

JAN 20 2012

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 **PART I**

2 SECTION 1. The legislature finds that Title V, Subtitle B
3 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
4 of 2010, known as the Nonadmitted and Reinsurance Reform Act of
5 2010, incorporated language addressing excess and surplus lines
6 insurance. Congress recommended in the Nonadmitted and
7 Reinsurance Reform Act of 2010 that states adopt uniform
8 requirements, forms, and procedures, such as an interstate
9 compact, to facilitate the reporting, payment, collection, and
10 allocation of premium taxes for nonadmitted insurance.

11 The legislature also finds that the surplus lines insurance
12 multi-state compliance compact, or SLIMPACT, was drafted to
13 streamline surplus lines insurance taxation and regulation.
14 SLIMPACT is an interstate compact that is a direct response to
15 the Dodd-Frank Wall Street Reform and Consumer Protection Act's
16 request for uniformity and simplicity in state surplus line tax
17 collection and allocation.



1 commissioner to participate in a multi-state cooperative to
2 collect surplus lines premium taxes and fees.

3 The legislature finds that clarifying amendments directing
4 the insurance commissioner to join the surplus lines insurance
5 multi-state compliance compact are necessary.

6 The purpose of this part is to amend sections of the
7 insurance code to require participation in the surplus lines
8 insurance multi-state compliance compact.

9 SECTION 3. Section 431:8-302, Hawaii Revised Statutes, is
10 amended by amending subsection (d) to read as follows:

11 "(d) The commissioner [~~is authorized to~~] shall enter into
12 [~~a cooperative agreement or interstate agreement or compact~~] the
13 surplus lines insurance multi-state compliance compact adopted
14 by the national conference of insurance legislators and known as
15 SLIMPACT to establish additional and alternative nationwide
16 uniform eligibility requirements that shall be applicable to
17 unauthorized insurers domiciled in another state."

18 SECTION 4. Section 431:8-315, Hawaii Revised Statutes, is
19 amended by amending subsection (e) to read as follows:

20 "(e) The commissioner [~~may~~]:

21 (1) Shall:



1 [~~(1)~~] (A) Enter into [~~a cooperative agreement, reciprocal~~
2 ~~agreement, or compact with other states~~] the
3 surplus lines insurance multi-state compliance
4 compact adopted by the national conference of
5 insurance legislators and known as SLIMPACT to
6 facilitate and provide for the collection,
7 allocation, and disbursement of premium taxes
8 attributable to the placement of surplus lines
9 insurance; and

10 (B) Conform to the requirements of the federal
11 Nonadmitted and Reinsurance Reform Act of 2010;
12 and

13 (2) May:

14 [~~(2)~~] (A) Provide for uniform methods of allocation and
15 reporting among surplus lines insurance risk
16 classifications;

17 [~~(3)~~] ~~Conform to the requirements of the federal Nonadmitted~~
18 ~~and Reinsurance Reform Act of 2010;~~

19 [~~(4)~~] (B) Share information among states relating to
20 surplus lines insurance premium taxes; and

21 [~~(5)~~] (C) Utilize a method adopted in cooperation with
22 other states to allocate risk and compute the tax



1 due on the portion of premium attributable to
2 each risk classification and to each state where
3 properties, risks, or exposures are located.

4 The commissioner shall assess the insured for the cost of
5 the [~~cooperative agreement, reciprocal agreement, or~~] compact to
6 collect and distribute the premium taxes. Upon application of
7 the insured, the commissioner shall refund the insured for
8 excess payments of taxes received by the State that are the
9 result of the statewide tax rate."

10 PART III

11 SECTION 5. The purpose of this part is to enact the
12 surplus lines insurance multi-state compliance compact into law.

13 SECTION 6. Chapter 431, article 8, Hawaii Revised
14 Statutes, is amended by adding a new part to be appropriately
15 designated and to read as follows:

16 "PART . SURPLUS LINES INSURANCE MULTI-STATE
17 COMPLIANCE COMPACT

18 §431:8-A Enactment of compact. The surplus lines
19 insurance multi-state compliance compact is entered into law and
20 entered into by this State with all other states legally joining
21 this compact in the form substantially as follows in this part.

22 §431:8-B Purpose. The purposes of this compact are to:



- 1 (1) Implement the express provisions of the Nonadmitted
2 and Reinsurance Reform Act;
- 3 (2) Protect the premium tax revenues of the compacting
4 states through facilitating the payment and collection
5 of premium tax on nonadmitted insurance; protect the
6 interests of the compacting states by supporting the
7 continued availability of such insurance to consumers;
8 provide for allocation of premium tax for nonadmitted
9 insurance of multi-state risks among the states in
10 accordance with uniform allocation formulas to be
11 developed, adopted, and implemented by the commission;
- 12 (3) Streamline and improve the efficiency of the surplus
13 lines market by eliminating duplicative and
14 inconsistent tax and regulatory requirements among the
15 states; and promote and protect the interest of
16 surplus lines licensees who assist insureds and
17 surplus lines insurers, thereby ensuring the continued
18 availability of surplus lines insurance to consumers;
- 19 (4) Streamline regulatory compliance with respect to
20 nonadmitted insurance placements by providing for
21 exclusive single state regulatory compliance for
22 nonadmitted insurance of multi-state risks, in



1 accordance with rules to be adopted by the commission,
2 thereby providing certainty regarding compliance to
3 all persons who have an interest in these
4 transactions, including but not limited to insureds,
5 regulators, surplus lines licensees, other insurance
6 producers, and surplus lines insurers;

7 (5) Establish a clearinghouse for receipt and
8 dissemination of premium tax and clearinghouse
9 transaction data related to nonadmitted insurance of
10 multi-state risks, in accordance with rules to be
11 adopted by the commission;

12 (6) Improve coordination of regulatory resources and
13 expertise between state insurance departments, other
14 state agencies, and state surplus lines stamping
15 offices, with respect to nonadmitted insurance;

16 (7) Adopt uniform rules to provide for premium tax
17 payment, reporting, allocation, data collection and
18 dissemination for nonadmitted insurance of multi-state
19 risks and single state risks, in accordance with rules
20 to be adopted by the commission, thereby promoting the
21 overall efficiency of the nonadmitted insurance
22 market;



- 1 (8) Adopt uniform mandatory rules with respect to
- 2 regulatory compliance requirements for foreign insurer
- 3 eligibility requirements and surplus lines
- 4 policyholder notices;
- 5 (9) Establish the surplus lines insurance multi-state
- 6 compliance compact commission;
- 7 (10) Coordinate reporting of clearinghouse transaction data
- 8 on nonadmitted insurance of multi-state risks among
- 9 compacting states and contracting states; and
- 10 (11) Perform these and other related functions as may be
- 11 consistent with the purposes of the surplus lines
- 12 insurance multi-state compliance compact.

13 **§431:8-C Definitions.** As used in this compact:

14 "Admitted insurer" means an insurer that is licensed, or

15 authorized, to transact the business of insurance under the law

16 of the home state; for purposes of this compact, the term shall

17 not include a domestic surplus lines insurer as may be defined

18 by applicable state law.

19 "Affiliate" means, with respect to an insured, an entity

20 that controls, is controlled by, or is under common control with

21 the insured.



1 "Allocation formula" means the uniform methods promulgated
2 by the commission by which insured risk exposures are
3 apportioned to each state to calculate premium taxes due.

4 "Bylaws" means the bylaws established by the commission for
5 its governance, or for directing or controlling the commission's
6 actions or conduct.

7 "Clearinghouse" means the commission's operations involving
8 the acceptance, processing, and dissemination among the
9 compacting states, contracting states, surplus lines licensees,
10 insureds, and other persons, of premium tax and clearinghouse
11 transaction data for nonadmitted insurance of multi-state risks,
12 in accordance with this compact and rules to be adopted by the
13 commission.

14 "Clearinghouse transaction data" means information
15 regarding nonadmitted insurance of multi-state risks required to
16 be reported, accepted, collected, processed, and disseminated by
17 surplus lines licensees for surplus lines insurance and insureds
18 for independently procured insurance under this compact and
19 rules to be adopted by the commission. The term includes
20 information related to single state risks if a state elects to
21 have the clearinghouse collect taxes for the state on single
22 state risks.



1 "Commission" means the surplus lines insurance multi-state
2 compliance compact commission established by this compact.

3 "Commissioner" means the chief insurance regulatory
4 official of a State.

5 "Compacting state" means a state that has enacted this
6 compact legislation and has not withdrawn pursuant to section
7 431:8-0(a), or been terminated pursuant to section 431:8-0(b).

8 "Contracting state" means a state that has not enacted this
9 compact legislation but has entered a written contract with the
10 commission to utilize the services of and fully participate in
11 the clearinghouse.

12 "Control", an entity has "control" over another entity if
13 the entity directly or indirectly or acting through one or more
14 persons owns, controls, or has the power to vote twenty-five per
15 cent or more of any class of voting securities of the other
16 entity; or the entity controls in any manner the election of a
17 majority of the directors or trustees of the other entity.

18 "Home state" means with respect to an insured, the state in
19 which an insured maintains the insured's principal place of
20 business or, in the case of an individual, the state in which
21 the individual maintains the individual's principal residence;
22 provided that if one hundred per cent of the insured risk is



1 located out of the state where the insured maintains the
2 insured's principal place of business or the state where the
3 individual maintains the principal residence, the home state
4 shall be the state where the greatest percentage of the
5 insured's taxable premium for that insurance contract is
6 allocated.

7 "Home state of affiliated group" means the home state of
8 the member of the affiliated group that has the largest
9 percentage of premium attributed to it under an insurance
10 contract that has more than one insured from the affiliated
11 group listed as named insureds on a single nonadmitted insurance
12 contract.

13 "Independently procured insurance" means insurance procured
14 by an insured directly from a surplus lines insurer or other
15 nonadmitted insurer under the laws of the home state.

16 "Insurer eligibility requirements" means the criteria,
17 forms, and procedures established to qualify as a surplus lines
18 insurer under the law of the home state; provided that the
19 criteria, forms, and procedures are consistent with the express
20 provisions of the Nonadmitted and Reinsurance Reform Act on and
21 after July 21, 2011.



1 "Member" means a person or persons chosen by a compacting
2 state as the compacting state's representative or
3 representatives to the commission; provided that each compacting
4 state is limited to one vote.

5 "Multi-state risk" means a risk with insured exposures in
6 more than one state.

7 "Nonadmitted and Reinsurance Reform Act" means the
8 Nonadmitted and Reinsurance Reform Act of 2010, 15 United States
9 Code 8201 et seq., which is subtitle B of title V of the Dodd-
10 Frank Wall Street Reform and Consumer Protection Act.

11 "Nonadmitted insurance" means surplus lines insurance and
12 independently procured insurance.

13 "Nonadmitted insurer" means an insurer that is not
14 authorized or admitted to transact the business of insurance
15 under the law of the home state.

16 "Noncompacting state" means a state that has not adopted
17 this compact.

18 "Policyholder notice" means the disclosure notice or stamp
19 that is required to be furnished to an applicant or a
20 policyholder in connection with a surplus lines insurance
21 placement.



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

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

12 "Purchasing group" means a group formed pursuant to the
13 Liability Risk Retention Act of 1986 which has as one of the
14 group's purposes the purchase of liability insurance on a group
15 basis, purchases liability insurance only for its group members
16 and only to cover the members' similar or related liability
17 exposure, and is composed of members with similar or related
18 business or activity liability exposure due to the members'
19 related, similar, or common business, trade, product, services,
20 premises, or operations and is domiciled in any state.

21 "Rule" means a statement of general or particular
22 applicability and future effect promulgated by the commission



1 designed to implement, interpret, or prescribe law or policy, or
2 describing the organization, procedure, or practice requirements
3 of the commission that shall have the force and effect of law in
4 the compacting states.

5 "Single state risk" means a risk with insured exposures in
6 only one state.

7 "State" means a state, district, or territory of the United
8 States of America.

9 "State transaction documentation" means information
10 required under the laws of the home state to be filed by surplus
11 lines licensees to report surplus lines insurance and verify
12 compliance with surplus lines laws, and by insureds to report
13 independently procured insurance.

14 "Surplus lines insurance" means insurance procured by a
15 surplus lines licensee from a surplus lines insurer or other
16 nonadmitted insurer as permitted under the law of the home
17 state; for purposes of this compact, the term also means excess
18 lines insurance as may be defined by applicable state law.

19 "Surplus lines insurer" means a nonadmitted insurer
20 eligible under the law of the home state to accept business from
21 a surplus lines licensee; for purposes of this compact, the term
22 also means an insurer that is permitted to write surplus lines



1 insurance under the laws of the state where the insurer is
2 domiciled.

3 "Surplus lines licensee" means an individual, firm, or
4 corporation licensed under the law of the home state to place
5 surplus lines insurance.

6 **§431:8-D Establishment of the commission and venue. (a)**

7 The compacting states hereby create and establish a joint public
8 agency known as the surplus lines insurance multi-state
9 compliance compact commission.

10 (b) Pursuant to section 431:8-E, the commission may adopt
11 mandatory rules to establish exclusive home state authority
12 regarding nonadmitted insurance of multi-state risks, allocation
13 formulas, clearinghouse transaction data, a clearinghouse for
14 receipt and distribution of allocated premium tax and
15 clearinghouse transaction data, and uniform rulemaking
16 procedures and rules to finance, administer, operate, and
17 enforce compliance with the provisions of this compact and the
18 bylaws and rules.

19 (c) Pursuant to section 431:8-E, the commission may adopt
20 mandatory rules establishing foreign insurer eligibility
21 requirements and a concise and objective policyholder notice
22 regarding the nature of a surplus lines placement.



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

3 (e) The commission is solely responsible for the
4 commission's liabilities except as otherwise specifically
5 provided in this compact.

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

13 **§431:8-E Authority to establish mandatory rules.** The
14 commission shall adopt mandatory rules that establish:

15 (1) Allocation formulas for each type of nonadmitted
16 insurance coverage, which shall be used by each
17 compacting state and contracting state in acquiring
18 premium tax and clearinghouse transaction data from
19 surplus lines licensees and insureds to report to the
20 clearinghouse. The allocation formulas shall be
21 established with input from surplus lines licensees
22 and shall be based upon readily available data with



- 1 simplicity and uniformity for the surplus lines
2 licensee as a material consideration;
- 3 (2) Uniform clearinghouse transaction data reporting
4 requirements for all information reported to the
5 clearinghouse;
- 6 (3) Methods by which compacting states and contracting
7 states will require surplus lines licensees and
8 insureds to pay premium tax and report clearinghouse
9 transaction data to the clearinghouse, including
10 processing clearinghouse transaction data through
11 state stamping and service offices, state insurance
12 departments, or other state designated agencies or
13 entities;
- 14 (4) That nonadmitted insurance of multi-state risks shall
15 be subject to all regulatory compliance requirements
16 of the home state exclusively. Home state regulatory
17 compliance requirements applicable to surplus lines
18 insurance shall include licensure requirements for
19 persons to sell, solicit, or negotiate surplus lines
20 insurance; insurer eligibility requirements or other
21 approved nonadmitted insurer requirements; diligent
22 search requirements; and state transaction



1 documentation and clearinghouse transaction data
2 regarding the payment of premium tax under this
3 compact and in rules to be adopted by the commission.
4 Home state regulatory compliance requirements
5 applicable to independently procured insurance
6 placements shall include providing state transaction
7 documentation and clearinghouse transaction data
8 regarding the payment of premium tax under this
9 compact and in rules to be adopted by the commission;
10 (5) That each compacting state and contracting state may
11 charge its own rate of taxation on the premium
12 allocated to the compacting state or contracting state
13 based on the applicable allocation formula; provided
14 that the state shall establish a single rate of
15 taxation applicable to all nonadmitted insurance
16 transactions and no other tax, fee assessment, or
17 other charge by a governmental or quasi-governmental
18 agency is permitted. Notwithstanding the foregoing,
19 stamping office fees may be charged as a separate,
20 additional cost unless such fees are incorporated into
21 a state's single rate of taxation;



- 1 (6) That a change in the rate of taxation by a compacting
2 state or contracting state is restricted to changes
3 made prospectively with at least ninety days advance
4 notice to the commission;
- 5 (7) That each compacting state and each contracting state
6 shall require premium tax payments either annually,
7 semiannually, or quarterly, using only one or more of
8 the following dates: March 1, June 1, September 1,
9 and December 1;
- 10 (8) That each compacting state and contracting state shall
11 prohibit any other state agency or political
12 subdivision from requiring surplus lines licensees to
13 provide clearinghouse transaction data and state
14 transaction documentation other than to the insurance
15 department or tax officials of the home state or a
16 single designated agent of the insurance department or
17 tax officials of the home state;
- 18 (9) The obligation of the home state itself, through a
19 designated agent, or surplus lines stamping or service
20 office, to collect clearinghouse transaction data from
21 surplus lines licensees and from insureds for



- 1 independently procured insurance, where applicable,
2 for reporting to the clearinghouse;
- 3 (10) A method for the clearinghouse to periodically report
4 to compacting states, contracting states, surplus
5 lines licensees, and insureds who independently
6 procure insurance all premium taxes owed to each of
7 the compacting states and contracting states, the
8 dates upon which payment of such premium taxes is due,
9 and a method to pay them through the clearinghouse;
- 10 (11) That each surplus lines licensee is required to be
11 licensed only in the home state of each insured for
12 whom surplus lines insurance has been procured;
- 13 (12) That a policy considered to be surplus lines insurance
14 in the insured's home state shall be considered
15 surplus lines insurance in all compacting states and
16 contracting states, and taxed as a surplus lines
17 transaction in all states to which a portion of the
18 risk is allocated. Each compacting state and
19 contracting state shall require each surplus lines
20 licensee to pay to every other compacting state and
21 contracting state premium taxes on each multi-state
22 risk through the clearinghouse at the tax rate charged



1 on surplus lines transactions in the other compacting
2 states and contracting states on the portion of the
3 risk in the compacting state or contracting state, as
4 determined by the applicable uniform allocation
5 formula adopted by the commission. A policy
6 considered to be independently procured insurance in
7 the insured's home state shall be considered
8 independently procured insurance in all compacting
9 states and contracting states. Each compacting state
10 and each contracting state shall require the insured
11 to pay every other compacting state and contracting
12 state the independently procured insurance premium tax
13 on each multi-state risk through the clearinghouse
14 pursuant to the uniform allocation formula adopted by
15 the commission;

16 (13) Uniform foreign insurer eligibility requirements as
17 authorized by the Nonadmitted and Reinsurance Reform
18 Act;

19 (14) A uniform policyholder notice; and

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



1 **§431:8-F Powers of the commission.** The commission shall
2 have the power to:

3 (1) Promulgate rules and operating procedures, pursuant to
4 section 431:8-I of this compact, which shall have the
5 force and effect of law and shall be binding in the
6 compacting states to the extent and in the manner
7 provided in this compact;

8 (2) Bring and prosecute legal proceedings or actions in
9 the name of the commission; provided that the standing
10 of a state insurance department to sue or be sued
11 under applicable law shall not be affected;

12 (3) Issue subpoenas requiring the attendance and testimony
13 of witnesses and the production of evidence; provided
14 that the commission is not empowered to demand or
15 subpoena records or data from nonadmitted insurers;

16 (4) Establish and maintain offices, including the creation
17 of a clearinghouse for the receipt of premium tax and
18 clearinghouse transaction data regarding nonadmitted
19 insurance of multi-state risks, single state risks for
20 states that elect to require surplus lines licensees
21 to pay premium tax on single state risks through the
22 clearinghouse, and tax reporting forms;



- 1 (5) Purchase and maintain insurance and bonds;
- 2 (6) Borrow, accept, or contract for services of personnel,
3 including employees of a compacting state or stamping
4 office, under an open, transparent, objective,
5 competitive process and procedure adopted by the
6 commission;
- 7 (7) Hire employees, professionals, or specialists, elect
8 or appoint officers, fix their compensation, define
9 their duties and give them appropriate authority to
10 carry out the purposes of the compact, and determine
11 their qualifications, under an open, transparent,
12 objective, competitive process and procedure adopted
13 by the commission; and establish the commission's
14 personnel policies and programs relating to conflicts
15 of interest, rates of compensation, qualifications of
16 personnel, and other related personnel matters;
- 17 (8) Accept, receive, utilize, and dispose of any
18 appropriate donations and grants of money, equipment,
19 supplies, materials, and services; provided that the
20 commission shall avoid at all times any appearance of
21 impropriety or conflict of interest;



- 1 (9) Lease, purchase, accept appropriate gifts or donations
2 of, or otherwise own, hold, improve, or use any real,
3 personal, or mixed property; provided that the
4 commission shall avoid at all times any appearance of
5 impropriety or conflict of interest;
- 6 (10) Sell, convey, mortgage, pledge, lease, exchange,
7 abandon, or otherwise dispose of any real, personal,
8 or mixed property;
- 9 (11) Provide for tax audit rules and procedures for the
10 compacting states with respect to the allocation of
11 premium taxes, including:
- 12 (A) Minimum audit standards, including sampling
13 methods;
- 14 (B) Review of internal controls;
- 15 (C) Cooperation and sharing of audit responsibilities
16 between compacting states;
- 17 (D) Handling of refunds or credits due to
18 overpayments or improper allocation of premium
19 taxes;
- 20 (E) Taxpayer records to be reviewed, including a
21 minimum retention period; and



- 1 (F) Authority of compacting states to review,
2 challenge, or reaudit taxpayer records;
- 3 (12) Enforce compliance by compacting states and
4 contracting states with rules and bylaws pursuant to
5 the authority set forth in section 431:8-0;
- 6 (13) Provide for dispute resolution among compacting states
7 and contracting states;
- 8 (14) Advise compacting states and contracting states on tax
9 issues relating to insurers, insureds, surplus lines
10 licensees, agents, or brokers domiciled or doing
11 business in noncompacting states, consistent with the
12 purposes of this compact;
- 13 (15) Make available advice and training to those personnel
14 in state stamping offices, state insurance
15 departments, or other state departments for record
16 keeping, tax compliance, and tax allocations; and be a
17 resource for state insurance departments and other
18 state departments;
- 19 (16) Establish a budget and make expenditures;
- 20 (17) Borrow money;
- 21 (18) Appoint and oversee committees, including advisory
22 committees comprised of members, state insurance



1 regulators, state legislators or their
2 representatives, insurance industry and consumer
3 representatives, and other interested persons as
4 designated in this compact and the bylaws;

- 5 (19) Establish an executive committee of at least seven and
6 not more than fifteen representatives, including
7 officers elected by the commission and other
8 representatives as provided for herein and determined
9 by the bylaws. Representatives of the executive
10 committee shall serve a one-year term and shall be
11 entitled to one vote each. The executive committee
12 shall have the power to act on behalf of the
13 commission, except for rulemaking, when the commission
14 is not in session. The executive committee shall
15 oversee the day to day activities of the
16 administration of the compact, including the
17 activities of the operations committee created under
18 paragraph (20) and section 431:8-G(c) and compliance
19 and enforcement of the provisions of the compact, the
20 bylaws and rules, and other duties as provided in this
21 compact and as deemed necessary;



1 (20) Establish an operations committee of at least seven
2 and not more than fifteen representatives to provide
3 analysis, advice, determinations, and recommendations
4 regarding technology, software, and systems
5 integration to be acquired by the commission and to
6 provide analysis, advice, determinations, and
7 recommendations regarding the establishment of
8 mandatory rules to be adopted by the commission;

9 (21) Enter into contracts with contracting states to enable
10 contracting states to use the services of and fully
11 participate in the clearinghouse under the terms and
12 conditions set forth in the contracts;

13 (22) Adopt and use a corporate seal; and

14 (23) Perform other functions that are necessary or
15 appropriate to achieve the purposes of this compact
16 consistent with state regulation of the business of
17 insurance.

18 **§431:8-G Organization of the commission.** (a) The
19 following provisions shall govern commission membership, voting,
20 and bylaws:

21 (1) Each compacting state shall have and is limited to one
22 member. A member shall be chosen through a process



1 and according to the qualifications and method of
2 selection determined by the compacting state. In the
3 absence of a selection provision, the member shall be
4 appointed by the governor of the compacting state. A
5 member may be removed or suspended from office as
6 provided by the law of the compacting state
7 represented by the member. A vacancy occurring in the
8 commission shall be filled in accordance with the laws
9 of the compacting state represented by the member
10 whose position has become vacant;

11 (2) Each member is entitled to one vote and shall have an
12 opportunity to participate in the governance of the
13 commission in accordance with the bylaws;

14 (3) The commission, by a majority vote of the members,
15 shall prescribe bylaws to govern its conduct as
16 necessary or appropriate to carry out the purposes and
17 exercise the powers of the compact, including but not
18 limited to:

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

20 (B) Providing reasonable procedures for holding

21 meetings of the commission, the executive

22 committee, and the operations committee;



- 1 (C) Providing reasonable standards and procedures for
2 the establishment and meetings of committees and
3 governing any general or specific delegation of
4 any authority or function of the commission;
- 5 (D) Providing reasonable procedures for calling and
6 conducting meetings of the commission that
7 consist of a majority of commission members,
8 ensuring reasonable advance notice of each
9 meeting and providing for the right of citizens
10 to attend each meeting with enumerated exceptions
11 designed to protect the public's interest, the
12 privacy of individuals, and insurers' and surplus
13 lines licensees' proprietary information,
14 including trade secrets. The commission may meet
15 in camera only after a majority of the entire
16 membership votes to close a meeting in toto or in
17 part. As soon as practicable, the commission
18 shall make public a copy of the vote to close the
19 meeting revealing the vote of each member with no
20 proxy votes allowed, and votes taken during the
21 meeting;



- 1 (E) Establishing the titles, duties, authority, and
- 2 reasonable procedures for the election of the
- 3 officers of the commission;
- 4 (F) Providing reasonable standards and procedures for
- 5 the establishment of the personnel policies and
- 6 programs of the commission. Notwithstanding any
- 7 civil service or other similar laws of a
- 8 compacting state, the bylaws shall exclusively
- 9 govern the personnel policies and programs of the
- 10 commission;
- 11 (G) Promulgating a code of ethics to address
- 12 permissible and prohibited activities of
- 13 commission members and employees; and
- 14 (H) Providing a mechanism for winding up the
- 15 operations of the commission and the equitable
- 16 disposition of surplus funds that exist after the
- 17 termination of the compact after the payment or
- 18 reservation or both of the commission's debts and
- 19 obligations; and
- 20 (4) The commission shall publish its bylaws in a
- 21 convenient form and file a copy of the bylaws and any



1 amendments to the bylaws with the appropriate agency
2 or officer in each of the compacting states.

3 (b) The following provisions shall govern the commission's
4 executive committee, personnel, and chairperson:

5 (1) An executive committee of the commission is
6 established. All actions of the executive committee,
7 including compliance and enforcement, are subject to
8 the review and ratification of the commission as
9 provided in the bylaws. The executive committee shall
10 have no more than fifteen representatives, or one
11 representative for each state if there are less than
12 fifteen compacting states, who are appointed and shall
13 serve for a term in accordance with the bylaws;

14 (2) The executive committee shall have the authority and
15 duties as set forth in the bylaws, including:

16 (A) Managing the affairs of the commission in a
17 manner consistent with the bylaws and purposes of
18 the commission;

19 (B) Establishing and overseeing an organizational
20 structure within, and appropriate procedures for
21 the commission to provide for the creation of
22 rules and operating procedures;



1 (C) Overseeing the offices of the commission; and
2 (D) Planning, implementing, and coordinating
3 communications and activities with other state,
4 federal, and local government organizations to
5 advance the goals of the commission;

6 (3) The commission shall annually elect officers from the
7 executive committee, with the officers having the
8 authority and duties as specified in the bylaws; and

9 (4) The executive committee may, subject to the approval
10 of the commission and according to terms and
11 conditions, and for a period and compensation that the
12 commission determines to be appropriate, appoint or
13 retain an executive director. The executive director
14 shall serve as secretary to the commission, but shall
15 not serve as a member of the commission. The
16 executive director shall hire and supervise other
17 persons as authorized by the commission.

18 (c) The following provisions shall govern the commission's
19 operations committee:

20 (1) An operations committee is established. All actions
21 of the operations committee are subject to the review
22 and oversight of the commission and the executive



1 committee, and shall be approved by the commission.
2 The executive committee shall accept the
3 determinations and recommendations of the operations
4 committee unless good cause is shown why those
5 determinations and recommendations should not be
6 approved. Disputes as to whether good cause exists to
7 reject a determination or recommendation of the
8 operations committee shall be resolved by the majority
9 vote of the commission. The operations committee
10 shall have no more than fifteen representatives or one
11 representative for each state if there are fewer than
12 fifteen compacting states, who are appointed and shall
13 serve for a term in accordance with the bylaws. The
14 operations committee shall have responsibility for:
15 (A) Evaluating technology requirements for the
16 clearinghouse, assessing existing systems used by
17 state regulatory agencies and state stamping
18 offices to maximize the efficiency and successful
19 integration of the clearinghouse technology
20 systems with state and state stamping office
21 technology platforms, and to minimize costs to



- 1 the states, state stamping offices, and the
2 clearinghouse;
- 3 (B) Making recommendations to the executive committee
4 based on the operations committee's analysis and
5 determination of the clearinghouse technology
6 requirements and compatibility with existing
7 state and state stamping office systems;
- 8 (C) Evaluating the most suitable proposals for
9 adoption as mandatory rules, assessing the
10 proposals for ease of integration by states and
11 likelihood of successful implementation, and
12 reporting to the executive committee the
13 operations committee's determinations and
14 recommendations; and
- 15 (D) Other duties and responsibilities delegated to
16 the operations committee by the bylaws, the
17 executive committee, or the commission; and
- 18 (2) All representatives of the operations committee shall
19 be individuals who have extensive experience or
20 employment or both in the surplus lines insurance
21 business, including executives and attorneys employed
22 by surplus lines insurers, surplus lines licensees,



1 law firms, state insurance departments, or state
2 stamping offices, or any combination of these
3 entities. Operations committee representatives from
4 compacting states that utilize the services of a state
5 stamping office shall appoint the chief operating
6 officer or a senior manager of the state stamping
7 office to the operations committee.

8 (d) The following provisions shall govern the commission's
9 legislative and advisory committees:

10 (1) A legislative committee composed of state legislators
11 or their designees is established to monitor the
12 operations of and make recommendations to the
13 commission, including the executive committee;
14 provided that the bylaws shall determine the manner of
15 selecting the members of the legislative committee and
16 the term of office of the legislative committee
17 members. Before the commission adopts any uniform
18 standard, revision to the bylaws, annual budget, or
19 other significant matter as provided in the bylaws,
20 the executive committee shall consult with and report
21 to the legislative committee; and



1 (2) The commission may establish additional advisory
2 committees as the bylaws provide, for carrying out the
3 commission's functions.

4 (e) The commission shall maintain the commission's
5 corporate books and records in accordance with the bylaws.

6 (f) The following provisions shall govern the commission's
7 qualified immunity, defense, and indemnification:

8 (1) The members, officers, executive director, employees,
9 and representatives of the commission, members of the
10 executive committee, and members of any other
11 committee of the commission, personally and in their
12 official capacity, are immune from suit and liability
13 for a claim for damage to or loss of property, or
14 personal injury, or other civil liability caused by or
15 arising out of an actual or alleged act, error, or
16 omission that occurred, or that the person against
17 whom the claim is made had a reasonable basis for
18 believing occurred within the scope of commission
19 employment, duties, or responsibilities; provided that
20 nothing in this paragraph may be construed to protect
21 a person from suit or liability or both for damage,



1 loss, injury, or liability caused by the intentional
2 or wilful or wanton misconduct of that person;

3 (2) The commission shall defend a member, officer,
4 executive director, employee, or representative of the
5 commission, the executive committee, or any other
6 committee of the commission in any civil action
7 seeking to impose liability arising out of an actual
8 or alleged act, error, or omission that occurred, or
9 that the person against whom the claim is made had a
10 reasonable basis for believing occurred, within the
11 scope of commission employment, duties, or
12 responsibilities; provided that the actual or alleged
13 act, error, or omission did not result from that
14 person's intentional or wilful or wanton misconduct.

15 Nothing in this paragraph may be construed to prohibit
16 the person from retaining the person's own counsel;
17 and

18 (3) The commission shall indemnify and hold harmless a
19 member, officer, executive director, employee, or
20 representative of the commission, executive committee,
21 or other committee of the commission for the amount of
22 a settlement or judgment obtained against the person



1 arising out of an actual or alleged act, error, or
2 omission that occurred, or that the person had a
3 reasonable basis for believing occurred, within the
4 scope of commission employment, duties, or
5 responsibilities; provided that the actual or alleged
6 act, error, or omission did not result from the
7 intentional or wilful or wanton misconduct of that
8 person.

9 **§431:8-H Meetings and acts of the commission.** (a) The
10 commission shall meet and take actions that are consistent with
11 the provisions of this compact and the bylaws.

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

19 (c) The commission shall meet at least once during each
20 calendar year and shall hold additional meetings according to
21 the bylaws.



1 (d) Public notice shall be given of all meetings and all
2 meetings shall be open to the public, except as set forth in the
3 rules or in this compact.

4 (e) The commission shall promulgate rules concerning the
5 meetings consistent with the principles contained in the
6 Government in the Sunshine Act, 5 United States Code 552b, as
7 may be amended.

8 (f) The commission and the commission's committees may
9 close a meeting, or a part of a meeting, upon a determination by
10 the commission by majority vote that an open meeting would be
11 likely to do any of the following:

- 12 (1) Relate solely to the commission's internal personnel
13 practices and procedures;
- 14 (2) Disclose matters specifically exempted from disclosure
15 by federal and state statute;
- 16 (3) Disclose trade secrets or commercial or financial
17 information that is privileged or confidential;
- 18 (4) Involve accusing a person of a crime, or formally
19 censuring a person;
- 20 (5) Disclose information of a personal nature where
21 disclosure would constitute a clearly unwarranted
22 invasion of personal privacy;



1 (6) Disclose investigative records compiled for law
2 enforcement purposes; or

3 (7) Specifically relate to the commission's issuance of a
4 subpoena or the commission's participation in a civil
5 action or other legal proceeding.

6 (g) For a meeting or part of a meeting that is closed
7 pursuant to subsection (f), the commission's legal counsel or
8 the counsel's designee shall certify that the meeting may be
9 closed and shall reference each relevant exemptive provision.
10 The commission shall keep minutes that fully and clearly
11 describe all matters discussed in the meeting and shall provide
12 a full and accurate summary of actions taken and the reasons for
13 the actions, including a description of the views expressed and
14 the record of a roll call vote. All documents considered in
15 connection with an action shall be identified in the minutes.
16 All minutes and documents of a closed meeting shall remain under
17 seal, subject to release by a majority vote of the commission.

18 **§431:8-I Rules and operating procedures; rulemaking**
19 **functions of the commission.** (a) The commission shall
20 promulgate reasonable rules to effectively and efficiently
21 achieve the purposes of this compact. If the commission
22 exercises its rulemaking authority in a manner that is beyond



1 the scope of the purposes of this compact, or the powers granted
2 by this compact, the action by the commission shall be invalid
3 and shall have no force or effect.

4 (b) Rules shall be made pursuant to a rulemaking process
5 that substantially conforms to the Model State Administrative
6 Procedure Act of 1981, Uniform Laws Annotated, vol. 15, p. 1
7 (2000) as amended, as appropriate for the operations of the
8 commission.

9 (c) A rule, operating procedure, or amendment to a rule is
10 effective on the date specified in the rule, operating
11 procedure, or amendment.

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



1 **§431:8-J Commission records and enforcement.** (a) The
2 commission shall promulgate rules establishing conditions and
3 procedures for public inspection and copying of the commission's
4 information and official records, not including information and
5 records involving the privacy of individuals, insurers, or
6 insureds, or surplus lines licensee trade secrets. State
7 transaction documentation and clearinghouse transaction data
8 collected by the clearinghouse shall be used for only those
9 purposes expressed in or reasonably implied under the provisions
10 of this compact, and the commission shall afford the state
11 transaction documentation and clearinghouse transaction data the
12 broadest protections as permitted by applicable law for
13 proprietary information, trade secrets, or personal data. The
14 commission may adopt additional rules under which the commission
15 may make available to federal and state agencies, including law
16 enforcement agencies, records and information otherwise exempt
17 from disclosure, and may enter agreements with the agencies to
18 receive or exchange information or records subject to
19 nondisclosure and confidentiality provisions.

20 (b) Except for privileged records, data, and information,
21 the laws of a compacting state pertaining to confidentiality or
22 nondisclosure shall not relieve a compacting state member of the



1 duty to disclose any relevant records, data, or information to
2 the commission; provided that disclosure to the commission shall
3 not waive or otherwise affect a confidentiality requirement.

4 Except as otherwise expressly provided for in this compact, the
5 commission shall not be subject to the compacting state's laws
6 pertaining to confidentiality and nondisclosure with respect to
7 records, data, and information in the commission's possession.
8 Confidential information of the commission shall remain
9 confidential after the information is provided to a member. The
10 commission shall maintain the confidentiality of information
11 provided by a member if that information is confidential under
12 the member's state's law.

13 (c) The commission shall monitor compacting states for
14 compliance with the bylaws and rules. The commission shall
15 provide written notice of noncompliance to a compacting state
16 that does not comply with the bylaws and rules. If a compacting
17 state that receives a notice of noncompliance fails to remedy
18 the noncompliance within the time specified in the notice of
19 noncompliance, the compacting state shall be considered in
20 default as set forth in section 431:8-0(b).

21 **§431:8-K Dispute resolution.** (a) The commission shall
22 attempt, upon the request of a member, to resolve disputes or



1 other issues that are subject to this compact and which may
2 arise between two or more compacting states, contracting states,
3 or noncompacting states. A member may not bring an action in a
4 court with competent jurisdiction alleging a violation of a
5 provision, standard, or requirement of this compact unless the
6 commission, at the member's request, has attempted to resolve
7 the dispute concerning the alleged violation.

8 (b) The commission shall provide alternative dispute
9 resolution procedures to resolve any disputes between insureds
10 or surplus lines licensees concerning tax calculation or
11 allocation or related issues that are the subject of this
12 compact.

13 (c) Alternative dispute resolution procedures provided
14 under this section shall be utilized in circumstances where a
15 dispute arises as to which state constitutes the home state.

16 **§431:8-L Review of commission decisions.** (a) Except as
17 necessary for adopting rules to fulfill the purposes of this
18 compact, the commission shall not otherwise regulate insurance
19 in the compacting states.

20 (b) No later than thirty days after the commission has
21 given notice of a rule or allocation formula, a third party
22 filer or compacting state may appeal the determination to a



1 review panel appointed by the commission. The commission shall
2 adopt rules to establish procedures for the appointment of
3 review panels and to provide for notice and hearing in the
4 appeal. An allegation that the commission, in making a
5 compliance or tax determination, acted arbitrarily,
6 capriciously, or in a manner that is an abuse of discretion or
7 otherwise not in accordance with the law, is subject to judicial
8 review in accordance with section 431:8-D(f).

9 (c) The commission shall have the authority to monitor,
10 review, and reconsider commission decisions upon a finding that
11 the determinations or allocations do not meet the relevant rule.
12 Where appropriate, the commission may withdraw or modify a
13 determination or allocation after proper notice and hearing,
14 subject to the appeal process in subsection (b).

15 **§431:8-M Finance.** (a) The commission shall pay or
16 provide for the payment of the reasonable expenses of the
17 commission's establishment and organization. To fund the cost
18 of the commission's initial operations, the commission may
19 accept contributions, grants, and other forms of funding from
20 state stamping offices, compacting states, and other sources.

21 (b) The commission shall collect a fee, payable by the
22 insured directly or through a surplus lines licensee, on each



1 transaction processed through the compact clearinghouse, to
2 cover the cost of the operations and activities of the
3 commission and the commission's staff. The revenue from the fee
4 shall be sufficient to cover the commission's annual budget.

5 (c) The commission's budget for a fiscal year shall not be
6 approved until it has been subject to notice and comment
7 provided in section 431:8-I.

8 (d) The commission shall be regarded as performing
9 essential governmental functions in exercising the commission's
10 powers and functions and carrying out the provisions of this
11 compact and any law relating to this compact. The commission
12 shall not be required to pay a tax or assessment of any kind
13 levied by a state or political subdivision upon property used by
14 the commission for, or income or revenue resulting from the
15 purposes described in this subsection, including any profit from
16 a sale or exchange.

17 (e) The commission shall keep complete and accurate
18 accounts of all the commission's internal receipts, including
19 grants and donations, and disbursements for all funds under its
20 control. The internal financial accounts of the commission
21 shall be subject to the accounting procedures established under
22 the bylaws. The financial accounts and reports of the



1 commission, including the system of internal controls and
2 procedures of the commission, shall be audited annually by an
3 independent certified public accountant. Upon the determination
4 of the commission, but not less than every three years, the
5 review of the independent auditor shall include a management and
6 performance audit of the commission. The commission shall make
7 an annual report to the governors and legislatures of the
8 compacting states, including a report of the independent audit.
9 The commission's internal accounts shall not be confidential and
10 the materials shall be shared with the commissioner, the
11 controller, or the stamping office of a compacting state upon
12 request; provided that work papers related to an internal or
13 independent audit and any information regarding the privacy of
14 individuals, and licensees' and insurers' proprietary
15 information, including trade secrets, shall remain confidential.

16 (f) A compacting state shall not have a claim to or
17 ownership of property held by or vested in the commission or to
18 commission funds held pursuant to this compact.

19 (g) The commission shall not make political contributions
20 to candidates for elected office, elected officials, political
21 parties, or political action committees. The commission shall



1 not engage in lobbying, except with respect to changes to this
2 compact.

3 §431:8-N Compacting states; effective date; amendment.

4 (a) Any state is eligible to become a compacting state.

5 (b) The compact shall become effective and binding upon
6 legislative enactment of the compact into law by two compacting
7 states. The commission established by this compact shall become
8 effective for purposes of adopting rules and creating the
9 clearinghouse when there are a total of ten compacting states
10 and contracting states or, when there are compacting states and
11 contracting states representing more than forty per cent of the
12 surplus lines insurance premium volume based on records of the
13 percentage of surplus lines insurance premium set forth in the
14 following table:

15 Surplus Line Insurance Premiums by State (Appendix A)

16 State	Premiums based	Share of Total
	17 on taxes paid	Premiums
18 Alabama	445,746,000	1.47%
19 Alaska	89,453,519	0.29%
20 Arizona	663,703,267	2.18%
21 Arkansas	201,859,750	0.66%
22 California	5,622,450,467	18.49%



1	Colorado	543,781,333	1.79%
2	Connecticut	329,358,800	1.08%
3	Delaware	92,835,950	0.31%
4	Florida	2,660,908,760	8.75%
5	Georgia	895,643,150	2.95%
6	Hawaii	232,951,489	0.77%
7	Idaho	74,202,255	0.24%
8	Illinois	1,016,504,629	3.34%
9	Indiana	412,265,320	1.36%
10	Iowa	135,130,933	0.44%
11	Kansas	160,279,300	0.53%
12	Kentucky	167,996,133	0.55%
13	Louisiana	853,173,280	2.81%
14	Maine	60,111,200	0.20%
15	Maryland	434,887,600	1.43%
16	Massachusetts	708,640,225	2.33%
17	Michigan	703,357,040	2.31%
18	Minnesota	393,128,400	1.29%
19	Mississippi	263,313,175	0.87%
20	Missouri	404,489,860	1.33%
21	Montana	64,692,873	0.21%
22	Nebraska	92,141,167	0.30%



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



1	Wyoming	40,526,967	0.13%
2	Total	30,400,197,251	100.00%

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

5 Thereafter, it shall become effective and binding as to any
6 other compacting state upon the enactment of the compact into
7 law by that state. Notwithstanding the foregoing, the
8 clearinghouse operations and the duty to report clearinghouse
9 transaction data shall begin on the first January 1 or July 1
10 following the first anniversary of the commission's effective
11 date. The commission shall set a date for the reporting of
12 clearinghouse transaction data by states that become compacting
13 states after the commission's effective date, and provide at
14 least ninety days advance notice of the date for the reporting
15 of clearinghouse data to surplus lines licensees and all other
16 interested parties.

17 (c) Amendments to this compact may be proposed by the
18 commission for enactment by the compacting states. An amendment
19 to this compact is not effective and binding upon the commission
20 and the compacting states unless and until all compacting states
21 enact the amendment into law.



1 §431:8-0 **Withdrawal; default; termination.** (a) The
2 following provisions shall govern withdrawal from the compact:

3 (1) Once effective, the compact shall continue in force
4 and remain binding upon every compacting state;
5 provided that a compacting state may withdraw from the
6 compact by enacting a statute specifically repealing
7 the statute that enacted the compact into law;

8 (2) The effective date of a compacting state's withdrawal
9 under paragraph (1) is the effective date of the
10 repealing statute; provided that the withdrawal under
11 paragraph (1) shall not apply to a tax or compliance
12 determination that has already been approved on the
13 date the repealing statute becomes effective, except
14 by mutual agreement of the commission and the
15 withdrawing state unless the approval of the tax or
16 compliance determination is rescinded by the
17 commission;

18 (3) The member of the withdrawing state shall immediately
19 notify the executive committee of the commission in
20 writing upon the introduction of legislation repealing
21 this compact in the withdrawing state;



1 (4) The commission shall notify the other compacting
2 states of the introduction of the legislation within
3 ten days after the commission's receipt of notice
4 under paragraph (3);

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

17 (6) Reinstatement following withdrawal of any compacting
18 state shall occur upon the effective date of the
19 withdrawing state's legislature reenacting the
20 compact.

21 (b) The following provisions shall govern default by a
22 compacting state:



1 (1) If the commission determines that a compacting state
2 has defaulted in the performance of any of the
3 compacting state's obligations or responsibilities
4 under this compact or under the bylaws or rules, the
5 commission shall, after notice and hearing under the
6 bylaws, suspend all rights, privileges, and benefits
7 conferred by this compact on the defaulting state,
8 effective on the effective date of default as fixed by
9 the commission. The grounds for the suspension of a
10 compacting state for default include failure of a
11 compacting state to perform its obligations or
12 responsibilities and any other grounds designated in
13 commission rules. The commission shall immediately
14 notify the defaulting state in writing of the
15 defaulting state's suspension, pending a cure of the
16 default. The commission shall stipulate the
17 conditions and the time period within which the
18 defaulting state shall cure its default. If the
19 defaulting state fails to cure the default within the
20 time period specified by the commission, the
21 defaulting state shall be terminated from this compact
22 and all rights, privileges, and benefits conferred by



1 this compact shall be terminated on the effective date
2 of the state's termination from this compact;

3 (2) Decisions of the commission that have already been
4 issued on the effective date of a state's termination
5 shall remain in force in the defaulting state in the
6 same manner as if the defaulting state had withdrawn
7 voluntarily pursuant to subsection (a); and

8 (3) Reinstatement following termination of a compacting
9 state requires a legislative reenactment of the
10 compact.

11 (c) The following provisions shall govern termination of
12 the compact:

13 (1) The compact dissolves effective on the date of the
14 withdrawal or termination for default of the
15 compacting state whose withdrawal or termination
16 reduces membership in the compact to one compacting
17 state; and

18 (2) Upon the dissolution of this compact, the compact
19 becomes null and void and shall have no further force
20 or effect, and the business and affairs of the
21 commission shall be wound up and any surplus funds



1 shall be distributed in accordance with the bylaws and
2 rules.

3 **§431:8-P Severability and construction.** (a) The
4 provisions of this compact are severable and if any phrase,
5 clause, sentence, or provision of this compact is deemed
6 unenforceable, the remaining provisions of the compact shall be
7 enforceable.

8 (b) The provisions of this compact shall be liberally
9 construed to effectuate the compact's purposes.

10 (c) Throughout this compact the use of the singular
11 includes the plural and vice versa.

12 (d) Any headings and captions of sections and subsections
13 used in this compact are for convenience only and shall be
14 ignored in construing the substantive provisions of this
15 compact.

16 **§431:8-Q Binding effect of compact and other laws.** (a)
17 The following provisions shall govern the effect of the compact
18 on other laws:

19 (1) Except as provided in paragraph (2), nothing in this
20 part prevents the enforcement of any other law of a
21 compacting state;



- 1 (2) Decisions of the commission, and rules and other
2 requirements of the commission shall constitute the
3 exclusive rule or determination applicable to the
4 compacting states. A law or regulation regarding
5 nonadmitted insurance of multi-state risks that is
6 contrary to rules of the commission is preempted with
7 respect to the following:
- 8 (A) Clearinghouse transaction data reporting
9 requirements;
- 10 (B) Allocation formula;
- 11 (C) Clearinghouse transaction data collection
12 requirements;
- 13 (D) Premium tax payment time frames and rules
14 concerning dissemination of data among the
15 compacting states for nonadmitted insurance of
16 multi-state risks and single state risks;
- 17 (E) Exclusive compliance with surplus lines law of
18 the home state of the insured;
- 19 (F) Rules for reporting to a clearinghouse for
20 receipt and distribution of clearinghouse
21 transaction data related to nonadmitted insurance
22 of multi-state risks;



- 1 (G) Uniform foreign insurers eligibility
- 2 requirements;
- 3 (H) Uniform policyholder notice; and
- 4 (I) Uniform treatment of purchasing groups procuring
- 5 nonadmitted insurance; and

6 (3) Except as provided in paragraph (2), a rule, uniform
7 standard, or other requirement of the commission
8 constitutes the exclusive provision that a
9 commissioner may apply to compliance or tax
10 determinations. Notwithstanding the foregoing, an
11 action taken by the commission shall not abrogate or
12 restrict: the access of any person to state courts;
13 the availability of alternative dispute resolution
14 under section 431:8-K; remedies available under state
15 law related to breach of contract, tort, or other laws
16 not specifically directed to compliance or tax
17 determinations; state law relating to the construction
18 of insurance contracts; or the authority of the
19 attorney general of the state, including maintaining
20 any actions or proceedings, as authorized by law.

21 (b) The following provisions shall govern the binding
22 effect of this compact:



- 1 (1) Except as provided in this subsection, lawful actions
2 of the commission, including rules promulgated by the
3 commission, are binding upon the compacting states;
- 4 (2) Agreements between the commission and the compacting
5 states are binding in accordance with the terms of the
6 agreements;
- 7 (3) Upon the request of a party to a conflict over the
8 meaning or interpretation of a commission action, and
9 upon a majority vote of the compacting states, the
10 commission may issue advisory opinions regarding the
11 meaning or interpretation in dispute. This paragraph
12 may be implemented by rule at the discretion of the
13 commission; and
- 14 (4) If a provision of this compact exceeds the
15 constitutional limits imposed on the legislature of a
16 compacting state, the conferral upon the commission of
17 obligations, duties, powers, and jurisdiction through
18 this compact is ineffective as to the compacting
19 state; and the obligations, duties, powers, and
20 jurisdiction shall remain in the compacting state and
21 shall be exercised by the agency of the compacting
22 state to which the obligations, duties, powers, or



1 jurisdiction are delegated by law in effect at the
2 time this compact becomes effective."

3 PART IV

4 SECTION 7. In codifying the new sections added by section
5 6 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 8. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 9. This Act shall take effect upon its approval.

11 INTRODUCED BY: Randy H. Becker

S.B. NO. 2168

Report Title:

Surplus Lines Insurance; Surplus Lines Insurance Multi-State Compliance Compact

Description:

Directs the insurance commissioner to join the surplus lines insurance multi-state compliance compact. Enacts the surplus lines insurance multi-state compliance compact into law.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

