

2011 -- H 5110

LC00430

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO INSURANCE

Introduced By: Representatives Kennedy, E Coderre, Marcello, Gallison, and McNamara

Date Introduced: January 25, 2011

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "INSURANCE" is hereby amended
2 by adding thereto the following chapter:

3 CHAPTER 75

4 SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT

5 **27-75-1. Short title.** – This chapter shall be known as and may be cited the “Surplus
6 Lines Insurance Multi-State Compliance Compact.”

7 **27-75-2. Preamble.** – WHEREAS, with regard to non-admitted insurance policies with
8 risk exposures located in multiple states, the 111th United States Congress, has stipulated in Title
9 V, Subtitle B the non-Admitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall
10 Street Reform and Consumer Protection Act, hereafter, the NRRA, that:

11 (1) The placement of non-admitted insurance shall be subject to the statutory and
12 regulatory requirements solely of the insured’s home state, and

13 (2) Any law, regulation, provision, or action of any state that applies or purports to apply
14 to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is
15 another state shall be preempted with respect to such application; except that any state law, rule,
16 or regulation that restricts the placement of workers’ compensation insurance or excess insurance
17 for self-funded workers’ compensation plans with a non-admitted insurer shall not be preempted;
18 and

19 WHEREAS, in compliance with NRRA, no state other than the home state of an insured

1 may require any premium tax payment for non-admitted insurance; and no state other than an
2 insured's home state may require a surplus lines broker to be licensed in order to sell, solicit, or
3 negotiate non-admitted insurance with respect to such insured; and

4 WHEREAS, the NRRA intends that the states may enter into a compact or otherwise
5 establish procedures to allocate among the states the premium taxes paid to an insured's home
6 state; and that each state adopt nationwide uniform requirements, forms, and procedures, such as
7 an interstate compact, that provide for the reporting, payment, collection, and allocation of
8 premium taxes for non-admitted insurance; and

9 WHEREAS, after the expiration of the two-year period beginning on the date of the
10 enactment of the NRRA, a state may not collect any fees relating to licensing of an individual or
11 entity as a surplus lines licensee in the state unless the state has in effect at such time laws or
12 regulations that provide for participation by the state in the national insurance producer database
13 of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines
14 licensees and the renewal of such licenses; and

15 WHEREAS, a need exists for a system of regulation that will provide for surplus lines
16 insurance to be placed with reputable and financially sound non-admitted insurers, and that will
17 permit orderly access to surplus lines insurance in this state and encourage insurers to make new
18 and innovative types of insurance available to consumers in this state; and

19 WHEREAS, protecting the revenue of this state and other compacting states may be
20 accomplished by facilitating the payment and collection of premium tax on non-admitted
21 insurance and providing for allocation of premium tax for non-admitted insurance of multi-state
22 risks among the states in accordance with uniform allocation formulas; and

23 WHEREAS, the efficiency of the surplus lines market may be improved by eliminating
24 duplicative and inconsistent tax and regulatory requirements among the states, and by promoting
25 and protecting the interests of surplus lines licensees who assist such insureds and non-admitted
26 insurers, thereby ensuring the continued availability of non-admitted insurance to consumers; and

27 WHEREAS, regulatory compliance with respect to non-admitted insurance placements
28 may be streamlined by providing for exclusive single-state regulatory compliance for non-
29 admitted insurance of multi-state risks, thereby providing certainty regarding such compliance to
30 all persons who have an interest in such transactions, including, but not limited to, insureds,
31 regulators, surplus lines licensees, other insurance producers, and surplus lines insurers; and

32 WHEREAS, coordination of regulatory resources and expertise between state insurance
33 departments and other state agencies, as well as state surplus lines stamping offices, with respect
34 to non-admitted insurance will be improved; and

1 risks, in accordance with rules to be adopted by the commission, thereby promoting the overall
2 efficiency of the non-admitted insurance market.

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

5 (i) Foreign insurer eligibility requirements;

6 (ii) Surplus lines policyholder notices;

7 (9) To establish the surplus lines insurance multi-state compliance compact
8 commission.

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

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

13 ARTICLE II

14 DEFINITIONS

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

16 (1) "Admitted insurer" means an insurer that is licensed, or authorized, to transact the
17 business of insurance under the law of the home state; for purposes of this compact "admitted
18 insurer" shall not include a domestic surplus lines insurer as may be defined by applicable state
19 law.

20 (2) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by,
21 or is under common control with the insured.

22 (3) "Allocation formula" means the uniform methods promulgated by the commission by
23 which insured risk exposures will be apportioned to each state for the purpose of calculating
24 premium taxes due.

25 (4) "Bylaws" means those bylaws established by the commission for its governance, or
26 for directing or controlling the commission's actions or conduct.

27 (5) "Clearinghouse" means the commission's operations involving the acceptance,
28 processing, and dissemination, among the compacting states, contracting states, surplus lines
29 licensees, insureds and other persons, of premium tax and clearinghouse transaction data for Non-
30 admitted insurance of multi-state risks, in accordance with this compact and rules to be adopted
31 by the commission.

32 (6) "Clearinghouse transaction data" means the information regarding non-admitted
33 insurance of multi-state risks required to be reported, accepted, collected, processed, and
34 disseminated by surplus lines licensees for surplus lines insurance and insureds for independently

1 procured insurance under this compact and rules to be adopted by the commission. Clearinghouse
2 transaction data includes information related to single-state risks if a state elects to have the
3 clearinghouse collect taxes on single-state risks for such state.

4 (7) “Compacting State” means any state which has enacted this compact legislation and
5 which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to
6 Article XIV, Section 2.

7 (8) “Commission” means the “surplus lines insurance multi-state compliance compact
8 commission” established by this compact.

9 (9) “Commissioner” means the chief insurance regulatory official of a state including, but
10 not limited to commissioner, superintendent, director or administrator or their designee(s).

11 (10) “Contracting state” means any state which has not enacted this compact legislation
12 but has entered into a written contract with the commission to utilize the services of and fully
13 participate in the clearinghouse.

14 (11) “Control” An entity has “control” over another entity if:

15 (i) The entity directly or indirectly or acting through 1 or more other persons own,
16 controls, or has the power to vote twenty-five percent (25%) or more of any class of voting
17 securities of the other entity; or

18 (ii) The entity controls, in any manner, the election of a majority of the directors or
19 trustees of the other entity.

20 (12) “Home state”

21 (i) In general. Except as provided in subparagraph (ii), the term “home state” means,
22 with respect to an insured:

23 (A) The state in which an insured maintains its principal place of business or, in the case
24 of an individual, the individual’s principal residence; or

25 (B) If one hundred percent (100%) of the insured risk is located out of the state referred
26 to in subparagraph (i)(A), the state to which the greatest percentage of the insured’s taxable
27 premium for that insurance contract is allocated.

28 (ii) Affiliated groups. If more than one insured from an affiliated group are named
29 insureds on a single non-admitted insurance contract, the term “home state” means the home
30 state, as determined pursuant to subparagraph (i), of the member of the affiliated group that has
31 the largest percentage of premium attributed to it under such insurance contract.

32 (13) “Independently procured insurance” means insurance procured by an insured
33 directly from a surplus lines insurer or other non-admitted insurer as permitted by the laws of the
34 home state.

1 (14) “Insurer eligibility requirements” means the criteria, forms and procedures
2 established to qualify as a surplus lines insurer under the law of the home state provided that such
3 criteria, forms and procedures are consistent with the express provisions of the NRRA on and
4 after July 21, 2011.

5 (15) “Member” means the person or persons chosen by a compacting state as its
6 representative or representatives to the commission provided that each compacting state shall be
7 limited to one vote.

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

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

10 (18) “Non-admitted insurance” means surplus lines insurance and independently
11 procured insurance.

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

14 (20) “NRRA” means the non-admitted and reinsurance reform act which is Title V,
15 Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

16 (21) “Policyholder notice” means the disclosure notice or stamp that is required to be
17 furnished to the applicant or policyholder in connection with a surplus lines insurance placement.

18 (22) “Premium tax” means with respect to non-admitted insurance, any tax, fee,
19 assessment, or other charge imposed by a government entity directly or indirectly based on any
20 payment made as consideration for such insurance, including premium deposits, assessments,
21 registration fees, and any other compensation given in consideration for a contract of insurance.

22 (23) “Principal place of business” means with respect to determining the home state of
23 the insured, the state where the insured maintains its headquarters and where the insured’s high-
24 level officers direct, control and coordinate the business activities of the insured.

25 (24) “Purchasing group” means any group formed pursuant to the liability risk retention
26 act which has as one of its purposes the purchase of liability insurance on a group basis,
27 purchases such insurance only for its group members and only to cover their similar or related
28 liability exposure and is composed of members whose businesses or activities are similar or
29 related with respect to the liability to which members are exposed by virtue of any related, similar
30 or common business, trade, product, services, premises or operations and is domiciled in any
31 state.

32 (25) “Rule” means a statement of general or particular applicability and future effect
33 promulgated by the commission designed to implement, interpret, or prescribe law or policy or
34 describing the organization, procedure or practice requirements of the commission which shall

1 have the force and effect of law in the compacting states.

2 (26) "Single-state risk" means a risk with insured exposures in only one state.

3 (27) "State" means any state, district or territory of the United States of America.

4 (28) "State transaction documentation" means the information required under the laws of
5 the home state to be filed by surplus lines licensees in order to report surplus lines insurance and
6 verify compliance with surplus lines laws, and by insureds in order to report independently
7 procured insurance.

8 (29) "Surplus lines insurance" means insurance procured by a surplus lines licensee from
9 a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state;
10 for purposes of this compact "surplus lines insurance" shall also mean excess lines insurance as
11 may be defined by applicable state law.

12 (30) "Surplus lines insurer" means a non-admitted insurer eligible under the law of the
13 home state to accept business from a surplus lines licensee; for purposes of this compact "surplus
14 lines insurer" shall also mean an insurer which is permitted to write surplus lines insurance under
15 the laws of the state where such insurer is domiciled.

16 (31) "Surplus lines licensee" means an individual, firm or corporation licensed under the
17 law of the home state to place surplus lines insurance.

18 ARTICLE III

19 ESTABLISHMENT OF THE COMMISSION AND VENUE

20 (a) The compacting states hereby create and establish a joint public agency known as the
21 "surplus lines insurance multi-state compliance compact commission."

22 (b) Pursuant to Article IV, the commission shall have the power to adopt mandatory rules
23 which establish exclusive home state authority regarding non-admitted insurance of multi- state
24 risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and
25 distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking
26 procedures and rules for the purpose of financing, administering, operating and enforcing
27 compliance with the provisions of this compact, its bylaws and rules.

28 (c) Pursuant to Article IV, the commission shall have the power to adopt mandatory rules
29 establishing foreign insurer eligibility requirements and a concise and objective policyholder
30 notice regarding the nature of a surplus lines placement.

31 (d) The commission is a body corporate and politic, and an instrumentality of the
32 compacting states.

33 (e) The commission is solely responsible for its liabilities except as otherwise specifically
34 provided in this compact.

1 (f) Venue is proper and judicial proceedings by or against the commission shall be
2 brought solely and exclusively in a court of competent jurisdiction where the principal office of
3 the commission is located. The commission may waive venue and jurisdictional defenses to the
4 extent it adopts or consents to participate in alternative dispute resolution proceedings.

5 ARTICLE IV

6 AUTHORITY TO ESTABLISH MANDATORY RULES

7 The commission shall adopt mandatory rules which establish:

8 (1) Allocation formulas for each type of non-admitted insurance coverage, which
9 allocation formulas must be used by each compacting state and contracting state in acquiring
10 premium tax and clearinghouse transaction data from surplus lines licensees and insureds for
11 reporting to the clearinghouse created by the compact commission. Such allocation formulas shall
12 be established with input from surplus lines licensees and be based upon readily available data
13 with simplicity and uniformity for the surplus line licensee as a material consideration.

14 (2) Uniform clearinghouse transaction data reporting requirements for all information
15 reported to the clearinghouse.

16 (3) Methods by which compacting states and contracting states require surplus lines
17 licensees and insureds to pay premium tax and to report clearinghouse transaction data to the
18 clearinghouse, including, but not limited to, processing clearinghouse transaction data through
19 state stamping and service offices, state insurance departments, or other state designated agencies
20 or entities.

21 (4) That non-admitted insurance of multi-state risks shall be subject to all of the
22 regulatory compliance requirements of the home state exclusively. Home state regulatory
23 compliance requirements applicable to surplus lines insurance shall include, but not be limited to:
24 (i) Person(s) required to be licensed to sell, solicit, or negotiate surplus lines insurance; (ii)
25 Insurer eligibility requirements or other approved non-admitted insurer requirements; (iii)
26 Diligent search; (iv) State transaction documentation and clearinghouse transaction data regarding
27 the payment of premium tax as set forth in this compact and rules to be adopted by the
28 commission. Home state regulatory compliance requirements applicable to independently
29 procured insurance placements shall include, but not be limited to, providing state transaction
30 documentation and clearinghouse transaction data regarding the payment of premium tax as set
31 forth in this compact and rules to be adopted by the commission.

32 (5) That each compacting state and contracting state may charge its own rate of taxation
33 on the premium allocated to such state based on the applicable allocation formula provided that
34 the state establishes one single rate of taxation applicable to all non-admitted insurance

1 transactions and no other tax, fee assessment or other charge by any governmental or quasi-
2 governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be
3 charged as a separate, additional cost unless such fees are incorporated into a state's single rate of
4 taxation.

5 (6) That any change in the rate of taxation by any compacting state or contracting state be
6 restricted to changes made prospectively on not less than ninety (90) days advance notice to the
7 compact commission.

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

11 (8) That each compacting state and contracting state prohibit any other state agency or
12 political subdivision from requiring surplus lines licensees to provide clearinghouse transaction
13 data and state transaction documentation other than to the insurance department or tax officials of
14 the home state or one single designated agent thereof.

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

19 (10) A method for the clearinghouse to periodically report to compacting states,
20 contracting states, surplus lines and insureds who independently procure insurance, all premium
21 taxes owed to each of the compacting states and contracting states, the dates upon which payment
22 of such premium taxes are due and a method to pay them through the clearinghouse.

23 (11) That each surplus line licensee is required to be licensed only in the home state of
24 each insured for whom surplus lines insurance has been procured.

25 (12) That a policy considered to be surplus lines insurance in the insured's home state
26 shall be considered surplus lines insurance in all compacting states and contracting states, and
27 taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each
28 compacting state and contracting state shall require each surplus lines licensee to pay to every
29 other compacting state and contracting state premium taxes on each multi-state risk through the
30 clearinghouse at such tax rate charged on surplus lines transactions in such other compacting
31 states and contracting states on the portion of the risk in each such compacting state and
32 contracting state as determined by the applicable uniform allocation formula adopted by the
33 commission. A policy considered to be independently procured Insurance in the insured's home
34 state shall be considered independently procured insurance in all compacting states and

1 contracting states. Each compacting state and contracting state shall require the insured to pay
2 every other compacting state and contracting state the independently procured insurance premium
3 tax on each multi-state risk through the clearinghouse pursuant to the uniform allocation formula
4 adopted by the commission.

5 (13) Uniform foreign insurer eligibility requirements as authorized by the NRRA.

6 (14) A uniform policyholder notice.

7 (15) Uniform treatment of purchasing group surplus lines insurance placements.

8 ARTICLE V

9 POWERS OF THE COMMISSION

10 The commission shall have the following powers:

11 (1) To promulgate rules and operating procedures, pursuant to Article VIII of this
12 compact, which shall have the force and effect of law and shall be binding in the compacting
13 States to the extent and in the manner provided in this compact;

14 (2) To bring and prosecute legal proceedings or actions in the name of the commission,
15 provided that the standing of any state insurance department to sue or be sued under applicable
16 law shall not be affected;

17 (3) To issue subpoenas requiring the attendance and testimony of witnesses and the
18 production of evidence, provided however, the commission is not empowered to demand or
19 subpoena records or data from non-admitted insurers;

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

24 (5) To purchase and maintain insurance and bonds;

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

28 (7) To hire employees, professionals or specialists, and elect or appoint officers, and to
29 fix their compensation, define their duties and give them appropriate authority to carry out the
30 purposes of the compact, and determine their qualifications, pursuant to an open, transparent,
31 objective competitive process and procedure adopted by the commission; and to establish the
32 commission's personnel policies and programs relating to conflicts of interest, rates of
33 compensation and qualifications of personnel, and other related personnel matters;

34 (8) To accept any and all appropriate donations and grants of money, equipment,

1 supplies, materials and services, and to receive, utilize and dispose of the same; provided that at
2 all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

3 (9) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,
4 hold, improve or use, any property, real, personal or mixed; provided that, at all times the
5 commission shall avoid any appearance of impropriety and/or conflict of interest;

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

8 (11) To provide for tax audit rules and procedures for the compacting states with respect
9 to the allocation of premium taxes including:

10 (i) Minimum audit standards, including sampling methods;
11 (ii) Review of internal controls;
12 (iii) Cooperation and sharing of audit responsibilities between compacting states;
13 (iv) Handling of refunds or credits due to overpayments or improper allocation of
14 premium taxes;

15 (v) Taxpayer records to be reviewed including a minimum retention period;
16 (vi) Authority of compacting states to review, challenge, or re-audit taxpayer records.

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

19 (13) To provide for dispute resolution among compacting states and contracting states;
20 (14) To advise compacting states and contracting states on tax-related issues relating to
21 insurers, insureds, surplus lines licensees, agents or brokers domiciled or doing business in non-
22 compacting states, consistent with the purposes of this compact;

23 (15) To make available advice and training to those personnel in state stamping offices,
24 state insurance departments or other state departments for record keeping, tax compliance, and
25 tax allocations; and to be a resource for state insurance departments and other state departments;

26 (16) To establish a budget and make expenditures;
27 (17) To borrow money;

28 (18) To appoint and oversee committees, including advisory committees comprised of
29 members, state insurance regulators, state legislators or their representatives, insurance industry
30 and consumer representatives, and such other interested persons as may be designated in this
31 compact and the bylaws;

32 (19) To establish an executive committee of not less than seven (7) nor more than fifteen
33 (15) representatives, which shall include officers elected by the commission and such other
34 representatives as provided for herein and determined by the bylaws. Representatives of the

1 executive committee shall serve a one-year term. Representatives of the executive committee
2 shall be entitled to one vote each. The executive committee shall have the power to act on behalf
3 of the commission, with the exception of rulemaking, during periods when the commission is not
4 in session. The executive committee shall oversee the day to day activities of the administration
5 of the compact, including the activities of the operations committee created under this Article and
6 compliance and enforcement of the provisions of the compact, its bylaws, and rules, and such
7 other duties as provided herein and as deemed necessary.

8 (20) To establish an operations committee of not less than seven (7) and not more than
9 fifteen (15) representatives to provide analysis, advice, determinations and recommendations
10 regarding technology, software, and systems integration to be acquired by the commission and to
11 provide analysis, advice, determinations and recommendations regarding the establishment of
12 mandatory rules to be adopted to be by the commission.

13 (21) To enter into contracts with contracting states so that contracting states can utilize
14 the services of and fully participate in the clearinghouse subject to the terms and conditions set
15 forth in such contracts;

16 (22) To adopt and use a corporate seal; and

17 (23) To perform such other functions as may be necessary or appropriate to achieve the
18 purposes of this compact consistent with the state regulation of the business of insurance.

19 ARTICLE VI

20 ORGANIZATION OF THE COMMISSION

21 (1) Membership, Voting and Bylaws

22 (i) Each compacting state shall have and be limited to one member. Each state shall
23 determine the qualifications and the method by which it selects a member and set forth the
24 selection process in the enabling provision of the legislation which enacts this compact. In the
25 absence of such a provision the member shall be appointed by the governor of such compacting
26 state. Any member may be removed or suspended from office as provided by the law of the state
27 from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled
28 in accordance with the laws of the compacting state wherein the vacancy exists.

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

31 (iii) The commission shall, by a majority vote of the members, prescribe bylaws to
32 govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the
33 powers of the compact including, but not limited to:

34 (A) Establishing the fiscal year of the commission;

1 (B) Providing reasonable procedures for holding meetings of the commission, the
2 executive committee, and the operations committee;

3 (C) Providing reasonable standards and procedures: (I) For the establishment and
4 meetings of committees, and (II) Governing any general or specific delegation of any authority or
5 function of the commission;

6 (D) Providing reasonable procedures for calling and conducting meetings of the
7 commission that consist of a majority of commission members, ensuring reasonable advance
8 notice of each such meeting and providing for the right of citizens to attend each such meeting
9 with enumerated exceptions designed to protect the public’s interest, the privacy of individuals,
10 and insurers’ and surplus lines licensees’ proprietary information, including trade secrets. The
11 commission may meet in camera only after a majority of the entire membership votes to close a
12 meeting in total or in part. As soon as practicable, the commission must make public: (I) A copy
13 of the vote to close the meeting revealing the vote of each member with no proxy votes allowed,
14 and (II) Votes taken during such meeting;

15 (E) Establishing the titles, duties and authority and reasonable procedures for the election
16 of the officers of the commission;

17 (F) Providing reasonable standards and procedures for the establishment of the personnel
18 policies and programs of the commission. Notwithstanding any civil service or other similar laws
19 of any compacting state, the bylaws shall exclusively govern the personnel policies and programs
20 of the commission;

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

23 (H) Providing a mechanism for winding up the operations of the commission and the
24 equitable disposition of any surplus funds that may exist after the termination of the compact after
25 the payment and/or reserving of all of its debts and obligations;

26 (iv) The commission shall publish its bylaws in a convenient form and file a copy thereof
27 and a copy of any amendment thereto, with the appropriate agency or officer in each of the
28 compacting states.

29 (2) Executive committee, personnel and chairperson

30 (i) An executive committee of the commission (“executive committee”) shall be
31 established. All actions, of the executive committee, including compliance and enforcement are
32 subject to the review and ratification of the commission as provided in the bylaws. The executive
33 committee shall have no more than fifteen (15) representatives, or one for each state if there are
34 less than fifteen (15) compacting states, who shall serve for a term and be established in

1 accordance with the bylaws.

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

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

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

8 (C) Overseeing the offices of the commission; and

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

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

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

19 (3) Operations Committee

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

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

30 The operations committee shall have responsibility for:

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

1 clearinghouse.

2 (B) Making recommendations to the executive committee based on its analysis and
3 determination of the clearinghouse technology requirements and compatibility with existing state
4 and state stamping office systems.

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

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

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

17 (4) Legislative and Advisory Committees

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

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

27 (5) Corporate records of the commission

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

30 (6) Qualified immunity, defense and indemnification

31 (i) The members, officers, executive director, employees and representatives of the
32 commission, the executive committee and any other committee of the commission shall be
33 immune from suit and liability, either personally or in their official capacity, for any claim for
34 damage to or loss of property or personal injury or other civil liability caused by or arising out of

1 any actual or alleged act, error or omission that occurred, or that the person against whom the
2 claim is made had a reasonable basis for believing occurred within the scope of commission
3 employment, duties or responsibilities; provided, that nothing in this paragraph shall be construed
4 to protect any such person from suit and/or liability for any damage, loss, injury or liability
5 caused by the intentional or willful or wanton misconduct of that person.

6 (ii) The commission shall defend any member, officer, executive director, employee or
7 representative of the commission, the executive committee or any other committee of the
8 commission in any civil action seeking to impose liability arising out of any actual or alleged act,
9 error or omission that occurred within the scope of commission employment, duties or
10 responsibilities, or that the person against whom the claim is made had a reasonable basis for
11 believing occurred within the scope of commission employment, duties or responsibilities;
12 provided, hat nothing herein shall be construed to prohibit that person from retaining his or her
13 own counsel; and provided further, that the actual or alleged act, error or omission did not result
14 from that person’s intentional or willful or wanton misconduct.

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

23 ARTICLE VII

24 MEETINGS AND ACTS OF THE COMMISSION

25 (a) The commission shall meet and take such actions as are consistent with the provisions
26 of this compact and the bylaws.

27 (b) Each member of the commission shall have the right and power to cast a vote to
28 which that compacting state is entitled and to participate in the business and affairs of the
29 commission. A member shall vote in person or by such other means as provided in the bylaws.
30 The bylaws may provide for members’ participation in meetings by telephone or other means of
31 communication.

32 (c) The commission shall meet at least once during each calendar year. Additional
33 meetings shall be held as set forth in the bylaws.

34 (d) Public notice shall be given of all meetings and all meetings shall be open to the

1 public, except as set forth in the rules or otherwise provided in the compact.

2 (e) The commission shall promulgate rules concerning its meetings consistent with the
3 principles contained in the “Government in the Sunshine Act,” 5 U.S.C., Section 552b, as may be
4 amended.

5 (f) The commission and its committees may close a meeting, or portion thereof, where it
6 determines by majority vote that an open meeting would be likely to:

7 (1) Relate solely to the commission’s internal personnel practices and procedures;

8 (2) Disclose matters specifically exempted from disclosure by federal and state statute;

9 (3) Disclose trade secrets or commercial or financial information which is privileged or
10 confidential;

11 (4) Involve accusing a person of a crime, or formally censuring a person;

12 (5) Disclose information of a personal nature where disclosure would constitute a clearly
13 unwarranted invasion of personal privacy;

14 (6) Disclose investigative records compiled for law enforcement purposes;

15 (7) Specifically relate to the commission’s issuance of a subpoena, or its participation in a
16 civil action or other legal proceeding.

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

25 ARTICLE VIII

26 RULES AND OPERATING PROCEDURES: RULEMAKING

27 Rulemaking Functions of the Commission:

28 1. Rulemaking Authority.--The commission shall promulgate reasonable rules in order to
29 effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing,
30 in the event the commission exercises its rulemaking authority in a manner that is beyond the
31 scope of the purposes of this chapter, or the powers granted hereunder, then such an action by the
32 commission shall be invalid and have no force or effect.

33 2. Rulemaking Procedure.--Rules shall be made pursuant to a rulemaking process that
34 substantially conforms to the “Model State Administrative Procedure Act,” of 1981 Act, Uniform

1 Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the
2 Commission.

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

5 4. Not later than thirty (30) days after a rule is promulgated, any person may file a
6 petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or
7 otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a
8 substantial likelihood of success. The court shall give deference to the actions of the commission
9 consistent with applicable law and shall not find the rule to be unlawful if the rule represents a
10 reasonable exercise of the commission's authority.

11 ARTICLE IX

12 COMMISSION RECORDS AND ENFORCEMENT

13 (a) The commission shall promulgate rules establishing conditions and procedures for
14 public inspection and copying of its information and official records, except such information and
15 records involving the privacy of individuals, insurers, insureds or surplus lines licensee trade
16 secrets. State transaction documentation and clearinghouse transaction data collected by the
17 clearinghouse shall be used for only those purposes expressed in or reasonably implied under the
18 provisions of this compact and the commission shall afford this data the broadest protections as
19 permitted by any applicable law for proprietary information, trade secrets or personal data. The
20 commission may promulgate additional rules under which it may make available to federal and
21 state agencies, including law enforcement agencies, records and information otherwise exempt
22 from disclosure, and may enter into agreements with such agencies to receive or exchange
23 information or records subject to nondisclosure and confidentiality provisions.

24 (b) Except as to privileged records, data and information, the laws of any compacting
25 state pertaining to confidentiality or nondisclosure shall not relieve any compacting state member
26 of the duty to disclose any relevant records, data or information to the commission; provided that
27 disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality
28 requirement, and further provided that, except as otherwise expressly provided in this chapter, the
29 commission shall not be subject to the compacting state's laws pertaining to confidentiality and
30 nondisclosure with respect to records, data and information in its possession. Confidential
31 information of the commission shall remain confidential after such information is provided to any
32 member, and the commission shall maintain the confidentiality of any information provided by a
33 member that is confidential under that member's state law.

34 (c) The commission shall monitor compacting states for compliance with duly adopted

1 bylaws and rules. The commission shall notify any non-complying compacting state in writing of
2 its noncompliance with commission bylaws or rules. If a non-complying compacting state fails to
3 remedy its noncompliance within the time specified in the notice of noncompliance, the
4 compacting state shall be deemed to be in default as set forth in Article XIV.

5 ARTICLE X

6 DISPUTE RESOLUTION

7 (a) Before a member may bring an action in a court of competent jurisdiction for
8 violation of any provision, standard or requirement of the compact, the commission shall attempt,
9 upon the request of a member, to resolve any disputes or other issues that are subject to this
10 compact and which may arise between two (2) or more compacting states, contracting states or
11 non-compacting states, and the commission shall promulgate a rule providing alternative dispute
12 resolution procedures for such disputes.

13 (b) The commission shall also provide alternative dispute resolution procedures to
14 resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or
15 allocation or related issues which are the subject of this compact.

16 (c) Any alternative dispute resolution procedures shall be utilized in circumstances where
17 a dispute arises as to which state constitutes the home state.

18 ARTICLE XI

19 REVIEW OF COMMISSION DECISIONS

20 Regarding Commission decisions:

21 (1) Except as necessary for promulgating Rules to fulfill the purposes of this compact, the
22 commission shall not have authority to otherwise regulate insurance in the compacting states.

23 (2) Not later than thirty (30) days after the commission has given notice of any Rule or
24 allocation formula, any third-party filer or compacting state may appeal the determination to a
25 review panel appointed by the commission. The commission shall promulgate rules to establish
26 procedures for appointing such review panels and provide for notice and hearing. An allegation
27 that the commission, in making compliance or tax determinations acted arbitrarily, capriciously,
28 or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is
29 subject to judicial review in accordance with Article III, subsection (f).

30 (3) The commission shall have authority to monitor, review and reconsider commission
31 decisions upon a finding that the determinations or allocations do not meet the relevant rule.
32 Where appropriate, the commission may withdraw or modify its determination or allocation after
33 proper notice and hearing, subject to the appeal process in subsection (2) above.

34 ARTICLE XII

1 FINANCE

2 (a) The commission shall pay or provide for the payment of the reasonable expenses of
3 its establishment and organization. To fund the cost of its initial operations the commission may
4 accept contributions, grants, and other forms of funding from the state stamping offices,
5 compacting states and other sources.

6 (b) The commission shall collect a fee payable by the insured directly or through a
7 surplus lines licensee on each transaction processed through the compact clearinghouse, to cover
8 the cost of the operations and activities of the commission and its staff in a total amount sufficient
9 to cover the commission's annual budget.

10 (c) The commission's budget for a fiscal year shall not be approved until it has been
11 subject to notice and comment as set forth in Article VIII of this compact.

12 (d) The commission shall be regarded as performing essential governmental functions in
13 exercising such powers and functions and in carrying out the provisions of this compact and of
14 any law relating thereto, and shall not be required to pay any taxes or assessments of any
15 character, levied by any state or political subdivision thereof, upon any of the property used by it
16 for such purposes, or any income or revenue therefrom, including any profit from a sale or
17 exchange.

18 (e) The commission shall keep complete and accurate accounts of all its internal receipts,
19 including grants and donations, and disbursements for all funds under its control. The internal
20 financial accounts of the commission shall be subject to the accounting procedures established
21 under its bylaws. The financial accounts and reports including the system of internal controls and
22 procedures of the commission shall be audited annually by an independent certified public
23 accountant. Upon the determination of the commission, but not less frequently than every three
24 (3) years, the review of the independent auditor shall include a management and performance
25 audit of the commission. The commission shall make an annual report to the governor and
26 legislature of the compacting states, which shall include a report of the independent audit. The
27 commission's internal accounts shall not be confidential and such materials may be shared with
28 the commissioner, the controller, or the stamping office of any compacting state upon request
29 provided, however, that any work papers related to any internal or independent audit and any
30 information regarding the privacy of individuals, and licensees' and insurers' proprietary
31 information, including trade secrets, shall remain confidential.

32 (f) No compacting state shall have any claim to or ownership of any property held by or
33 vested in the commission or to any commission funds held pursuant to the provisions of this
34 compact.

1 committee of the commission in writing upon the introduction of legislation repealing this
2 compact in the withdrawing state.

3 (4) The commission shall notify the other compacting states of the introduction of such
4 legislation within ten (10) days after its receipt of notice thereof.

5 (5) The withdrawing state is responsible for all obligations, duties and liabilities incurred
6 through the effective date of withdrawal, including any obligations, the performance of which
7 extend beyond the effective date of withdrawal. To the extent those obligations may have been
8 released or relinquished by mutual agreement of the commission and the Withdrawing State, the
9 commission's determinations prior to the effective date of withdrawal shall continue to be
10 effective and be given full force and effect in the withdrawing state, unless formally rescinded by
11 the commission.

12 (6) Reinstatement following withdrawal of any compacting state shall occur upon the
13 effective date of the withdrawing state reenacting the compact.

14 (b) Default

15 (1) If the commission determines that any compacting state has at any time defaulted
16 ("defaulting state") in the performance of any of its obligations or responsibilities under this
17 compact, the bylaws or duly promulgated rules then after notice and hearing as set forth in the
18 bylaws, all rights, privileges and benefits conferred by this compact on the defaulting state shall
19 be suspended from the effective date of default as fixed by the commission. The grounds for
20 default include, but are not limited to, failure of a compacting state to perform its obligations or
21 responsibilities, and any other grounds designated in commission rules. The commission shall
22 immediately notify the defaulting state in writing of the defaulting state's suspension pending a
23 cure of the default. The commission shall stipulate the conditions and the time period within
24 which the defaulting state must cure its default. If the defaulting state fails to cure the default
25 within the time period specified by the commission, the defaulting state shall be terminated from
26 the compact and all rights, privileges and benefits conferred by this compact shall be terminated
27 from the effective date of termination.

28 (2) Decisions of the commission that are issued on the effective date of termination shall
29 remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn
30 voluntarily pursuant to subsection (a) of this Article.

31 (3) Reinstatement following termination of any compacting state requires a reenactment
32 of the compact.

33 (c) Dissolution of compact

34 (1) The compact dissolves effective upon the date of the withdrawal or default of the

1 compacting state which reduces membership in the compact to one compacting state.

2 (2) Upon the dissolution of this compact, the compact becomes null and void and shall
3 have no further force or effect, and the business and affairs of the commission shall be wound up
4 and any surplus funds shall be distributed in accordance with the rules and bylaws.

5 ARTICLE XV

6 SEVERABILITY AND CONSTRUCTION

7 (a) The provisions of this compact shall be severable and if any phrase, clause, sentence
8 or provision is deemed unenforceable, the remaining provisions of the compact shall be
9 enforceable.

10 (b) The provisions of this compact shall be liberally construed to effectuate its purposes.

11 (c) Throughout this compact the use of the singular shall include the plural and vice-
12 versa.

13 (d) The headings and captions of articles, sections and sub-sections used in this compact
14 are for convenience only and shall be ignored in construing the substantive provisions of this
15 compact.

16 ARTICLE XVI

17 BINDING EFFECT OF COMPACT AND OTHER LAWS

18 (a) Other laws

19 (1) Nothing herein prevents the enforcement of any other law of a compacting state
20 except as provided in subdivision (2) of this section.

21 (2) Decisions of the commission, and any rules, and any other requirements of the
22 commission shall constitute the exclusive rule, or determination applicable to the compacting
23 states. Any law or regulation regarding non-admitted insurance of multi-state risks that is contrary
24 to rules of the commission is preempted with respect to the following:

25 (i) Clearinghouse transaction data reporting requirements;

26 (ii) Allocation formula;

27 (iii) Clearinghouse transaction data collection requirements;

28 (iv) Premium tax payment time frames and rules concerning dissemination of data
29 among the compacting states for non-admitted insurance of multi-state risks and single-state
30 risks;

31 (v) Exclusive compliance with surplus lines law of the home state of the insured;

32 (vi) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse
33 transaction data related to non-admitted insurance of multi-state risks;

34 (vii) Uniform foreign insurers eligibility requirements;

1 (viii) Uniform policyholder notice; and
2 (ix) Uniform treatment of purchasing groups procuring non-admitted insurance.

3 (3) Except as stated in subdivision (2), any rule, uniform standard or other requirement of
4 the commission shall constitute the exclusive provision that a commissioner may apply to
5 compliance or tax determinations. Notwithstanding the foregoing, no action taken by the
6 commission shall abrogate or restrict: (i) The access of any person to state courts; (ii) The
7 availability of alternative dispute resolution under Article X of this compact (iii) Remedies
8 available under state law related to breach of contract, tort, or other laws not specifically directed
9 to compliance or tax determinations; (iv) State law relating to the construction of insurance
10 contracts; or (v) The authority of the attorney general of the state, including but not limited to
11 maintaining any actions or proceedings, as authorized by law.

12 (b) Binding effect of this compact

13 (1) All lawful actions of the commission, including all Rules promulgated by the
14 commission, are binding upon the compacting states, except as provided herein.

15 (2) All agreements between the commission and the compacting states are binding in
16 accordance with their terms.

17 (3) Upon the request of a party to a conflict over the meaning or interpretation of
18 commission actions, and upon a majority vote of the compacting states, the commission may
19 issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be
20 implemented by rule at the discretion of the commission.

21 (4) In the event any provision of this compact exceeds the constitutional limits imposed
22 on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to
23 be conferred by that provision upon the commission shall be ineffective as to that state and those
24 obligations duties, powers or jurisdiction shall remain in the compacting state and shall be
25 exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are
26 delegated by law in effect at the time this compact becomes effective.

27 SECTION 2. This act shall take effect upon passage.

=====
LC00430
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE

1 This act would establish the surplus lines insurance multi-state compliance compact to
2 protect the premium tax revenues of the compacting states through facilitating the payment and
3 collection of premium tax on non-admitted insurance, and to protect the interests of the
4 compacting states by supporting the continued availability of such insurance to consumers.

5 This act would take effect upon passage.

6

=====
LC00430
=====