



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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Bulletin 13-004

June 5, 2013

Revisions to NAC Chapter 685A Concerning Nonadmitted Insurance

The purpose of this bulletin is to notify surplus-lines brokers, and insureds who independently procure nonadmitted insurance, of changes in Nevada's regulations that were instituted to conform with federal and Nevada statutes.

The Commissioner's Regulation R034-12, filed with the Secretary of State on September 14, 2012, renders Chapter 685A of the Nevada Administrative Code fully consistent with the Nonadmitted and Reinsurance Reform Act (NRRRA) of 2010 and the Nevada Revised Statutes as amended by Senate Bill (SB) 289 (2011). Furthermore, Regulation R034-12 repeals certain compliance requirements that are obsolete in the electronic age. The text of Regulation R034-12 can be found at the following website:
<http://www.leg.state.nv.us/register/2012Register/R034-12A.pdf>

Brokers and insureds should be aware of the following changes:

- Brokers are now only required to make a diligent effort to determine the financial solvency of any foreign or alien nonadmitted insurer if (i) Nevada is the home state of the insured, and (ii) the insurer is not listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners (NAIC). (NAC 686A.205(1), as amended)
- The former NAC 685A.215(3) concerning restrictions on "artificial divisions of coverage in one class or in any form of coverage under one class" was determined to be obsolete and in conflict with the NRRRA and, therefore, was removed.
- The documentation of due diligence pursuant to NRS 685A.050 should be provided by the broker in an electronic report via the NSLA's Surplus Lines Information

Portal (SLIP) system – not by an affidavit. An original signature is no longer required. This requirement is obsolete in the electronic age. (NAC 685A.240, as amended)


- NAC 685A.235, which required each insurance contract to include the original signature and license number of the broker who procured the contract, was repealed. The original-signature requirement is obsolete due to electronic filing and electronic signatures, and the license number of the broker is included in a separate field of the filing, thus rendering its inclusion in the contract redundant.
- Brokers are no longer required to maintain their files, accounts, and other records of surplus-lines transactions *separately* from other records in their place of business. Because many records are now electronic, the requirement of physical separation is obsolete. The requirement to maintain records, however, remains. The records must be open to examination by the Commissioner at any reasonable time. (NAC 685A.250, as amended)
- Pursuant to the NRRRA, due-diligence searches of coverage in the nonadmitted market do not need to be performed by or on behalf of an exempt commercial purchaser, as defined in NRS 685A.032. NAC 685A.215 was amended accordingly. However, exempt commercial purchasers or brokers who procure insurance on their behalf continue to be responsible for the filing and payment of premium tax (NRS 685A.180(1) with respect to surplus-lines broker; NRS 685A.180(2) and NRS 680B.040 with respect to insureds who independently procure nonadmitted insurance). The tax-filing obligations and the rate of premium tax (3.5%) do not vary on the basis of whether an insured is an exempt commercial purchaser.
- NAC 685A.190, NAC 685A.195, and NAC 685A.200, which included eligibility and application requirements for nonadmitted insurers, were repealed. Those requirements were preempted by the NRRRA and SB 289, which provide for streamlined nationwide uniform eligibility criteria. Pursuant to NRS 685A.070, as amended by Section 25 of SB 289, the Division of Insurance no longer maintains a list of eligible insurers or issues Certificates of Eligibility to nonadmitted insurers. It is the responsibility of each broker or insured to procure business only with eligible nonadmitted companies.

However, the determination of insurer eligibility is straightforward in most situations:

- **Foreign insurer (domiciled in the United States but not in Nevada):** If a foreign insurer is authorized in its state of domicile to write the kinds of insurance which it intends to write in Nevada, then it will be an eligible nonadmitted insurer in Nevada for those types of coverage.

- **Alien insurer (domiciled outside the United States):** All insurers on the NAIC Quarterly Listing of Alien Insurers are automatically eligible.¹ An alien insurer that is not on the NAIC Quarterly Listing of Alien Insurers may still be eligible if it maintains an adequate trust fund as described in NRS 685A.070(4).
- NAC 685A.420 was amended to clarify the treatment of the premium tax pertaining to a multi-state risk. If Nevada is not participating in a multi-state agreement, as is presently the case, and if Nevada is the home state of the risk, then Nevada is entitled to collect 100% of the premium tax on the entire multi-state policy. Surplus-lines brokers must file such premium tax with the Nevada Surplus Lines Association (NSLA). Insureds who independently procure insurance must file such premium tax with the Nevada Department of Taxation. If Nevada is not the home state of the risk, then, pursuant to the NRRRA, only the home state, and not Nevada, may require the payment of premium tax on the policy.

Furthermore, in response to past questions from brokers and insureds, the Division takes this opportunity to emphasize the statutory distinction between surplus lines insurance and independently procured nonadmitted insurance. The only difference between these two kinds of insurance is whether or not a broker is involved in the procurement of the policy. Pursuant to NRS 685A.039, "Surplus lines insurance" means insurance procured by an insured through a broker with a nonadmitted insurer eligible to accept such insurance. Pursuant to NRS 685A.035, "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer. Thus, if a broker is involved in *any* manner in the procurement of a nonadmitted policy, then the policy is *by definition* surplus lines insurance and may not be considered independently procured. Filings of reports of due diligence (if applicable) and premium taxes for such a policy are the responsibility of the broker and must be submitted to the NSLA.


SCOTT J. KIPPER
Commissioner of Insurance

¹ The NAIC Quarterly Listing of Alien Insurers is now available online on the following website:
http://www.naic.org/documents/committees_e_surplus_lines_fawg_quarterly_listing_alien_insurers.pdf