

House Study Bill 181

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON SODERBERG)

A BILL FOR

1 An Act providing for a surplus lines insurance multistate
2 compliance compact, coordinating provisions, and repeals,
3 and including effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

TLSB 2659YC (10) 84

av/nh

1 DIVISION I

2 SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT

3 Section 1. NEW SECTION. 515I.1 Surplus lines insurance
4 multistate compliance compact.

5 The surplus lines insurance multistate compliance compact
6 is entered into and enacted into law with all jurisdictions
7 legally joining therein, in the form substantially as follows:

8 1. Article I ===== Findings and declaration of purpose.

9 a. The state of Iowa and the other states that are parties
10 to this compact find all of the following:

11 (1) With regard to nonadmitted insurance policies with
12 risk exposures located in multiple states, the 111th United
13 States Congress, has stipulated in the federal Nonadmitted
14 and Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the
15 federal Dodd=Frank Wall Street Reform and Consumer Protection
16 Act, the following:

17 (a) The placement of nonadmitted insurance shall be subject
18 to the statutory and regulatory requirements solely of the
19 insured's home state.

20 (b) Any law, regulation, provision, or action of any state
21 that applies or purports to apply to nonadmitted insurance sold
22 to, solicited by, or negotiated with an insured whose home
23 state is another state shall be preempted with respect to such
24 application, except that any state law, rule, or regulation
25 that restricts the placement of workers' compensation insurance
26 or excess insurance for self=funded workers' compensation plans
27 with a nonadmitted insurer shall not be preempted.

28 (2) In compliance with the federal Nonadmitted and
29 Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the
30 federal Dodd=Frank Wall Street Reform and Consumer Protection
31 Act, no state other than the home state of an insured may
32 require any premium tax payment for nonadmitted insurance,
33 and no state other than an insured's home state may require a
34 surplus lines broker to be licensed in order to sell, solicit,
35 or negotiate nonadmitted insurance with respect to such

2 1 insured.

2 2 (3) The federal Nonadmitted and Reinsurance Reform Act of
2 3 2010, Tit. V, subtit. B, of the federal Dodd=Frank Wall Street
2 4 Reform and Consumer Protection Act, intends that the states

2 5 may enter into a compact or otherwise establish procedures
2 6 to allocate among the states the premium taxes paid to an
2 7 insured's home state, and that each state adopt nationwide
2 8 uniform requirements, forms, and procedures, such as an
2 9 interstate compact, that provide for the reporting, payment,
2 10 collection, and allocation of premium taxes for nonadmitted
2 11 insurance.

2 12 (4) After the expiration of the two-year period beginning
2 13 on the date of the enactment of the federal Nonadmitted and
2 14 Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the
2 15 federal Dodd-Frank Wall Street Reform and Consumer Protection
2 16 Act, a state shall not collect any fees relating to licensing
2 17 of an individual or entity as a surplus lines licensee in
2 18 the state unless the state has in effect at such time laws
2 19 or regulations that provide for participation by the state
2 20 in the national insurance producer database of the national
2 21 association of insurance commissioners, or any other equivalent
2 22 uniform national database, for the licensure of surplus lines
2 23 licensees and the renewal of such licenses.

2 24 (5) A need exists for a system of regulation that will
2 25 provide for surplus lines insurance to be placed with reputable
2 26 and financially sound nonadmitted insurers, and that will
2 27 permit orderly access to surplus lines insurance in this state
2 28 and encourage insurers to make new and innovative types of
2 29 insurance available to consumers in this state.

2 30 (6) Protecting the revenue of this state and other
2 31 compacting states may be accomplished by facilitating the
2 32 payment and collection of premium tax on nonadmitted insurance
2 33 and providing for allocation of premium tax for nonadmitted
2 34 insurance of multistate risks among the states in accordance
2 35 with uniform allocation formulas.

3 1 (7) The efficiency of the surplus lines market may be
3 2 improved by eliminating duplicative and inconsistent tax and
3 3 regulatory requirements among the states, and by promoting and
3 4 protecting the interests of surplus lines licensees who assist
3 5 such insureds and nonadmitted insurers, thereby ensuring the
3 6 continued availability of nonadmitted insurance to consumers.

3 7 (8) Regulatory compliance with respect to nonadmitted
3 8 insurance placements may be streamlined by providing for
3 9 exclusive single-state regulatory compliance for nonadmitted
3 10 insurance of multistate risks, thereby providing certainty
3 11 regarding such compliance to all persons who have an interest
3 12 in such transactions, including but not limited to insureds,
3 13 regulators, surplus lines licensees, other insurance producers,
3 14 and surplus lines insurers.

3 15 (9) Coordination of regulatory resources and expertise
3 16 between state insurance departments and other state agencies,
3 17 as well as state surplus lines stamping offices, with respect
3 18 to nonadmitted insurance will be improved.

3 19 b. The general purposes of this compact are all of the
3 20 following:

3 21 (1) To implement the express provisions of the federal
3 22 Nonadmitted and Reinsurance Reform Act of 2010 in Tit. V,
3 23 subtit. B, of the federal Dodd-Frank Wall Street Reform and
3 24 Consumer Protection Act.

3 25 (2) To protect the premium tax revenues of the compacting
3 26 states through facilitating the payment and collection of
3 27 premium tax on nonadmitted insurance; and to protect the
3 28 interests of the compacting states by supporting the continued
3 29 availability of such insurance to consumers and to provide
3 30 for allocation of premium tax for nonadmitted insurance of
3 31 multistate risks among the states in accordance with uniform
3 32 allocation formulas to be developed, adopted, and implemented

3 33 by the commission.

3 34 (3) To streamline and improve the efficiency of the surplus
3 35 lines market by eliminating duplicative and inconsistent tax
4 1 and regulatory requirements among the states and promote and
4 2 protect the interest of surplus lines licensees who assist
4 3 such insureds and surplus lines insurers, thereby ensuring the
4 4 continued availability of surplus lines insurance to consumers.

4 5 (4) To streamline regulatory compliance with respect to
4 6 nonadmitted insurance placements by providing for exclusive
4 7 single=state regulatory compliance for nonadmitted insurance
4 8 of multistate risks, in accordance with rules to be adopted
4 9 by the commission, thereby providing certainty regarding
4 10 such compliance to all persons who have an interest in
4 11 such transactions, including but not limited to insureds,
4 12 regulators, surplus lines licensees, other insurance producers,
4 13 and surplus lines insurers.

4 14 (5) To establish a clearinghouse for receipt and
4 15 dissemination of premium tax and clearinghouse transaction
4 16 data related to nonadmitted insurance of multistate risks, in
4 17 accordance with rules to be adopted by the commission.

4 18 (6) To improve coordination of regulatory resources and
4 19 expertise between state insurance departments and other state
4 20 agencies, as well as state surplus lines stamping offices, with
4 21 respect to nonadmitted insurance.

4 22 (7) To adopt uniform rules to provide for premium
4 23 tax payment, reporting, allocation, data collection and
4 24 dissemination for nonadmitted insurance of multistate risks and
4 25 single=state risks, in accordance with rules to be adopted by
4 26 the commission, thereby promoting the overall efficiency of the
4 27 nonadmitted insurance market.

4 28 (8) To adopt uniform mandatory rules with respect to
4 29 regulatory compliance requirements for all of the following:

4 30 (a) Foreign insurer eligibility requirements.

4 31 (b) Surplus lines policyholder notices.

4 32 (9) To establish the surplus lines insurance multistate
4 33 compliance compact commission.

4 34 (10) To coordinate reporting of clearinghouse transaction
4 35 data on nonadmitted insurance of multistate risks among
5 1 compacting states and contracting states.

5 2 (11) To perform these and such other related functions
5 3 as may be consistent with the purposes of the surplus lines
5 4 insurance multistate compliance compact.

5 5 2. Article II ===== Definitions.

5 6 For purposes of this compact, the following definitions
5 7 shall apply:

5 8 a. "Admitted insurer" means an insurer that is licensed or
5 9 authorized to transact the business of insurance under the law
5 10 of the home state. For purposes of this compact, "admitted
5 11 insurer" shall not include a domestic surplus lines insurer as
5 12 may be defined by applicable state law.

5 13 b. "Affiliate" means with respect to an insured, any entity
5 14 that controls, is controlled by, or is under common control
5 15 with the insured.

5 16 c. "Allocation formula" means the uniform methods
5 17 promulgated by the commission by which insured risk exposures
5 18 will be apportioned to each state for the purpose of
5 19 calculating premium taxes due.

5 20 d. "Bylaws" means those bylaws established by the commission
5 21 for its governance, or for directing or controlling the
5 22 commission's actions or conduct.

5 23 e. "Clearinghouse" means the commission's operations
5 24 involving the acceptance, processing, and dissemination, among
5 25 the compacting states, contracting states, surplus lines

5 26 licensees, insureds, and other persons, of premium tax and
5 27 clearinghouse transaction data for nonadmitted insurance of
5 28 multistate risks, in accordance with this compact and rules to
5 29 be adopted by the commission.

5 30 f. "Clearinghouse transaction data" means the information
5 31 regarding nonadmitted insurance of multistate risks required to
5 32 be reported, accepted, collected, processed, and disseminated
5 33 by surplus lines licensees for surplus lines insurance
5 34 and insureds for independently procured insurance under
5 35 this compact and rules to be adopted by the commission.

6 1 "Clearinghouse transaction data" includes information related to
6 2 single=state risks if a state elects to have the clearinghouse
6 3 collect taxes on single=state risks for such state.

6 4 g. "Commission" means the surplus lines insurance multistate
6 5 compliance compact commission established by this compact.

6 6 h. "Commissioner" means the Iowa commissioner of insurance.

6 7 i. "Compacting state" means any state which has enacted
6 8 this compact legislation and which has not withdrawn pursuant
6 9 to article XIV, paragraph "a", or been terminated pursuant to
6 10 article XIV, paragraph "b".

6 11 j. "Contracting state" means any state which has not
6 12 enacted this compact legislation but has entered into a written
6 13 contract with the commission to utilize the services of and
6 14 fully participate in the clearinghouse.

6 15 k. "Control" means an entity has "control" over another
6 16 entity if:

6 17 (1) The entity directly or indirectly, or acting through one
6 18 or more other persons owns, controls, or has the power to vote
6 19 twenty=five percent or more of any class of voting securities
6 20 of the other entity.

6 21 (2) The entity controls in any manner the election of a
6 22 majority of the directors or trustees of the other entity.

6 23 l. "Home state" means the following:

6 24 (1) In general. Except as provided in subparagraph (2), the
6 25 term "home state" means, with respect to an insured, either of
6 26 the following:

6 27 (a) The state in which an insured maintains its principal
6 28 place of business or, in the case of an individual, the
6 29 individual's principal residence.

6 30 (b) If one hundred percent of the insured risk is located
6 31 out of the state referred to in subparagraph division (a), the
6 32 state to which the greatest percentage of the insured's taxable
6 33 premium for that insurance contract is allocated.

6 34 (2) Affiliated groups. If more than one insured from an
6 35 affiliated group are named insureds on a single nonadmitted
7 1 insurance contract, the term "home state" means the home state,
7 2 as determined pursuant to subparagraph (1), of the member of
7 3 the affiliated group that has the largest percentage of premium
7 4 attributed to it under such insurance contract.

7 5 m. "Independently procured insurance" means insurance
7 6 procured by an insured directly from a surplus lines insurer or
7 7 other nonadmitted insurer as permitted by the laws of the home
7 8 state.

7 9 n. "Insurer eligibility requirements" means the criteria,
7 10 forms, and procedures established to qualify as a surplus lines
7 11 insurer under the law of the home state provided that such
7 12 criteria, forms, and procedures are consistent with the express
7 13 provisions of the federal Nonadmitted and Reinsurance Reform
7 14 Act in Tit. V, subtit. B, of the federal Dodd=Frank Wall Street
7 15 Reform and Consumer Protection Act, on and after July 21, 2011.

7 16 o. "Member" means the person or persons chosen by a
7 17 compacting state as its representative or representatives to
7 18 the commission provided that each compacting state shall be

7 19 limited to one vote.

7 20 p. "Multistate risk" means a risk with insured exposures in
7 21 more than one state.

7 22 q. "Nonadmitted insurance" means surplus lines insurance and
7 23 independently procured insurance.

7 24 r. "Nonadmitted insurer" means an insurer that is not
7 25 authorized or admitted to transact the business of insurance
7 26 under the law of the home state.

7 27 s. "Noncompacting state" means any state which has not
7 28 adopted this compact.

7 29 t. "Policyholder notice" means the disclosure notice or
7 30 stamp that is required to be furnished to the applicant or
7 31 policyholder in connection with a surplus lines insurance
7 32 placement.

7 33 u. "Premium tax" means with respect to nonadmitted
7 34 insurance, any tax, fee, assessment, or other charge imposed
7 35 by a government entity directly or indirectly based on any
8 1 payment made as consideration for such insurance, including
8 2 premium deposits, assessments, registration fees, and any
8 3 other compensation given in consideration for a contract of
8 4 insurance.

8 5 v. "Principal place of business" means with respect to
8 6 determining the home state of the insured, the state where the
8 7 insured maintains its headquarters, and where the insured's
8 8 high-level officers direct, control, and coordinate the
8 9 business activities of the insured.

8 10 w. "Purchasing group" means any group formed pursuant to the
8 11 federal Liability Risk Retention Act which has as one of its
8 12 purposes the purchase of liability insurance on a group basis,
8 13 purchases such insurance only for its group members and only
8 14 to cover their similar or related liability exposure, and is
8 15 composed of members whose businesses or activities are similar
8 16 or related with respect to the liability to which members are
8 17 exposed by virtue of any related, similar, or common business,
8 18 trade, product, services, premises, or operations, and is
8 19 domiciled in any state.

8 20 x. "Rule" means a statement of general or particular
8 21 applicability and future effect promulgated by the commission
8 22 designed to implement, interpret, or prescribe law or policy
8 23 or describing the organization, procedure, or practice
8 24 requirements of the commission which shall have the force and
8 25 effect of law in the compacting states.

8 26 y. "Single-state risk" means a risk with insured exposures
8 27 in only one state.

8 28 z. "State" means any state, district, or territory of the
8 29 United States of America.

8 30 aa. "State transaction documentation" means the information
8 31 required under the laws of the home state to be filed by
8 32 surplus lines licensees in order to report surplus lines
8 33 insurance and verify compliance with surplus lines laws, and by
8 34 insureds in order to report independently procured insurance.

8 35 ab. "Surplus lines insurance" means insurance procured
9 1 by a surplus lines licensee from a surplus lines insurer or
9 2 other nonadmitted insurer as permitted under the law of the
9 3 home state. For purposes of this compact, "surplus lines
9 4 insurance" also means excess lines insurance as may be defined
9 5 by applicable state law.

9 6 ac. "Surplus lines insurer" means a nonadmitted insurer
9 7 eligible under the law of the home state to accept business
9 8 from a surplus lines licensee. For purposes of this compact,
9 9 "surplus lines insurer" also means an insurer which is permitted
9 10 to write surplus lines insurance under the laws of the state
9 11 where such insurer is domiciled.

9 12 ad. "Surplus lines licensee" means an individual, firm, or
9 13 corporation licensed under the law of the home state to place
9 14 surplus lines insurance.

9 15 3. Article III ===== Establishment of the commission and venue.

9 16 a. The compacting states hereby create and establish a joint
9 17 public agency known as the surplus lines insurance multistate
9 18 compliance compact commission.

9 19 b. Pursuant to article IV, the commission shall have the
9 20 power to adopt mandatory rules which establish exclusive home
9 21 state authority regarding nonadmitted insurance of multistate
9 22 risks, allocation formulas, clearinghouse transaction data,
9 23 a clearinghouse for receipt and distribution of allocated
9 24 premium tax and clearinghouse transaction data, and uniform
9 25 rulemaking procedures and rules for the purpose of financing,
9 26 administering, operating, and enforcing compliance with the
9 27 provisions of this compact, its bylaws, and rules.

9 28 c. Pursuant to article IV, the commission shall have
9 29 the power to adopt mandatory rules establishing foreign
9 30 insurer eligibility requirements and a concise and objective
9 31 policyholder notice regarding the nature of a surplus lines
9 32 placement.

9 33 d. The commission is a body corporate and politic, and an
9 34 instrumentality of the compacting states.

9 35 e. The commission is solely responsible for its liabilities
10 1 except as otherwise specifically provided in this compact.

10 2 f. Venue is proper and judicial proceedings by or against
10 3 the commission shall be brought solely and exclusively in a
10 4 court of competent jurisdiction where the principal office of
10 5 the commission is located. The commission may waive venue and
10 6 jurisdictional defenses to the extent it adopts or consents to
10 7 participate in alternative dispute resolution proceedings.

10 8 4. Article IV ===== Authority to establish mandatory rules.

10 9 The commission shall adopt mandatory rules which establish
10 10 all of the following:

10 11 a. Allocation formulas for each type of nonadmitted
10 12 insurance coverage, which allocation formulas must be used
10 13 by each compacting state and contracting state in acquiring
10 14 premium tax and clearinghouse transaction data from surplus
10 15 lines licensees and insureds for reporting to the clearinghouse
10 16 created by the commission. Such allocation formulas shall
10 17 be established with input from surplus lines licensees and
10 18 be based upon readily available data with simplicity and
10 19 uniformity for the surplus lines licensee as a material
10 20 consideration.

10 21 b. Uniform clearinghouse transaction data reporting
10 22 requirements for all information reported to the clearinghouse.

10 23 c. Methods by which compacting states and contracting
10 24 states require surplus lines licensees and insureds to pay
10 25 premium tax and to report clearinghouse transaction data to
10 26 the clearinghouse, including but not limited to processing
10 27 clearinghouse transaction data through state stamping and
10 28 service offices, state insurance departments, or other
10 29 state-designated agencies or entities.

10 30 d. (1) That nonadmitted insurance of multistate risks shall
10 31 be subject to all of the regulatory compliance requirements of
10 32 the home state exclusively. Home state regulatory compliance
10 33 requirements applicable to surplus lines insurance shall
10 34 include but not be limited to the following:

10 35 (a) Persons required to be licensed to sell, solicit, or
1 1 negotiate surplus lines insurance.

1 2 (b) Insurer eligibility requirements or other approved
1 3 nonadmitted insurer requirements.

1 4 (c) Diligent search.

1 5 (d) State transaction documentation and clearinghouse
1 6 transaction data regarding the payment of premium tax as
1 7 set forth in this compact and rules to be adopted by the
1 8 commission.

1 9 (2) Home state regulatory compliance requirements
1 10 applicable to independently procured insurance placements shall
1 11 include but not be limited to providing state transaction
1 12 documentation and clearinghouse transaction data regarding the
1 13 payment of premium tax as set forth in this compact and rules
1 14 to be adopted by the commission.

1 15 e. That each compacting state and contracting state may
1 16 charge its own rate of taxation on the premium allocated
1 17 to such state based on the applicable allocation formula
1 18 provided that the state establishes one single rate of taxation
1 19 applicable to all nonadmitted insurance transactions and no
1 20 other tax, fee assessment, or other charge by any governmental
1 21 or quasi-governmental agency is permitted. Notwithstanding the
1 22 foregoing, stamping office fees may be charged as a separate,
1 23 additional cost unless such fees are incorporated into a
1 24 state's single rate of taxation.

1 25 f. That any change in the rate of taxation by any compacting
1 26 state or contracting state is restricted to changes made
1 27 prospectively on not less than ninety days advance notice to
1 28 the compact commission.

1 29 g. That each compacting state and contracting state shall
1 30 require premium tax payments either annually, semiannually, or
1 31 quarterly utilizing one or more of the following dates only:
1 32 March 1, June 1, September 1, and December 1.

1 33 h. That each compacting state and contracting state prohibit
1 34 any other state agency or political subdivision from requiring
1 35 surplus lines licensees to provide clearinghouse transaction
12 1 data and state transaction documentation other than to the
12 2 insurance department or tax officials of the home state or one
12 3 single designated agent thereof.

12 4 i. The obligation of the home state by itself, through
12 5 a designated agent, surplus lines stamping or service
12 6 office, to collect clearinghouse transaction data from
12 7 surplus lines licensees and from insureds for independently
12 8 procured insurance, where applicable, for reporting to the
12 9 clearinghouse.

12 10 j. A method for the clearinghouse to periodically report to
12 11 compacting states, contracting states, surplus lines licensees,
12 12 and insureds who independently procure insurance, all premium
12 13 taxes owed to each of the compacting states and contracting
12 14 states, the dates upon which payment of such premium taxes are
12 15 due, and a method to pay the taxes through the clearinghouse.

12 16 k. That each surplus lines licensee is required to be
12 17 licensed only in the home state of each insured for whom
12 18 surplus lines insurance has been procured.

12 19 l. That a policy considered to be surplus lines insurance
12 20 in the insured's home state shall be considered surplus lines
12 21 insurance in all compacting states and contracting states, and
12 22 taxed as a surplus lines transaction in all states to which a
12 23 portion of the risk is allocated. Each compacting state and
12 24 contracting state shall require each surplus lines licensee
12 25 to pay to every other compacting state and contracting state
12 26 premium taxes on each multistate risk through the clearinghouse
12 27 at such tax rate charged on surplus lines transactions in such
12 28 other compacting states and contracting states on the portion
12 29 of the risk in each such compacting state and contracting
12 30 state as determined by the applicable uniform allocation
12 31 formula adopted by the commission. A policy considered to be
12 32 independently procured insurance in the insured's home state

12 33 shall be considered independently procured insurance in all
12 34 compacting states and contracting states. Each compacting
12 35 state and contracting state shall require the insured to
13 1 pay every other compacting state and contracting state the
13 2 independently procured insurance premium tax on each multistate
13 3 risk through the clearinghouse pursuant to the uniform
13 4 allocation formula adopted by the commission.

13 5 m. Uniform foreign insurer eligibility requirements as
13 6 authorized by the federal Nonadmitted and Reinsurance Reform
13 7 Act of 2010, Tit. V, subtit. B, of the federal Dodd=Frank Wall
13 8 Street Reform and Consumer Protection Act.

13 9 n. A uniform policyholder notice.

13 10 o. Uniform treatment of purchasing group surplus lines
13 11 insurance placements.

13 12 5. Article V ===== Powers of the commission.

13 13 The commission shall have the following powers:

13 14 a. To promulgate rules and operating procedures, pursuant to
13 15 article VIII of this compact, which shall have the force and
13 16 effect of law and shall be binding in the compacting states to
13 17 the extent and in the manner provided in this compact.

13 18 b. To bring and prosecute legal proceedings or actions in
13 19 the name of the commission, provided that the standing of any
13 20 state insurance department to sue or be sued under applicable
13 21 law shall not be affected.

13 22 c. To issue subpoenas requiring the attendance and testimony
13 23 of witnesses and the production of evidence, provided however,
13 24 the commission is not empowered to demand or subpoena records
13 25 or data from nonadmitted insurers.

13 26 d. To establish and maintain offices including the
13 27 creation of a clearinghouse for the receipt of premium tax and
13 28 clearinghouse transaction data regarding nonadmitted insurance
13 29 of multistate risks, single=state risks for states which elect
13 30 to require surplus lines licensees to pay premium tax on single
13 31 state risks through the clearinghouse, and tax reporting forms.

13 32 e. To purchase and maintain insurance and bonds.

13 33 f. To borrow, accept, or contract for services of personnel,
13 34 including but not limited to employees of a compacting state or
13 35 stamping office, pursuant to an open, transparent, objective

14 1 competitive process and procedure adopted by the commission.

14 2 g. To hire employees, professionals, or specialists, and
14 3 elect or appoint officers, and to fix their compensation,
14 4 define their duties and give them appropriate authority
14 5 to carry out the purposes of the compact, and determine
14 6 their qualifications, pursuant to an open, transparent,
14 7 objective competitive process and procedure adopted by the
14 8 commission, and to establish the commission's personnel
14 9 policies and programs relating to conflicts of interest, rates
14 10 of compensation, and qualifications of personnel, and other
14 11 related personnel matters.

14 12 h. To accept any and all appropriate donations and grants
14 13 of money, equipment, supplies, materials, and services, and to
14 14 receive, utilize, and dispose of the same, provided that at all
14 15 times the commission shall avoid any appearance of impropriety
14 16 or conflict of interest.

14 17 i. To lease, purchase, accept appropriate gifts or
14 18 donations of, or otherwise to own, hold, improve, or use, any
14 19 property, real, personal, or mixed, provided that at all times
14 20 the commission shall avoid any appearance of impropriety or
14 21 conflict of interest.

14 22 j. To sell, convey, mortgage, pledge, lease, exchange,
14 23 abandon, or otherwise dispose of any property real, personal,
14 24 or mixed.

14 25 k. To provide for tax audit rules and procedures for the

14 26 compacting states with respect to the allocation of premium
14 27 taxes including all of the following:

- 14 28 (1) Minimum audit standards, including sampling methods.
- 14 29 (2) Review of internal controls.
- 14 30 (3) Cooperation and sharing of audit responsibilities
14 31 between compacting states.
- 14 32 (4) Handling of refunds or credits due to overpayments or
14 33 improper allocation of premium taxes.
- 14 34 (5) Taxpayer records to be reviewed including a minimum
14 35 retention period.
- 15 1 (6) Authority of compacting states to review, challenge, or
15 2 reaudit taxpayer records.
 - 15 3 l. To enforce compliance by compacting states and
15 4 contracting states with rules and bylaws pursuant to the
15 5 authority set forth in article XIV.
 - 15 6 m. To provide for dispute resolution among compacting states
15 7 and contracting states.
 - 15 8 n. To advise compacting states and contracting states on
15 9 tax-related issues relating to insurers, insureds, surplus
15 10 lines licensees, agents, or brokers domiciled or doing business
15 11 in noncompacting states, consistent with the purposes of this
15 12 compact.
 - 15 13 o. To make available advice and training to those personnel
15 14 in state stamping offices, state insurance departments or
15 15 other state departments for record keeping, tax compliance,
15 16 and tax allocations, and to be a resource for state insurance
15 17 departments and other state departments.
 - 15 18 p. To establish a budget and make expenditures.
 - 15 19 q. To borrow money.
 - 15 20 r. To appoint and oversee committees, including advisory
15 21 committees comprised of members, state insurance regulators,
15 22 state legislators or their representatives, insurance industry
15 23 and consumer representatives, and such other interested persons
15 24 as may be designated in this compact and the bylaws.
 - 15 25 s. To establish an executive committee of not less than
15 26 seven nor more than fifteen representatives, which shall
15 27 include officers elected by the commission and such other
15 28 representatives as provided for herein and determined by the
15 29 bylaws. Representatives of the executive committee shall serve
15 30 a one-year term. Representatives of the executive committee
15 31 shall be entitled to one vote each. The executive committee
15 32 shall have the power to act on behalf of the commission, with
15 33 the exception of rulemaking, during periods when the commission
15 34 is not in session. The executive committee shall oversee the
15 35 day-to-day activities of the administration of the compact,
16 1 including the activities of the operations committee created
16 2 under this article and compliance and enforcement of the
16 3 provisions of the compact, its bylaws, and rules, and such
16 4 other duties as provided herein and as deemed necessary.
 - 16 5 t. To establish an operations committee of not less than
16 6 seven and not more than fifteen representatives to provide
16 7 analysis, advice, determinations, and recommendations regarding
16 8 technology, software, and systems integration to be acquired by
16 9 the commission and to provide analysis, advice, determinations,
16 10 and recommendations regarding the establishment of mandatory
16 11 rules to be adopted by the commission.
 - 16 12 u. To enter into contracts with contracting states so
16 13 that contracting states can utilize the services of and fully
16 14 participate in the clearinghouse subject to the terms and
16 15 conditions set forth in such contracts.
 - 16 16 v. To adopt and use a corporate seal.
 - 16 17 w. To perform such other functions as may be necessary or
16 18 appropriate to achieve the purposes of this compact consistent

16 19 with the state regulation of the business of insurance.

16 20 6. Article VI ===== Organization of the commission.

16 21 a. Membership, voting, and bylaws.

16 22 (1) Each compacting state shall have and be limited to one
16 23 member. Each state shall determine the qualifications and the
16 24 method by which it selects a member and set forth the selection
16 25 process in the enabling provision of the legislation which
16 26 enacts this compact. In the absence of such a provision, the
16 27 member shall be appointed by the governor of such compacting
16 28 state. Any member may be removed or suspended from office as
16 29 provided by the law of the state from which the member shall
16 30 be appointed. Any vacancy occurring in the commission shall
16 31 be filled in accordance with the laws of the compacting state
16 32 wherein the vacancy exists.

16 33 (2) Each member shall be entitled to one vote and shall
16 34 otherwise have an opportunity to participate in the governance
16 35 of the commission in accordance with the bylaws.

17 1 (3) The commission shall, by a majority vote of the members,
17 2 prescribe bylaws to govern its conduct as may be necessary
17 3 or appropriate to carry out the purposes and exercise the
17 4 powers of the compact including but not limited to all of the
17 5 following:

17 6 (a) Establishing the fiscal year of the commission.

17 7 (b) Providing reasonable procedures for holding meetings
17 8 of the commission, the executive committee, and the operations
17 9 committee.

17 10 (c) Providing reasonable standards and procedures for all
17 11 of the following:

17 12 (i) The establishment and meetings of committees.

17 13 (ii) Governing any general or specific delegation of any
17 14 authority or function of the commission.

17 15 (d) Providing reasonable procedures for calling and
17 16 conducting meetings of the commission that consist of a
17 17 majority of commission members, ensuring reasonable advance
17 18 notice of each such meeting and providing for the right of
17 19 citizens to attend each such meeting with enumerated exceptions
17 20 designed to protect the public's interest, the privacy of
17 21 individuals, and insurers' and surplus lines licensees'
17 22 proprietary information, including trade secrets. The
17 23 commission may meet in camera only after a majority of the
17 24 entire membership votes to close a meeting in whole or in part.
17 25 As soon as practicable, the commission shall make public a copy
17 26 of the vote to close the meeting revealing the vote of each
17 27 member with no proxy votes allowed, and votes taken during such
17 28 meeting.

17 29 (e) Establishing the titles, duties, and authority and
17 30 reasonable procedures for the election of the officers of the
17 31 commission.

17 32 (f) Providing reasonable standards and procedures for the
17 33 establishment of the personnel policies and programs of the
17 34 commission. Notwithstanding any civil service or other similar
17 35 laws of any compacting state, the bylaws shall exclusively
18 1 govern the personnel policies and programs of the commission.

18 2 (g) Promulgating a code of ethics to address permissible and
18 3 prohibited activities of commission members and employees.

18 4 (h) Providing a mechanism for winding up the operations of
18 5 the commission and the equitable disposition of any surplus
18 6 funds that may exist after the termination of the compact after
18 7 the payment or reserving of all of its debts and obligations.

18 8 (4) The commission shall publish its bylaws in a convenient
18 9 form and file a copy thereof and a copy of any amendment
18 10 thereto, with the appropriate agency or officer in each of the
18 11 compacting states.

18 12 b. Executive committee, personnel, and chairperson.

18 13 (1) An executive committee of the commission shall be
18 14 established. All actions of the executive committee, including
18 15 compliance and enforcement, are subject to the review and
18 16 ratification of the commission as provided in the bylaws.

18 17 (2) The executive committee shall have no more than fifteen
18 18 representatives, or one for each state if there are less than
18 19 fifteen compacting states, who shall serve for a term and shall
18 20 be established in accordance with the bylaws.

18 21 (3) The executive committee shall have such authority and
18 22 duties as may be set forth in the bylaws, including but not
18 23 limited to all of the following:

18 24 (a) Managing the affairs of the commission in a manner
18 25 consistent with the bylaws and purposes of the commission.

18 26 (b) Establishing and overseeing an organizational structure
18 27 within, and appropriate procedures for the commission to
18 28 provide for the creation of rules and operating procedures.

18 29 (c) Overseeing the offices of the commission.

18 30 (d) Planning, implementing, and coordinating communications
18 31 and activities with other state, federal, and local government
18 32 organizations in order to advance the goals of the commission.

18 33 (4) The commission shall annually elect officers from
18 34 the executive committee, with each having such authority and
18 35 duties, as may be specified in the bylaws.

19 1 (5) The executive committee may, subject to the approval
19 2 of the commission, appoint or retain an executive director
19 3 for such period, upon such terms and conditions and for such
19 4 compensation as the commission may deem appropriate. The
19 5 executive director shall serve as secretary to the commission,
19 6 but shall not be a member of the commission. The executive
19 7 director shall hire and supervise such other persons as may be
19 8 authorized by the commission.

19 9 c. Operations committee.

19 10 (1) An operations committee shall be established. All
19 11 actions of the operations committee are subject to the review
19 12 and oversight of the commission and the executive committee and
19 13 must be approved by the commission. The executive committee
19 14 shall accept the determinations and recommendations of the
19 15 operations committee unless good cause is shown why such
19 16 determinations and recommendations should not be approved.
19 17 Any disputes as to whether good cause exists to reject any
19 18 determination or recommendation of the operations committee
19 19 shall be resolved by the majority vote of the commission.

19 20 (2) The operations committee shall have no more than fifteen
19 21 representatives, or one for each state if there are less than
19 22 fifteen compacting states, who shall serve for a term and shall
19 23 be established as set forth in the bylaws.

19 24 (3) The operations committee shall have responsibility for
19 25 all of the following:

19 26 (a) Evaluating technology requirements for the
19 27 clearinghouse, assessing existing systems used by state
19 28 regulatory agencies and state stamping offices, to maximize
19 29 the efficiency and successful integration of the clearinghouse
19 30 technology systems with state and state stamping office
19 31 technology platforms and to minimize costs to the states, state
19 32 stamping offices, and the clearinghouse.

19 33 (b) Making recommendations to the executive committee
19 34 based on its analysis and determination of the clearinghouse
19 35 technology requirements and compatibility with existing state
20 1 and state stamping office systems.

20 2 (c) Evaluating the most suitable proposals for adoption
20 3 as mandatory rules, assessing such proposals for ease
20 4 of integration by states and likelihood of successful

20 5 implementation, to report to the executive committee its
20 6 determinations and recommendations.

20 7 (d) Such other duties and responsibilities as are
20 8 delegated to it by the bylaws, the executive committee, or the
20 9 commission.

20 10 (4) All representatives of the operations committee shall
20 11 be individuals who have extensive experience or employment
20 12 in the surplus lines insurance business including but not
20 13 limited to executives and attorneys employed by surplus lines
20 14 insurers, surplus lines licensees, law firms, state insurance
20 15 departments, and state stamping offices. Operations committee
20 16 representatives from compacting states which utilize the
20 17 services of a state stamping office shall appoint the chief
20 18 operating officer or a senior manager of the state stamping
20 19 office to the operations committee.

20 20 d. Legislative and advisory committees.

20 21 (1) A legislative committee comprised of state legislators
20 22 or their designees shall be established to monitor the
20 23 operations of and make recommendations to the commission,
20 24 including the executive committee, provided that the manner of
20 25 selection and term of any legislative committee member shall
20 26 be as set forth in the bylaws. Prior to the adoption by the
20 27 commission of any uniform standard, revision to the bylaws,
20 28 annual budget, or other significant matter as may be provided
20 29 in the bylaws, the executive committee shall consult with and
20 30 report to the legislative committee.

20 31 (2) The commission may establish additional advisory
20 32 committees as its bylaws may provide for the carrying out of
20 33 its functions.

20 34 e. Corporate records of the commission. The commission
20 35 shall maintain its corporate books and records in accordance
2 1 with the bylaws.

2 2 f. Qualified immunity, defense, and indemnification.

2 3 (1) The members, officers, executive director, employees,
2 4 and representatives of the commission, the executive committee,
2 5 and any other committee of the commission shall be immune from
2 6 suit and liability, either personally or in their official
2 7 capacity, for any claim for damage to or loss of property, or
2 8 personal injury or other civil liability, caused by or arising
2 9 out of any actual or alleged act, error, or omission that
2 10 occurred, or that the person against whom the claim is made had
2 11 a reasonable basis for believing occurred within the scope of
2 12 commission employment, duties, or responsibilities, provided
2 13 that nothing in this subparagraph shall be construed to protect
2 14 any such person from suit or liability for any damage, loss,
2 15 injury, or liability caused by the intentional, or willful or
2 16 wanton, misconduct of that person.

2 17 (2) The commission shall defend any member, officer,
2 18 executive director, employee, or representative of the
2 19 commission, executive committee, or any other committee of the
2 20 commission in any civil action seeking to impose liability
2 21 arising out of any actual or alleged act, error, or omission
2 22 that occurred within the scope of commission employment,
2 23 duties, or responsibilities, or that the person against
2 24 whom the claim is made had a reasonable basis for believing
2 25 occurred within the scope of commission employment, duties,
2 26 or responsibilities, provided that nothing herein shall be
2 27 construed to prohibit that person from retaining that person's
2 28 own counsel; and provided further, that the actual or alleged
2 29 act, error, or omission did not result from that person's
2 30 intentional, or willful or wanton, misconduct.

2 31 (3) The commission shall indemnify and hold harmless
2 32 any member, officer, executive director, employee, or

2 33 representative of the commission, executive committee, or
2 34 any other committee of the commission for the amount of any
2 35 settlement or judgment obtained against that person arising
22 1 out of any actual or alleged act, error, or omission that
22 2 occurred within the scope of commission employment, duties,
22 3 or responsibilities, or that such person had a reasonable
22 4 basis for believing occurred within the scope of commission
22 5 employment, duties, or responsibilities, provided that the
22 6 actual or alleged act, error, or omission did not result from
22 7 the intentional, or willful or wanton, misconduct of that
22 8 person.

22 9 7. Article VII ===== Meetings and acts of the commission.

22 10 a. The commission shall meet and take such actions as are
22 11 consistent with the provisions of this compact and the bylaws.

22 12 b. Each member of the commission shall have the right
22 13 and power to cast a vote to which that compacting state is
22 14 entitled and to participate in the business and affairs of the
22 15 commission. A member shall vote in person or by such other
22 16 means as provided in the bylaws. The bylaws may provide for
22 17 members' participation in meetings by telephone or other means
22 18 of communication.

22 19 c. The commission shall meet at least once during each
22 20 calendar year. Additional meetings shall be held as set forth
22 21 in the bylaws.

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

22 25 e. The commission shall promulgate rules concerning its
22 26 meetings consistent with the principles contained in the
22 27 federal Government in the Sunshine Act, 5 U.S.C. { 552b, as may
22 28 be amended.

22 29 f. The commission and its committees may close a meeting, or
22 30 portion thereof, where it determines by majority vote that an
22 31 open meeting would be likely to do any of the following:

22 32 (1) Relate solely to the commission's internal personnel
22 33 practices and procedures.

22 34 (2) Disclose matters specifically exempted from disclosure
22 35 by federal and state statute.

23 1 (3) Disclose trade secrets, or commercial or financial
23 2 information which is privileged or confidential.

23 3 (4) Involve accusing a person of a crime, or formally
23 4 censuring a person.

23 5 (5) Disclose information of a personal nature where
23 6 disclosure would constitute a clearly unwarranted invasion of
23 7 personal privacy.

23 8 (6) Disclose investigative records compiled for law
23 9 enforcement purposes.

23 10 (7) Specifically relate to the commission's issuance of a
23 11 subpoena, or its participation in a civil action or other legal
23 12 proceeding.

23 13 g. For a meeting, or portion of a meeting, closed pursuant
23 14 to this article, the commission's legal counsel or designee
23 15 shall certify that the meeting may be closed and shall
23 16 reference each relevant exemptive provision. The commission
23 17 shall keep minutes which shall fully and clearly describe all
23 18 matters discussed in a meeting and shall provide a full and
23 19 accurate summary of actions taken, and the reasons therefor,
23 20 including a description of the views expressed and the record
23 21 of a roll call vote. All documents considered in connection
23 22 with an action shall be identified in such minutes. All
23 23 minutes and documents of a closed meeting shall remain under
23 24 seal, subject to release by a majority vote of the commission.

23 25 8. Article VIII ===== Rules and operating procedures =====

23 26 rulemaking functions of the commission.

23 27 a. The commission shall promulgate reasonable rules in
23 28 order to effectively and efficiently achieve the purposes of
23 29 this compact. Notwithstanding the foregoing, in the event the
23 30 commission exercises its rulemaking authority in a manner that
23 31 is beyond the scope of the purposes of this compact, or the
23 32 powers granted hereunder, then such an action by the commission
23 33 shall be invalid and have no force or effect.

23 34 b. Rules shall be made pursuant to a rulemaking process
23 35 that substantially conforms to the federal 1981 Model State
24 1 Administrative Procedure Act, Uniform Laws Annotated, Vol. 15,
24 2 p. 1 (2000) as amended, as may be appropriate to the operations
24 3 of the commission.

24 4 c. All rules and amendments thereto shall become effective
24 5 as of the date specified in each rule, operating procedure, or
24 6 amendment.

24 7 d. Not later than thirty days after a rule is promulgated,
24 8 any person may file a petition for judicial review of the rule;
24 9 provided that the filing of such a petition shall not stay or
24 10 otherwise prevent the rule from becoming effective unless the
24 11 court finds that the petitioner has a substantial likelihood of
24 12 success. The court shall give deference to the actions of the
24 13 commission consistent with applicable law and shall not find
24 14 the rule to be unlawful if the rule represents a reasonable
24 15 exercise of the commission's authority.

24 16 9. Article IX ==== Commission records and enforcement.

24 17 a. The commission shall promulgate rules establishing
24 18 conditions and procedures for public inspection and copying of
24 19 its information and official records, except such information
24 20 and records involving the privacy of individuals, insurers,
24 21 insureds, or surplus lines licensee trade secrets. State
24 22 transaction documentation and clearinghouse transaction
24 23 data collected by the clearinghouse shall be used for only
24 24 those purposes expressed in or reasonably implied under the
24 25 provisions of this compact and the commission shall afford this
24 26 data the broadest protections as permitted by any applicable
24 27 law for proprietary information, trade secrets, or personal
24 28 data. The commission may promulgate additional rules under
24 29 which it may make available to federal and state agencies,
24 30 including law enforcement agencies, records and information
24 31 otherwise exempt from disclosure, and may enter into agreements
24 32 with such agencies to receive or exchange information
24 33 or records subject to nondisclosure and confidentiality
24 34 provisions.

24 35 b. Except as to privileged records, data, and information,
25 1 the laws of any compacting state pertaining to confidentiality
25 2 or nondisclosure shall not relieve any compacting state
25 3 member of the duty to disclose any relevant records, data,
25 4 or information to the commission, provided that disclosure
25 5 to the commission shall not be deemed to waive or otherwise
25 6 affect any confidentiality requirement, and further provided
25 7 that, except as otherwise expressly provided in this compact,
25 8 the commission shall not be subject to the compacting state's
25 9 laws pertaining to confidentiality and nondisclosure with
25 10 respect to records, data, and information in the commission's
25 11 possession. Confidential information of the commission shall
25 12 remain confidential after such information is provided to any
25 13 member, and the commission shall maintain the confidentiality
25 14 of any information provided by a member that is confidential
25 15 under that member's state law.

25 16 c. The commission shall monitor compacting states for
25 17 compliance with duly adopted bylaws and rules. The commission
25 18 shall notify any noncomplying compacting state in writing of

25 19 the state's noncompliance with commission bylaws or rules. If
25 20 a noncomplying compacting state fails to remedy the state's
25 21 noncompliance within the time specified in the notice of
25 22 noncompliance, the compacting state shall be deemed to be in
25 23 default as set forth in article XIV.

25 24 10. Article X ===== Dispute resolution.

25 25 a. Before a member may bring an action in a court of
25 26 competent jurisdiction for violation of any provision,
25 27 standard, or requirement of the compact, the commission shall
25 28 attempt, upon the request of a member, to resolve any disputes
25 29 or other issues that are subject to this compact and which
25 30 may arise between two or more compacting states, contracting
25 31 states, or noncompacting states, and the commission shall
25 32 promulgate a rule providing alternative dispute resolution
25 33 procedures for such disputes.

25 34 b. The commission shall also provide alternative dispute
25 35 resolution procedures to resolve any disputes between insureds
26 1 or surplus lines licensees concerning a tax calculation or
26 2 allocation or related issues which are the subject of this
26 3 compact.

26 4 c. Any alternative dispute resolution procedures shall be
26 5 utilized in circumstances where a dispute arises as to which
26 6 state constitutes the home state.

26 7 11. Article XI ===== Review of commission decisions.

26 8 a. Except as necessary for promulgating rules to fulfill
26 9 the purposes of this compact, the commission shall not have
26 10 authority to otherwise regulate insurance in the compacting
26 11 states.

26 12 b. Not later than thirty days after the commission has
26 13 given notice of any rule or allocation formula, any third-party
26 14 filer or compacting state may appeal the determination to a
26 15 review panel appointed by the commission. The commission
26 16 shall promulgate rules to establish procedures for appointing
26 17 such review panels and provide for notice and hearing. An
26 18 allegation that the commission, in making compliance or tax
26 19 determinations, acted arbitrarily, capriciously, or in a manner
26 20 that is an abuse of discretion or otherwise not in accordance
26 21 with the law, is subject to judicial review in accordance with
26 22 article III, paragraph "f".

26 23 c. The commission shall have authority to monitor, review,
26 24 and reconsider commission decisions upon a finding that the
26 25 determinations or allocations do not meet the relevant rule.
26 26 Where appropriate, the commission may withdraw or modify its
26 27 determination or allocation after proper notice and hearing,
26 28 subject to the appeal process in paragraph "b".

26 29 12. Article XII ===== Finance.

26 30 a. The commission shall pay or provide for the payment of
26 31 the reasonable expenses of its establishment and organization.
26 32 To fund the cost of its initial operations, the commission
26 33 may accept contributions, grants, and other forms of funding
26 34 from the state stamping offices, compacting states, and other
26 35 sources.

27 1 b. The commission shall collect a fee payable by the
27 2 insured directly or through a surplus lines licensee on each
27 3 transaction processed through the clearinghouse, to cover the
27 4 cost of the operations and activities of the commission and its
27 5 staff in a total amount sufficient to cover the commission's
27 6 annual budget.

27 7 c. The commission's budget for a fiscal year shall not be
27 8 approved until it has been subject to notice and comment as set
27 9 forth in article VIII of this compact.

27 10 d. The commission shall be regarded as performing essential
27 11 governmental functions in exercising such powers and functions

27 12 and in carrying out the provisions of this compact and of any
27 13 law relating thereto, and shall not be required to pay any
27 14 taxes or assessments of any character, levied by any state or
27 15 political subdivision thereof, upon any of the property used
27 16 by the commission for such purposes, or any income or revenue
27 17 therefrom, including any profit from a sale or exchange.

27 18 e. The commission shall keep complete and accurate accounts
27 19 of all its internal receipts, including grants and donations,
27 20 and disbursements for all funds under its control. The
27 21 internal financial accounts of the commission shall be subject
27 22 to the accounting procedures established under the commission's
27 23 bylaws. The financial accounts and reports including the
27 24 system of internal controls and procedures of the commission
27 25 shall be audited annually by an independent certified public
27 26 accountant. Upon the determination of the commission, but
27 27 not less frequently than every three years, the review of the
27 28 independent auditor shall include a management and performance
27 29 audit of the commission. The commission shall make an annual
27 30 report to the governor and legislature of the compacting
27 31 states, which shall include a report of the independent audit.
27 32 The commission's internal accounts shall not be confidential
27 33 and such materials may be shared with the commissioner, the
27 34 controller, or the stamping office of any compacting state upon
27 35 request, provided, however, that any work papers related to any
28 1 internal or independent audit and any information regarding
28 2 the privacy of individuals, and licensees' and insurers'
28 3 proprietary information, including trade secrets, shall remain
28 4 confidential.

28 5 f. No compacting state shall have any claim to or ownership
28 6 of any property held by or vested in the commission or to
28 7 any commission funds held pursuant to the provisions of this
28 8 compact.

28 9 g. The commission shall not make any political contributions
28 10 to candidates for elected office, elected officials, political
28 11 parties, or political action committees. The commission shall
28 12 not engage in lobbying except with respect to changes to this
28 13 compact.

28 14 13. Article XIII ===== Compacting states, effective date, and
28 15 amendment.

28 16 a. Any state is eligible to become a compacting state.

28 17 b. The compact shall become effective and binding upon
28 18 legislative enactment of the compact into law by two compacting
28 19 states, provided the commission shall become effective for
28 20 purposes of adopting rules, and creating the clearinghouse when
28 21 there are a total of ten compacting states and contracting
28 22 states or, alternatively, when there are compacting states and
28 23 contracting states representing greater than forty percent of
28 24 the surplus lines insurance premium volume based on records of
28 25 the percentage of surplus lines insurance premium set forth
28 26 in paragraph "d". Thereafter, it shall become effective
28 27 and binding as to any other compacting state upon enactment
28 28 of the compact into law by that state. Notwithstanding the
28 29 foregoing, the clearinghouse operations and the duty to report
28 30 clearinghouse transaction data shall begin on the first January
28 31 or July 1 following the first anniversary of the commission
28 32 effective date. For states which join the compact subsequent
28 33 to the effective date, a start date for reporting clearinghouse
28 34 transaction data shall be set by the commission, provided
28 35 that surplus lines licensees and all other interested parties
29 1 receive not less than ninety days' advance notice.

29 2 c. Amendments to the compact may be proposed by the
29 3 commission for enactment by the compacting states. No
29 4 amendment shall become effective and binding upon the

29 5 commission and the compacting states unless and until all
29 6 compacting states enact the amendment into law.

29 7 d. Surplus lines insurance premiums by state:

29 8	State	Premiums based on tax paid	Share of total premiums
29 10	-----		
29 11	Alabama	445,746,000	1.47 percent
29 12	Alaska	89,453,519	0.29 percent
29 13	Arizona	663,703,267	2.18 percent
29 14	Arkansas	201,859,750	0.66 percent
29 15	California	5,622,450,467	18.49 percent
29 16	Colorado	543,781,333	1.79 percent
29 17	Connecticut	329,358,800	1.08 percent
29 18	Delaware	92,835,950	0.31 percent
29 19	Florida	2,660,908,760	8.75 percent
29 20	Georgia	895,643,150	2.95 percent
29 21	Hawaii	232,951,489	0.77 percent
29 22	Idaho	704,202,255	0.24 percent
29 23	Illinois	1,016,504,629	3.34 percent
29 24	Indiana	412,265,320	1.36 percent
29 25	Iowa	135,130,933	0.44 percent
29 26	Kansas	160,279,300	0.53 percent
29 27	Kentucky	167,996,133	0.55 percent
29 28	Louisiana	853,173,280	2.81 percent
29 29	Maine	60,111,200	0.20 percent
29 30	Maryland	434,887,600	1.43 percent
29 31	Massachusetts	708,640,225	2.33 percent
29 32	Michigan	703,357,040	2.31 percent
29 33	Minnesota	393,128,400	1.29 percent
29 34	Mississippi	263,313,175	0.87 percent
29 35	Missouri	404,489,860	1.33 percent
30 1	Montana	64,692,873	0.21 percent
30 2	Nebraska	92,141,167	0.30 percent
30 3	Nevada	354,271,514	1.17 percent
30 4	New Hampshire	102,946,250	0.34 percent
30 5	New Jersey	1,087,994,033	3.58 percent
30 6	New Mexico	67,608,458	0.22 percent
30 7	New York	2,768,618,083	9.11 percent
30 8	North Carolina	514,965,060	1.69 percent
30 9	North Dakota	36,223,943	0.12 percent
30 10	Ohio	342,000,000	1.12 percent
30 11	Oklahoma	319,526,400	1.05 percent
30 12	Oregon	312,702,150	1.03 percent
30 13	Pennsylvania	780,666,667	2.57 percent
30 14	Rhode Island	71,794,067	0.24 percent
30 15	South Carolina	412,489,825	1.36 percent
30 16	South Dakota	38,702,120	0.13 percent
30 17	Tennessee	451,775,240	1.49 percent
30 18	Texas	3,059,170,454	10.06 percent
30 19	Utah	142,593,412	0.47 percent
30 20	Vermont	41,919,433	0.14 percent
30 21	Virginia	611,530,667	2.01 percent
30 22	Washington	739,932,050	2.43 percent
30 23	West Virginia	130,476,250	0.43 percent
30 24	Wisconsin	248,758,333	0.82 percent
30 25	Wyoming	40,526,967	0.13 percent
30 26	Total	30,400,197,25	100.00 percent

30 27 This data is 2005 calendar year data excerpted from a study
30 28 dated February 27, 2007, by Mackin & Company.

30 29 14. Article XIV ==== Withdrawal, default, and termination.

30 30 a. Withdrawal.

30 31 (1) Once effective, the compact shall continue in force
30 32 and remain binding upon each and every compacting state,

30 33 provided that a compacting state may withdraw from the compact
30 34 by enacting a statute specifically repealing the statute which
30 35 enacted the compact into law.

3 1 (2) The effective date of withdrawal is the effective date
3 2 of the repealing statute. However, the withdrawal shall not
3 3 apply to any tax or compliance determinations approved on the
3 4 date the repealing statute becomes effective, except by mutual
3 5 agreement of the commission and the withdrawing state unless
3 6 the approval is rescinded by the commission.

3 7 (3) The member of the withdrawing state shall immediately
3 8 notify the executive committee of the commission in writing
3 9 upon the introduction of legislation repealing this compact in
3 10 the withdrawing state.

3 11 (4) The commission shall notify the other compacting states
3 12 of the introduction of such legislation within ten days after
3 13 the commission's receipt of notice thereof.

3 14 (5) The withdrawing state is responsible for all
3 15 obligations, duties, and liabilities incurred through the
3 16 effective date of withdrawal, including any obligations, the
3 17 performance of which extend beyond the effective date of
3 18 withdrawal. To the extent those obligations may have been
3 19 released or relinquished by mutual agreement of the commission
3 20 and the withdrawing state, the commission's determinations
3 21 prior to the effective date of withdrawal shall continue to be
3 22 effective and be given full force and effect in the withdrawing
3 23 state, unless formally rescinded by the commission.

3 24 (6) Reinstatement following withdrawal of any compacting
3 25 state shall occur upon the effective date of the withdrawing
3 26 state reenacting the compact.

3 27 b. Default.

3 28 (1) If the commission determines that any compacting
3 29 state has at any time defaulted in the performance of any
3 30 of its obligations or responsibilities under this compact,
3 31 the bylaws, or duly promulgated rules, then after notice and
3 32 hearing as set forth in the bylaws, all rights, privileges,
3 33 and benefits conferred by this compact on the defaulting
3 34 state shall be suspended from the effective date of default
3 35 as fixed by the commission. The grounds for default include
32 1 but are not limited to failure of a compacting state to
32 2 perform its obligations or responsibilities, and any other
32 3 grounds designated in commission rules. The commission shall
32 4 immediately notify the defaulting state in writing of the
32 5 defaulting state's suspension pending a cure of the default.
32 6 The commission shall stipulate the conditions and the time
32 7 period within which the defaulting state must cure its default.
32 8 If the defaulting state fails to cure the default within
32 9 the time period specified by the commission, the defaulting
32 10 state shall be terminated from the compact and all rights,
32 11 privileges, and benefits conferred by this compact shall be
32 12 terminated from the effective date of termination.

32 13 (2) Decisions of the commission that are issued on the
32 14 effective date of termination shall remain in force in the
32 15 defaulting state in the same manner as if the defaulting state
32 16 had withdrawn voluntarily pursuant to paragraph "a" of this
32 17 article.

32 18 (3) Reinstatement following termination of any compacting
32 19 state requires a reenactment of the compact.

32 20 c. Dissolution of compact.

32 21 (1) The compact dissolves effective upon the date of the
32 22 withdrawal or default of the compacting state which reduces
32 23 membership in the compact to one compacting state.

32 24 (2) Upon the dissolution of this compact, the compact
32 25 becomes null and void and shall have no further force or

32 26 effect, and the business and affairs of the commission shall
32 27 be wound up and any surplus funds shall be distributed in
32 28 accordance with the rules and bylaws.

32 29 15. Article XV ===== Severability and construction.

32 30 a. The provisions of this compact shall be severable
32 31 and if any phrase, clause, sentence, or provision is deemed
32 32 unenforceable, the remaining provisions of the compact shall
32 33 be enforceable.

32 34 b. The provisions of this compact shall be liberally
32 35 construed to effectuate its purposes.

33 1 c. Throughout this compact the use of the singular shall
33 2 include the plural and vice versa.

33 3 d. The headings and captions of articles, subsections, and
33 4 paragraphs used in this compact are for convenience only and
33 5 shall be ignored in construing the substantive provisions of
33 6 this compact.

33 7 16. Article XVI ===== Binding effect of compact and other laws.

33 8 a. Other laws.

33 9 (1) Nothing in this compact prevents the enforcement of
33 10 any other law of a compacting state except as provided in
33 11 subparagraph (2).

33 12 (2) Decisions of the commission, and any rules, and any
33 13 other requirements of the commission shall constitute the
33 14 exclusive rule or determination applicable to the compacting
33 15 states. Any law or regulation regarding nonadmitted insurance
33 16 of multistate risks that is contrary to rules of the commission
33 17 is preempted with respect to the following:

33 18 (a) Clearinghouse transaction data reporting requirements.

33 19 (b) Allocation formulas.

33 20 (c) Clearinghouse transaction data collection requirements.

33 21 (d) Premium tax payment time frames and rules concerning
33 22 dissemination of data among the compacting states for
33 23 nonadmitted insurance of multistate risks and single-state
33 24 risks.

33 25 (e) Exclusive compliance with surplus lines law of the home
33 26 state of the insured.

33 27 (f) Rules for reporting to a clearinghouse for receipt
33 28 and distribution of clearinghouse transaction data related to
33 29 nonadmitted insurance of multistate risks.

33 30 (g) Uniform foreign insurers eligibility requirements.

33 31 (h) Uniform policyholder notice.

33 32 (i) Uniform treatment of purchasing groups procuring
33 33 nonadmitted insurance.

33 34 (3) Except as stated in subparagraph (2), any rule,
33 35 uniform standard, or other requirement of the commission shall
34 1 constitute the exclusive provision that a commissioner may
34 2 apply to compliance or tax determinations. Notwithstanding the
34 3 foregoing, no action taken by the commission shall abrogate or
34 4 restrict any of the following:

34 5 (a) The access of any person to state courts.

34 6 (b) The availability of alternative dispute resolution
34 7 under article X of this compact.

34 8 (c) Remedies available under state law related to breach
34 9 of contract, tort, or other laws not specifically directed to
34 10 compliance or tax determinations.

34 11 (d) State law relating to the construction of insurance
34 12 contracts.

34 13 (e) The authority of the attorney general of the state,
34 14 including but not limited to maintaining any actions or
34 15 proceedings, as authorized by law.

34 16 b. Binding effect of this compact.

34 17 (1) All lawful actions of the commission, including all
34 18 rules promulgated by the commission, are binding upon the

34 19 compacting states, except as provided herein.

34 20 (2) All agreements between the commission and the
34 21 compacting states are binding in accordance with their terms.

34 22 (3) Upon the request of a party to a conflict over the
34 23 meaning or interpretation of commission actions, and upon a
34 24 majority vote of the compacting states, the commission may
34 25 issue advisory opinions regarding the meaning or interpretation
34 26 in dispute. This provision may be implemented by rule at the
34 27 discretion of the commission.

34 28 (4) In the event any provision of this compact exceeds
34 29 the constitutional limits imposed on the legislature of
34 30 any compacting state, the obligations, duties, powers, or
34 31 jurisdiction sought to be conferred by that provision upon the
34 32 commission shall be ineffective as to that state and those
34 33 obligations, duties, powers, or jurisdiction shall remain in
34 34 the compacting state and shall be exercised by the agency
34 35 of the compacting state to which those obligations, duties,
35 1 powers, or jurisdiction are delegated by law in effect at the
35 2 time this compact becomes effective.

35 3 Sec. 2. EFFECTIVE UPON ENACTMENT. This division of this
35 4 Act, being deemed of immediate importance, takes effect upon
35 5 enactment.

35 6
35 7 DIVISION II
COORDINATING PROVISIONS

35 8 Sec. 3. Section 507A.4, subsection 1, Code 2011, is amended
35 9 to read as follows:

35 10 1. The lawful transaction of surplus lines insurance as
35 11 permitted by ~~sections 515.120 through 515.122~~ chapter 515I.

35 12 Sec. 4. Section 515E.9, Code 2011, is amended to read as
35 13 follows:

35 14 515E.9 Purchasing group restrictions.

35 15 A purchasing group shall not purchase insurance from an
35 16 insurer not admitted in this state unless the purchase is
35 17 effected through a duly licensed ~~agent or broker~~ producer
35 18 acting pursuant to ~~sections 515.120 through 515.122~~ chapter
35 19 515I.

35 20 Sec. 5. Section 522B.6, subsection 2, paragraph g, Code
35 2 2011, is amended to read as follows:

35 22 g. Excess and surplus lines insurance provided by certain
35 23 nonadmitted insurers pursuant to ~~section 515.120~~ chapter 515I.

35 24 Sec. 6. REPEAL. Sections 515.120 through 515.122, Code
35 25 2011, are repealed.

35 26 Sec. 7. CONTINGENT EFFECTIVE DATE. The provisions of this
35 27 division of this Act take effect at such time as the surplus
35 28 lines insurance multistate compliance compact, as enacted by
35 29 this Act in chapter 515I, becomes effective and the surplus
35 30 lines insurance multistate compliance compact commission
35 31 becomes effective for purposes of adopting rules and creating
35 32 the clearinghouse. The commissioner of insurance shall notify
35 33 the Code editor at such time as surplus lines insurance sold in
35 34 this state will be subject to regulation pursuant to chapter
35 35 515I on a date certain.

36 1 EXPLANATION

36 2 This bill creates new Code chapter 515I to enact the surplus
36 3 lines insurance multistate compliance compact and coordinating
36 4 provisions. The purpose of the compact is to carry out the
36 5 intention of the federal Nonadmitted and Reinsurance Reform
36 6 Act of 2010 of the federal Dodd=Frank Wall Street Reform and
36 7 Consumer Protection Act that the states establish procedures
36 8 to allocate the premium taxes paid by insureds for nonadmitted
36 9 insurance of multistate risks among the states in accordance
36 10 with uniform allocation formulas, including the reporting,
36 11 payment, collection, and allocation of those premium taxes.

36 12 "Nonadmitted insurance" or "surplus lines insurance" is
36 13 insurance procured from an insurer that is not authorized or
36 14 admitted to transact the business of insurance under the law of
36 15 the insured's home state.

36 16 The compact provides for the creation and establishment of
36 17 a joint public agency known as the surplus lines insurance
36 18 multistate compliance commission. The commission has the
36 19 power to adopt mandatory rules which establish exclusive
36 20 home state authority regarding surplus lines insurance,
36 21 allocation formulas, clearinghouse transaction data, a
36 22 clearinghouse for receipt and distribution of allocated
36 23 premium tax and clearinghouse transaction data, and uniform
36 24 rulemaking procedures and rules for the purpose of financing,
36 25 administering, operating, and enforcing compliance with the
36 26 provisions of the compact, its bylaws, and rules.

36 27 Each compacting state is entitled to one member on the
36 28 commission. States that do not enact the compact may enter
36 29 into written contracts with the commission to utilize the
36 30 services of and fully participate in the clearinghouse which
36 31 disseminates premium tax and clearinghouse transaction data.

36 32 The commission is empowered to establish an executive
36 33 committee of seven to 15 representatives to oversee the
36 34 administration of the compact and oversee the activities of the
36 35 operations committee. An operations committee of seven to 15
37 1 commission members is established to provide analysis, advice,
37 2 determinations, and recommendations regarding technology,
37 3 software, and systems integration to be acquired by the
37 4 commission and regarding the establishment of rules to be
37 5 adopted by the commission.

37 6 A legislative committee comprised of state legislators or
37 7 their designees is established to monitor the operations of and
37 8 make recommendations to the commission. Prior to the adoption
37 9 of any uniform standard, revision to the bylaws, annual budget,
37 10 or other significant matter as provided in the bylaws, the
37 11 executive committee of the commission is required to consult
37 12 with and report to the legislative committee. The commission
37 13 may also establish additional advisory committees to assist it
37 14 in carrying out its functions.

37 15 The commission is required to meet at least once a year.
37 16 Rules must be made by the commission pursuant to a rulemaking
37 17 process that substantially conforms to the federal 1981 Model
37 18 State Administrative Procedure Act. A person may file a
37 19 petition for judicial review of a rule.

37 20 The commission may fund the costs of its initial operations
37 21 through contributions, grants, and other forms of funding from
37 22 the states and other sources. The commission must collect
37 23 a fee payable by the insured on each transaction processed
37 24 through the clearinghouse to cover the ongoing cost of the
37 25 operations and activities of the commission and its staff in
37 26 a total amount sufficient to cover the commission's annual
37 27 budget.

37 28 The commission is required to monitor compacting states for
37 29 compliance with its bylaws and rules.

37 30 Any state may join the compact. The compact does not become
37 31 effective and binding until it is enacted by two compacting
37 32 states and the commission does not become effective for the
37 33 purposes of adopting rules and creating the clearinghouse
37 34 until there are 10 compacting and contracting states, or there
37 35 are compacting and contracting states that represent greater
38 1 than 40 percent of the total surplus lines insurance premium
38 2 volume of the states based on records of such premiums as set
38 3 forth in the compact based on 2005 data excerpted from a 2007
38 4 study. Thereafter, the compact becomes binding as to any other

38 5 compacting state upon enactment of the compact by that state.
38 6 Clearinghouse operations and the duty to report
38 7 clearinghouse transaction data begin on the first January
38 8 or July 1 following the first anniversary of the commission
38 9 effective date. For states which join the compact subsequent
38 10 to the commission effective date, a start date for reporting
38 11 clearinghouse transaction data shall be set by the commission,
38 12 provided that surplus lines licensees, and other interested
38 13 parties receive not less than 90 days' advance notice of the
38 14 effective date. Amendments to the compact are not effective
38 15 and binding upon the commission and the compacting states until
38 16 all compacting states enact the amendment.

38 17 A compacting state may withdraw from the compact by enacting
38 18 a law repealing the statute which enacted the compact.
38 19 Withdrawal from the compact does not apply to any tax or
38 20 compliance determinations approved on the date the repealing
38 21 statute becomes effective except upon mutual agreement of the
38 22 commission and the withdrawing state.

38 23 A compacting state that fails to perform its obligations and
38 24 responsibilities under the compact, its bylaws, and rules shall
38 25 be suspended from the effective date of default as fixed by the
38 26 commission.

38 27 The compact does not prevent the enforcement of other
38 28 state laws of a compacting state except that any state law or
38 29 regulation regarding nonadmitted insurance of multistate risks
38 30 that is contrary to the rules of the commission is preempted
38 31 with respect to specified matters.

38 32 New Code chapter 515I, which contains the compact, is
38 33 effective upon enactment.

38 34 The bill also contains coordinating provisions. Code
38 35 sections 515.120 through 515.122, which currently regulate
39 1 the sale of surplus lines insurance in the state, are
39 2 repealed, as are references to those provisions which are
39 3 contained elsewhere in the Code. The coordinating provisions
39 4 are effective at such time as the surplus lines insurance
39 5 multistate compliance compact becomes effective as to this
39 6 state and the surplus lines insurance multistate compliance
39 7 compact commission becomes effective for purposes of adopting
39 8 rules and creating the clearinghouse. The commissioner of
39 9 insurance is required to notify the Code editor at such time as
39 10 surplus lines insurance sold in the state will be subject to
39 11 regulation pursuant to Code chapter 515I on a date certain.

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