

HOUSE BILL 966

By Curtiss

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 14, relative to surplus lines insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 56, Chapter 14, is amended by deleting the existing language in its entirety and substituting instead the following:

56-14-101. This part shall be known and may be cited as the "Surplus Lines Insurance Act."

56-14-102. As used in this part, unless the context otherwise requires:

(1) "Admitted company" or "authorized company" means an insurance company qualified and licensed to transact business under Title 56;

(2) "Affiliated group" means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;

(3) "Alien insurance company" means an insurance company incorporated or formed under the laws of any country other than the United States;

(4) "Commissioner" means the commissioner of commerce and insurance;

(5) "Control" means:

(A) To own, control, or have the power of an entity directly, indirectly, or acting through one or more other persons to vote twenty-five percent (25%) or more of any class of voting securities of another entity; or

(B) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

(6) "Department" means the department of commerce and insurance;

(7)

(A) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve (12) months; and

(iii) The person meets at least one of the following criteria:

(a) The person possesses a net worth in excess of twenty million dollars (\$20,000,000), as such amount is adjusted pursuant to subdivision (7)(B);

(b) The person generates annual revenue in excess of fifty million dollars (\$50,000,000), as such amount is adjusted pursuant to subdivision (7)(B);

(c) The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate;

(d) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty

million dollars (\$30,000,000), as such amount is adjusted pursuant to subdivision (7)(B); or

(e) The person is a municipality with a population in excess of fifty thousand (50,000) inhabitants;

(B) Beginning on the fifth occurrence of January 1 after the date this act becomes law, and each fifth occurrence of January 1 thereafter, the amounts in subdivisions (7)(A)(iii)(a), (b), and (d) shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics;

(8) "Foreign" has the same meaning as in § 56-1-102;

(9)

(A) "Home state," except as provided in subdivision (9)(B), means, with respect to an insured:

(i) 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

(ii) If one hundred percent (100%) of the insured risk is located out of the state referred to in subdivision (9)(A)(i), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated;

(B) If more than one (1) insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state, as determined pursuant to subdivision (9)(A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract;

(C) When determining the home state of the insured, the principal place of business is the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured;

(10) "Insurance company" has the same meaning as in § 56-1-102;

(11) "Nonadmitted company" or "unauthorized company" means an insurance company not licensed to transact business in this state under Title 56;

(12) "Nonadmitted insurance" or "surplus lines insurance" means any insurance coverage permitted by § 56-14-105 to be placed directly or through surplus lines agents with a nonadmitted insurer eligible pursuant to § 56-14-108;

(13) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the federal Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such section existed on January 1, 2011;

(14) "Surplus lines agent" means an agent who is licensed under Title 56, Chapter 6, Part 1 who is granted a surplus lines license in accordance with this part;

(15) "Surplus lines insurer" means an unauthorized company in which a nonadmitted insurance coverage is placed or may be placed under this part; and

(16) "Writing agent" means the licensed insurance agent who accepts the application for nonadmitted insurance directly or indirectly from the prospective insured.

56-14-103.

(a) If insurance coverages of insureds, whose home state is this state, cannot be procured from admitted companies after diligent effort, the coverages, designated as

surplus lines insurance, may be procured from unauthorized companies, subject to the following conditions:

(1) The insurance must be eligible for surplus lines under § 56-14-105;

(2) The insurer must be an eligible surplus lines insurer under § 56-14-108;

(3) The writing agent must be a licensed surplus lines agent; and

(4) Any other applicable provisions of this part must be followed.

(b) Any surplus lines insurance of an insured, whose home state is this state, procured through negotiations or an application, in whole or in part occurring or made from within or without this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of subsection (a).

56-14-104.

(a) The commissioner may issue a surplus lines license to any agent licensed pursuant to title 56, chapter 6. Such license shall grant the agent authority to procure the kinds of insurance provided for in this part from unauthorized companies in this state under the conditions prescribed in this part.

(b) Every license issued pursuant to this section shall expire on December 31 next following the date of issuance, and may be renewed for ensuing periods of twelve (12) months. A license fee in the amount of sixty dollars (\$60.00) shall be paid annually to the commissioner in advance of issuance of the license.

(c) Before commissioner may issue or renew a license, the agent seeking licensure or renewal of a license must file an application in a form that the commissioner prescribes.

(d) Before a license is issued, the applicant shall hold a valid license from the department authorizing the applicant to write the coverages provided for in this part with a company licensed to transact business in this state.

56-14-105.

(a) No insurance coverage shall be eligible for surplus lines insurance unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the authorized companies licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall not exceed the amount of coverage that exceeds the amount that may be procured from authorized companies.

(b) Subsection (a) shall not apply to exempt commercial purchasers if the surplus lines agent procuring or placing the policy has disclosed to the exempt commercial purchaser that such insurance may or may not be available from admitted companies that may provide greater protection with more regulatory oversight, and the exempt commercial purchaser has subsequently requested in writing that the surplus lines agent procure or place such insurance from a nonadmitted company.

(c) Policy or contract forms shall not be eligible unless the use:

(1) Is reasonably necessary for the principal purposes of the coverage;

(2) Would not be contrary to the purposes of the coverage; or

(3) Would not be contrary to the purposes of this part with respect to the reasonable protection of authorized companies from unwarranted competition by unauthorized companies.

(d) The following kinds of insurance shall not be eligible for surplus lines insurance:

(1) Primary personal automobile liability;

(2) Surety; and

(3) Workers' compensation, except as provided in subsection (a).

56-14-106.

(a) On a quarterly basis, the surplus lines agent shall promptly file with the commissioner on March 1, June 1, September 1, and December 1 of each year, on forms prescribed by the commissioner, a verified report of all surplus lines insurance transactions during the proceeding period placed, procured, or effected for, or on behalf of, an insured whose home state is the state of Tennessee, showing:

(1) Aggregate gross premiums written;

(2) Aggregate return premiums;

(3) Amount of aggregate tax remitted to this state;

(4) Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to a multistate agreement or compact; and

(5) Except for insurance placed or procured on behalf of an "exempt commercial purchaser", a sworn statement by the agent with regard to the coverages described in the quarterly report that, to the best of the agent's knowledge and belief, the agent could not reasonably procure such coverages from an admitted insurer.

(b) Within thirty (30) days of the end of each calendar month, the surplus lines agent shall make an affidavit for every new or renewed surplus lines insurance contract placed, procured or effected for, or on behalf of, an insured whose home state is the state of Tennessee within such calendar month, in the form prescribed by the commissioner. The affidavit shall be promptly filed with the commissioner and shall include an affirmation that the agent is, after diligent effort, unable to procure from an admitted company or admitted companies the full amount of insurance required to

protect the interest of the insured for each surplus lines insurance transaction except those procured or placed for exempt commercial purchasers.

(c) Upon placing a new or renewed surplus lines insurance coverage, the surplus lines agent shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if the policy is not then available, a certificate, cover note, or other confirmation of insurance.

(d) No surplus lines agent shall deliver the document required by subsection (c), or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless:

(1) The agent has prior written authority from the insurer for the insurance;

(2) The agent has received information from the insurer in the regular course of business that the insurance has been granted; or

(3) An insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(e) If, after the delivery of the document required by subsection (c), there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note, or confirmation, or in any other material respect as to the insurance coverage evidenced by the document, the surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation, or endorsement for the original document, accurately showing the current status of the coverage and the insurers responsible under the coverage. No such change shall result in a coverage or insurance contract that would be in violation of this part if originally issued on that basis.

(f) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has delivered a certificate, cover note, or confirmation upon request by the insured, the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note, or confirmation that was previously issued.

56-14-107.

(a) Every new or renewed insurance contract certificate, cover note, or other confirmation of insurance procured and delivered as a surplus line insurance coverage pursuant to this part shall bear the name and address of the writing agent and shall have stamped, affixed, or printed upon it the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus lines coverage pursuant to the Tennessee insurance statutes.

(b) The document shall show the description and location of the subject of the insurance, coverage, conditions, and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one (1) insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

56-14-108.

(a) An insurer shall not engage in the transaction of insurance unless authorized to do so pursuant to a valid license, or exempted by this act or otherwise exempted by the insurance laws of this state.

(b) A person who does not have a valid license as required by subsection (a) shall not engage in a transaction of insurance or act in this state directly or indirectly as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of insurance, or renewals thereof, or forwarding of applications, delivery of policies or contracts, inspection of risks, fixing of rates, investigation or adjustment of claims or losses, collection or forwarding of premiums, or in any other manner represent or assist the insurer in the transaction of insurance.

(c) A person who represents or aids a nonadmitted insurer in violation of this section shall be subject to the penalties set forth in § 56-14-117. No insurance contract entered into in violation of this section shall preclude the insured from enforcing his rights under the contract in accordance with the terms and provisions of the contract of insurance and the laws of this state, to the same degree those rights would have been enforceable had the contract been lawfully procured.

(d) If the nonadmitted insurer fails to pay a claim or loss within the provisions of the insurance contract and the laws of this state, a person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract, shall be liable to the insured for the full amount under the provisions of the insurance contract.

(e) Subsections (a) and (d) shall not apply to a person in regard to an insured who independently procures insurance. This section shall not apply to a person, properly licensed as an agent or broker in this state who, for a fee and pursuant to a written agreement, is engaged solely to offer the insured advice, counsel or opinion, or service with respect to the benefits, advantages or disadvantages promised under any proposed or in-force policy of insurance if the person does not, directly or indirectly,

participate in the solicitation, negotiation, or procurement of insurance on behalf of the insured.

(f) This section shall not apply to a person acting in material compliance with the insurance laws of this state in the placement of the types of insurance identified in the following subdivisions:

(1) Surplus lines insurance as provided in § 56-14-103. For the purposes of this subsection (f), a license shall be deemed to be in material compliance with the insurance laws of this state, unless the licensee committed a violation of § 56-14-103 that proximately caused loss to the insured;

(2) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this state;

(3) Reinsurance, unless the commissioner waives the requirements of this subdivision:

(A) The assuming insurer is authorized to engage in an insurance or reinsurance business by its domiciliary jurisdiction and is authorized to write the type of reinsurance in its domiciliary jurisdiction; and

(B) The assuming insurer satisfies all legal requirements for such reinsurance in the state of domicile of the ceding insurer;

(4) The property and operation of railroads or aircraft engaged in interstate or foreign commerce, wet marine, and transportation insurance; and

(5) Transactions subsequent to issuance of a policy not covering properties risks or exposures located, or to be performed in this state at the time of issuance, and lawfully solicited, written or delivered outside this state.

56-14-109.

(a) If, at any time the commissioner has reason to believe that any unauthorized insurer then on the list of eligible surplus lines insurers is in unsound financial condition or has acted in an untrustworthy manner, is no longer eligible under the conditions for surplus lines insurers provided in § 56-14-108, has willfully violated the laws of this state or does not conduct a proper claims practice, the commissioner may declare it ineligible.

(b) The commissioner shall promptly mail notice of all such declarations to each surplus lines agent at the agent's most recent address that is on record with the commissioner.

56-14-110.

(a) Insurance contracts procured as surplus line insurance coverage from unauthorized companies in accordance with this part shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by authorized companies.

(b) A contract of insurance placed in effect by an unauthorized company in violation of this part is unenforceable by the company. The insured shall not be precluded from enforcing the insured's rights in accordance with the terms and provisions of the contract.

56-14-111.

(a) If an unauthorized company has assumed the risk in accordance with this part, and if the premium for the insurance has been received by the surplus lines agent who placed the insurance, then in all questions thereafter arising under the coverage as between the insurance company and the insured, the insurance company shall be deemed to have received the premium due to it for the coverage. The insurance company shall be liable to the insured as to losses covered by the insurance, and for unearned premiums that may become payable to the insured upon cancellation of the

insurance, whether or not, in fact, the surplus lines agent is indebted to the insurer with respect to the insurance, or for any other cause.

(b) Each unauthorized company assuming a surplus lines insurance risk under this part shall be deemed to have subjected itself to the requirements of this section.

56-14-112.

(a) An unauthorized company may be sued upon any cause of action arising in this state under any surplus lines insurance contract issued by it or certificate, cover note, or other confirmation of the insurance issued by the surplus lines agent, pursuant to the same procedure as is provided for unauthorized insurers in Title 56, Chapter 2, Part 6 and § 56-7-105(b). The policy issued by the insurer, or any certificate of insurance issued by the surplus lines agent, shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process.

(b) Each unauthorized company assuming a surplus lines insurance risk pursuant to this part shall be deemed to have subjected itself to the requirements of this section.

(c) This section shall be cumulative to any other methods that may be provided by law for service of process upon the insurer.

56-14-113.

(a) The premiums charged for surplus lines insurance are subject to a gross premium tax in an amount to be determined by the compact authorized by Title 56, Chapter 14, Part 2. In the event that the compact fails to become established or fails to determine a rate for premium tax collection the provisions of subsection (b) control.

(b)

(1) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to § 56-14-104 shall

collect and pay to the commissioner a sum based the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines agent pursuant to the license. Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on an amount equal to five percent (5%) on that portion of the gross premiums allocated to this state pursuant to subdivision (b)(7), plus 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 pursuant to subdivision (b)(7), less 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 agent shall be returned to the policyholder directly by the surplus lines agent or through the producing broker, if any.

(3) The surplus lines agent is prohibited from rebating, for any reason, any part of the tax.

(4) The commissioner is authorized to contract or compact with other states for the purpose of collecting and disbursing to reciprocal states any funds collected pursuant to subsection (a) that are 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 compact or reciprocal allocation procedure with this state, the net premium tax collected shall be retained by this state.

(5) At the time of filing the quarterly report as set forth in § 56-14-106, each surplus lines licensee shall pay the premium tax due for the policies written during the period covered by the report.

(6) If a surplus lines insurance policy procured through a surplus lines agent covers properties, risks, or exposures only partially located or to be performed in this state, the tax due to this state shall be computed on the portions of the premiums which are attributable to the properties, risks, or exposures located or to be performed in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state shall 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. In no event shall the tax payable to this state be less than the tax due pursuant to subdivision (b)(7); provided, however, in the event that the amount of tax due under this provision is less than fifty dollars (\$50) in any jurisdiction, it shall be payable in the jurisdiction in which the affidavit required in § 56-14-106(b) is filed. The commissioner shall, at least annually, furnish to the commissioner of a reciprocal state a copy of all filings reporting an allocation of taxes as required by this subdivision unless such reports are provided pursuant to a clearinghouse as established by compact or reciprocal allocation procedure.

(7) In determining the amount of gross premiums taxable in this state for a placement of surplus lines insurance covering properties, risks, or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to properties, risks, or exposures located or to be performed in this state and which relates to

the kinds of insurance being placed as determined by reference to an allocation schedule duly promulgated in a regulation by the commissioner or a commission established by compact.

(A) If a policy covers more than one classification:

(i) For any portion of the coverage identified by a classification on the allocation schedule, the tax shall be computed by using the allocation schedule for the corresponding portion of the premium;

(ii) For any portion of the coverage not identified by a classification on the allocation schedule, the tax shall be computed by using an alternative equitable method of allocation for the property or risk; and

(iii) For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation which pertains to the classification describing the predominant coverage.

(B) If the information provided by the surplus lines agent is insufficient to substantiate the method of allocation used by the surplus lines agent, or if the commissioner determines that the surplus lines agent's method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state as follows:

(i) By use of the allocation schedule where the risk is appropriately identified in the schedule;

(ii) Where the allocation schedule does not identify a classification appropriate to the coverage, the commissioner may

give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information to the extent sufficient and relevant, including the percentage of the insured's physical assets in this state, the percentage of the insured's sales in this state, the percentage of income or resources derived from this state, and the amount of premium tax paid to another jurisdiction for the policy.

(C) The commissioner is authorized to adopt the allocation schedule of the Nonadmitted Insurance Commission for the purpose of computing the tax due on the portion of premium attributable to each risk classification.

(8) For the purposes of this section, "premium" includes all premiums, membership fees, assessments, dues, or any other consideration for insurance collected under this section.

(9) The tax collected under this section shall be in lieu of all other insurance taxes.

(10) The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb the tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of the tax or the agent's commission.

(c) All surplus lines premium taxes collected by a surplus lines agent under this section are trust funds in the agent's hands and the property of this state. The funds

shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium tax at the time required in this section, or who fraudulently withholds or appropriates or otherwise uses the money or any portions of the money belonging to the state, commits theft and shall be punished as provided by law for the crime of theft, regardless of whether the surplus lines agent has or claims to have any interest in the money so received.

(d) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver, or trustee, all surplus lines premium tax money and penalties due the state from the surplus lines agent shall be considered preferred claims, and the state shall be a preferred creditor and shall be paid in full.

(e) The attorney general and reporter, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover the tax not paid within the time prescribed in this section.

56-14-114.

Any agent who is granted a surplus lines license in accordance with this part may bring announcements or statements before the public in respect to the agent's ability to place surplus lines insurance as may be permitted by this part.

56-14-115.

Agents licensed in accordance with this part may not pay the whole or any part of the commission on surplus lines insurance to any person, except that the commissions may be shared or divided with any other person licensed by the commissioner as a surplus lines agent.

56-14-116.

(a) Each surplus lines agent shall keep in the agent's office in this state a full and true record of each surplus lines contract procured by the agent for or on behalf of an insured whose home state is the state of Tennessee, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

- (1) Amount of the insurance and perils insured against;
- (2) Brief general description of property insured and where located;
- (3) Gross premium charged;
- (4) Return premium paid, if any;
- (5) Rate of premium charged upon the several items of property;
- (6) Effective date of the contract and its terms;
- (7) Name and post office address of the insured;
- (8) Name and home office address of the insurer;
- (9) Amount collected from the insured; and
- (10) Other information as required by the commissioner.

(b) The record shall at all times be open to examination by the commissioner without notice, and shall be kept available and open to the commissioner for three (3) years next following expiration or cancellation of the contract.

56-14-117.

Any violation of this part shall subject the agent to the revocation or suspension of the surplus lines agent's license for a period of not less than one (1) year and a fine of not more than five hundred dollars (\$500).

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 14, is further amended by adding the following language as a new Part 2:

The Surplus Lines Insurance Multi-State Compliance Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I. Policy and Purpose.

The purposes of this compact are:

- (1) To implement the express provisions of the NRRA;
- (2) To protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on non-admitted 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 non-admitted insurance of multi-state 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 non-admitted insurance placements by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state 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 but not limited to 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 non-admitted insurance of multi-state 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 non-admitted insurance;

(7) To adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection, and dissemination for non-admitted insurance of multi-state risks and single-state risks, in accordance with rules to be adopted by the commission, thereby promoting the overall efficiency of the non-admitted insurance market;

(8) To adopt uniform mandatory rules with respect to regulatory compliance requirements for:

- (i) Foreign insurer eligibility requirements; and
- (ii) Surplus lines policyholder notices;

(9) To establish the surplus lines insurance multi-state compliance compact commission;

(10) To coordinate reporting of clearinghouse transaction data on non-admitted insurance of multi-state risks among compacting states and contracting states; and

(11) To perform these and such other related functions as may be consistent with the purposes of the surplus lines insurance multi-state compliance compact.

ARTICLE II. Definitions.

For purposes of this compact the following definitions shall 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” shall 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 non-admitted insurance of multi-state risks, in accordance with this compact and rules to be adopted by the commission;

(6) “Clearinghouse transaction data” means the information regarding non-admitted insurance of multi-state 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) “Compacting state” means any state which has enacted this compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2;

(8) "Commission" means the "surplus lines insurance multi-state compliance compact commission" established by this compact;

(9) "Commissioner" means the chief insurance regulatory official of a state including, but not limited to, commissioner, superintendent, director or administrator or their designees;

(10) "Contracting state" means any state which has not enacted this compact legislation but has entered into 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 (1) or more other persons own, controls, or has the power to vote twenty-five percent (25%) 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) In general, except as provided in subdivision (B), the term "home state" means, with respect to an insured:

(i) 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

(ii) If one hundred percent (100%) of the insured risk is located out of the state referred to in subdivision (A)(i), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated;

(B) Affiliated groups: If more than one (1) insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to 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 non-admitted 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 NRRA 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 shall be limited to one (1) vote;

(16) “Multi-state risk” means a risk with insured exposures in more than one (1) state;

(17) “Non-compacting state” means any state which has not adopted this compact;

(18) “Non-admitted insurance” means surplus lines insurance and independently procured insurance;

(19) “Non-admitted insurer” means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state;

(20) “NRRA” means the Non-Admitted and Reinsurance Reform Act which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

(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 non-admitted 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 non-admitted insurer as permitted under the law of the home state. For purposes of this compact "surplus lines insurance" shall also mean excess lines insurance as may be defined by applicable state law;

(30) "Surplus lines insurer" means a non-admitted 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" shall also mean an insurer which is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled; and

(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 multi-state compliance compact commission".

§ 2. Pursuant to Article IV, the commission shall have the power to adopt mandatory rules which establish exclusive home state authority regarding non-admitted insurance of multi state 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 shall have the power to 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 shall 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 which establish:

(1) Allocation formulas for each type of non-admitted 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 shall be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus line 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, but not limited to, processing clearinghouse

transaction data through state stamping and service offices, state insurance departments, or other state designated agencies or entities;

(4) That non-admitted insurance of multi-state risks shall be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines insurance shall include, but not be limited to:

(i) Person(s) required to be licensed to sell, solicit, or negotiate surplus lines insurance;

(ii) Insurer eligibility requirements or other approved non-admitted insurer requirements;

(iii) Diligent search;

(iv) 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 shall include, but not be limited to, 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 (1) single rate of taxation applicable to all non-admitted 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 (90) days advance notice to the compact commission;

(7) That each compacting state and contracting state shall require premium tax payments either annually, semi-annually, or quarterly utilizing one or more of the following dates only: March 1, June 1, September 1, and December 1;

(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 (1) 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 line 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 line 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 multi-state 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 shall 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 multi-state risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission;

- (13) Uniform foreign insurer eligibility requirements as authorized by the NRRA;
- (14) A uniform policyholder notice; and
- (15) Uniform treatment of purchasing group surplus lines insurance placements.

ARTICLE V. Powers of the Commission.

The commission shall have the following powers:

- (1) To promulgate rules and operating procedures, pursuant to Article VIII of this compact, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- (2) To 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 shall not be affected;

(3) To 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 non-admitted insurers;

(4) To establish and maintain offices including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding non-admitted insurance of multi-state risks, single-state risks for states which elect to require surplus lines licensees to pay premium tax on single state risks through the clearinghouse and tax reporting forms;

(5) To purchase and maintain insurance and bonds;

(6) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state or stamping office, pursuant to an open, transparent, objective competitive process and procedure adopted by the commission;

(7) To 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, qualifications of personnel, and other related personnel matters;

(8) To 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 and/or conflict of interest;

(9) To 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 and/or conflict of interest;

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

(11) To 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 re-audit taxpayer records;

(12) To enforce compliance by compacting states and contracting states with rules, and bylaws pursuant to the authority set forth in Article XIV;

(13) To provide for dispute resolution among compacting states and contracting states;

(14) To 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 non-compacting states, consistent with the purposes of this compact;

(15) To make available advice and training to those personnel in state stamping offices, state insurance departments, or other state departments for record keeping, tax

compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;

(16) To establish a budget and make expenditures;

(17) To borrow money;

(18) To 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) To establish an executive committee of not less than seven (7) nor more than fifteen (15) representatives, which shall 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 shall be entitled to one (1) vote each. The executive committee shall 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) To establish an operations committee of not less than seven (7) and not more than fifteen (15) 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) To enter into 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) To adopt and use a corporate seal; and

(23) To 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. Membership, Voting and Bylaws.

(a) Each compacting state shall have and be limited to one (1) 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 which enacts this compact. In the absence of such a provision the member shall 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 he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists.

(b) Each member shall be entitled to one (1) vote and shall otherwise have an opportunity to participate in the governance of the commission in accordance with the bylaws.

(c) The commission shall, by a majority vote of the members, 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, but not limited to:

(i) Establishing the fiscal year of the commission;

- (ii) Providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;
 - (iii) Providing reasonable standards and procedures:
 - (A) For the establishment and meetings of committees; and
 - (B) Governing any general or specific delegation of any authority or function of the commission;
 - (iv) Providing reasonable procedures for calling and conducting meetings of the commission that 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 to or in part. As soon as practicable, the commission must make public:
 - (A) A copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and
 - (B) Votes taken during such meeting;
 - (v) Establishing the titles, duties, authority, and reasonable procedures for the election of the officers of the commission;
 - (vi) 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 shall exclusively govern the personnel policies and programs of the commission;

(vii) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;

(viii) 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 and/or reserving of all of its debts and obligations;

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. Executive Committee, Personnel and Chairperson.

(a) An executive committee of the commission (“executive committee”) shall be 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 shall have no more than fifteen (15) representatives, or one (1) for each state if there are less than fifteen (15) compacting states, who shall serve for a term and be established in accordance with the bylaws.

(b) The executive committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

(i) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) Establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of rules and operating procedures;

(iii) Overseeing the offices of the commission; and

(iv) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(c) The commission shall annually elect officers from the executive committee, with each having such authority and duties, as may be specified in the bylaws.

(d) The executive committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission;

§ 3. Operations Committee.

(a) An operations committee shall be established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee shall accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee shall be resolved by the majority vote of the commission.

The operations committee shall have no more than fifteen (15) representatives or one (1) for each state if there are less than fifteen (15) compacting states, who shall serve for a term and shall be established as set forth in the bylaws;

The operations committee shall have responsibility for:

(i) Evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms and to minimize costs to the states, state stamping offices, and the clearinghouse;

(ii) Making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems;

(iii) Evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations;

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

(b) All representatives of the operations committee shall be individuals who have extensive experience and/or employment in the surplus lines insurance business, including, but not limited to, executives and attorneys employed by surplus line insurers, surplus line licensees, law firms, state insurance departments, and/or state stamping offices. Operations committee representatives from compacting states which utilize the services of a state stamping office must appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.

§ 4. Legislative and Advisory Committees.

(a) A legislative committee comprised of state legislators or their designees shall be established to monitor the operations of and make recommendations to, the commission, including the executive committee; provided, that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.

(b) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

§ 5. Corporate Records of the Commission.

The commission shall maintain its corporate books and records in accordance with the bylaws.

§ 6. Qualified Immunity, Defense and Indemnification.

(a) The members, officers, executive director, employees and representatives of the commission, the executive committee and any other committee of the commission shall 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 subsection (a) shall be construed to protect any such person from suit and/or liability 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 shall be construed to prohibit that person from retaining his or her 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 shall have the right and power to cast a vote to which that compacting state is entitled and to 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 shall be held as set forth in the bylaws.

§ 4. Public notice shall be given of all meetings and all meetings shall 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., Section 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 which 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; and

(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 shall fully and clearly describe all matters discussed in a meeting and shall 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 shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

ARTICLE VIII. Rules and Operating Procedures: Rulemaking.

Functions of the Commission.

Rulemaking functions of the commission:

§ 1. Rulemaking authority: The commission shall promulgate 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 shall be invalid and have no force or effect.

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

§ 3. Effective Date: All rules and amendments, thereto, shall become effective as of the date specified in each rule, operating procedure or amendment.

§ 4. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall 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 shall 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 promulgate 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 shall 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 promulgate 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 into 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 shall 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 shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this compact, the commission shall 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 shall 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 non-complying compacting state in writing of its noncompliance with commission bylaws or rules. If a non-complying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall 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 (2) or more compacting states, contracting states, or non-compacting 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 shall be utilized in circumstances where a dispute arises as to which state constitutes the home state.

ARTICLE XI. Review of Commission Decisions.

Regarding commission decisions:

§ 1. Except as necessary for promulgating rules to fulfill the purposes of this compact, the commission shall not have authority to otherwise regulate insurance in the compacting states.

§ 2. Not later than thirty (30) 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 promulgate 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 Article III, Section 6.

§ 3. The commission shall have authority to 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 Section 2 of this Article.

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 shall not be approved until it has been subject to notice and comment as set forth in Article VIII of this compact.

§ 4. The commission shall 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 shall 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 shall 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 shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three (3) years, the review of the independent auditor shall 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 shall include a report of the independent audit. The commission's internal accounts shall 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 work papers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, shall remain confidential.

§ 6. No compacting state shall 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 shall not make any political contributions to candidates for elected office, elected officials, political parties, nor political action committees. The commission shall 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 shall become effective and binding upon legislative enactment of the compact into law by two (2) compacting states; provided, that the commission shall become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten (10) compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than forty percent (40%) of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in Appendix A hereto. Thereafter, it shall 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 shall begin on the first January 1st or July 1st following the first anniversary of the commission effective date. For states which join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data shall be set by the commission provided surplus lines licensees and all other interested parties receive not less than ninety (90) days' advance notice.

Appendix A.

Surplus Line Insurance Premiums by State

| State | Premiums based on taxes paid | Share of Total Premiums |
|---------------|---------------------------------|----------------------------|
| 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.

§ 3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

ARTICLE XIV. Withdrawal, Default and Termination.

§ 1. Withdrawal.

(a) Once effective, the compact shall 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 shall 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 (10) 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 shall 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 shall occur upon the effective date of the withdrawing state reenacting the compact.

§ 2. Default.

(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 shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, 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 must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Decisions of the commission that are issued on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to Section 1 of this Article.

(d) Reinstatement following termination of any compacting state requires a reenactment of the compact.

§ 3. Dissolution of compact.

(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 shall have no further force or effect, and the business and affairs of the commission shall 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 shall be severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

§ 2. The provisions of this compact shall be liberally construed to effectuate its purposes.

§ 3. Throughout this compact the use of the singular shall include the plural and vice-versa.

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

ARTICLE XVI. Binding Effect of Compact and Other Laws.

§ 1. Other Laws.

(a) Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subsection (b) of this section.

(b) Decisions of the commission, and any rules, and any other requirements of the commission shall constitute the exclusive rule, or determination applicable to the

compacting states. Any law or regulation regarding non-admitted insurance of multi-state risks that is contrary to rules of the commission is preempted with respect to the following:

- (i) Clearinghouse transaction data reporting requirements;
- (ii) Allocation formula;
- (iii) Clearinghouse transaction data collection requirements;
- (iv) Premium tax payment time frames and rules concerning dissemination of data among the compacting states for non-admitted insurance of multi-state risks and single-state risks;
- (v) Exclusive compliance with surplus lines law of the home state of the insured;
- (vi) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to non-admitted insurance of multi-state risks;
- (vii) Uniform foreign insurers eligibility requirements;
- (viii) Uniform policyholder notice; and
- (ix) Uniform treatment of purchasing groups procuring non-admitted insurance.

(c) Except as stated in subsection (b) of this section, any rule, uniform standard or other requirement of the commission shall constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

- (i) The access of any person to state courts;
- (ii) The availability of alternative dispute resolution under Article X of this compact;

(iii) Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations;

(iv) State law relating to the construction of insurance contracts; or

(v) The authority of the attorney general of the state, including but not limited to, maintaining any actions or proceedings, as authorized by law.

§ 2. Binding Effect of this Compact.

(a) All lawful actions of the commission, including all rules promulgated 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 shall be ineffective as to that state and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall 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 3. This act shall take effect upon becoming a law, the public welfare requiring

it.