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SENATE BILL 250

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; ENACTING AND ENTERING INTO THE SURPLUS  
LINES INSURANCE MULTISTATE COMPLIANCE COMPACT; MAKING  
CORRESPONDING AMENDMENTS TO THE NEW MEXICO INSURANCE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1. [NEW MATERIAL] SURPLUS LINES INSURANCE**

MULTISTATE COMPLIANCE COMPACT ENTERED INTO.--The "Surplus Lines  
Insurance Multistate Compliance Compact" is enacted into law  
and entered into with all other jurisdictions legally joining  
therein in the form substantially as follows:

**"SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT**

**ARTICLE 1**

**PURPOSE**

The purposes of the Surplus Lines Insurance Multistate  
Compliance Compact are to:

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1           A. implement the express provisions of the federal  
2 act;

3           B. protect the premium tax revenues of the  
4 compacting states through facilitating the payment and  
5 collection of premium tax on non-admitted insurance;

6           C. protect the interests of the compacting states  
7 by supporting the continued availability of such insurance to  
8 consumers;

9           D. provide for allocation of premium tax for  
10 non-admitted insurance of multistate risks among the states in  
11 accordance with uniform allocation formulas to be developed,  
12 adopted and implemented by the commission;

13           E. streamline and improve the efficiency of the  
14 surplus lines market by eliminating duplicative and  
15 inconsistent tax and regulatory requirements among the states;

16           F. promote and protect the interest of surplus  
17 lines licensees who assist insureds and surplus lines insurers,  
18 thereby ensuring the continued availability of surplus lines  
19 insurance to consumers;

20           G. streamline regulatory compliance with respect to  
21 non-admitted insurance placements by providing for exclusive  
22 single-state regulatory compliance for non-admitted insurance  
23 of multistate risks, in accordance with rules to be adopted by  
24 the commission, thereby providing certainty regarding such  
25 compliance to all persons who have an interest in such

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1 transactions, including, but not limited to, insureds,  
2 regulators, surplus lines licensees, other insurance producers  
3 and surplus lines insurers;

4 H. establish a clearinghouse for receipt and  
5 dissemination of premium tax and clearinghouse transaction data  
6 related to non-admitted insurance of multistate risks, in  
7 accordance with rules to be adopted by the commission;

8 I. improve coordination of regulatory resources and  
9 expertise between state insurance departments and other state  
10 agencies, as well as state surplus lines stamping offices, with  
11 respect to non-admitted insurance;

12 J. adopt uniform rules to provide for premium tax  
13 payment, reporting, allocation, data collection and  
14 dissemination for non-admitted insurance of multistate risks  
15 and single-state risks, thereby promoting the overall  
16 efficiency of the non-admitted insurance market;

17 K. adopt uniform mandatory rules with respect to  
18 regulatory compliance requirements for:

19 (1) foreign insurer eligibility requirements;  
20 and

21 (2) surplus lines policyholder notices;

22 L. establish the surplus lines insurance multistate  
23 compliance compact commission;

24 M. coordinate reporting of clearinghouse  
25 transaction data on non-admitted insurance of multistate risks

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1 among compacting states and contracting states; and

2 N. perform these and such other related functions  
3 as may be consistent with the purposes of this compact.

4 ARTICLE 2

5 DEFINITIONS

6 As used in the Surplus Lines Insurance Multistate  
7 Compliance Compact:

8 A. "affiliate" means, with respect to an insured,  
9 any entity that controls, is controlled by or is under common  
10 control with the insured;

11 B. "allocation formula" means the uniform methods  
12 promulgated by the commission by which insured risk exposures  
13 will be apportioned to each state for the purpose of  
14 calculating premium taxes due;

15 C. "bylaws" means those bylaws established by the  
16 commission for its governance or for directing or controlling  
17 the commission's actions or conduct;

18 D. "clearinghouse" means the commission's  
19 operations involving the acceptance, processing and  
20 dissemination, among the compacting states, contracting states,  
21 surplus lines licensees, insureds and other persons, of premium  
22 tax and clearinghouse transaction data for non-admitted  
23 insurance of multistate risks, in accordance with this compact  
24 and rules to be adopted by the commission;

25 E. "clearinghouse transaction data" means the

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1 information regarding non-admitted insurance of multistate  
2 risks required to be reported, accepted, collected, processed  
3 and disseminated by surplus lines licensees for surplus lines  
4 insurance and insureds for independently procured insurance  
5 under this compact and rules to be adopted by the commission.  
6 Clearinghouse transaction data includes information related to  
7 single-state risks if a state elects to have the clearinghouse  
8 collect taxes on single-state risks for such state;

9 F. "compacting state" means any state that has  
10 enacted this compact and that has not withdrawn or been  
11 terminated pursuant to Article 14 of this compact;

12 G. "commission" means the surplus lines insurance  
13 multistate compliance compact commission;

14 H. "commissioner" means the chief insurance  
15 regulatory official of a state, including, but not limited to,  
16 commissioner, superintendent, director or administrator or  
17 their designees;

18 I. "contracting state" means any state that has not  
19 enacted this compact but has entered into a written contract  
20 with the commission to use the services of and fully  
21 participate in the clearinghouse;

22 J. "control" means:

23 (1) directly, indirectly or acting through one  
24 or more other persons, owning, controlling or having the power  
25 to vote twenty-five percent or more of any class of voting

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1 securities of another entity; or

2 (2) controlling in any manner the election of  
3 a majority of the directors or trustees of another entity;

4 K. "federal act" means the federal Nonadmitted and  
5 Reinsurance Reform Act of 2009, which is 30 Title V, Subtitle B  
6 of the federal Dodd-Frank Wall Street Reform and Consumer  
7 Protection Act;

8 L. "home state" means

9 (1) with respect to an insured:

10 (a) the state in which an insured  
11 maintains its principal place of business or, in the case of an  
12 individual, the individual's principal residence; or

13 (b) if one hundred percent of the  
14 insured risk is located out of the state referred to in  
15 Subparagraph (a) of this paragraph, the state to which the  
16 greatest percentage of the insured's taxable premium for that  
17 insurance contract is allocated; or

18 (2) if more than one insured from an  
19 affiliated group are named insureds on a single non-admitted  
20 insurance contract, "home state" means the home state, as  
21 determined pursuant to Paragraph (1) of this subsection, of the  
22 member of the affiliated group that has the largest percentage  
23 of premium attributed to it under the insurance contract;

24 M. "independently procured insurance" means  
25 insurance procured by an insured directly from a surplus lines

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1 insurer or other non-admitted insurer as permitted by the laws  
2 of the home state;

3 N. "insurer eligibility requirements" means the  
4 criteria, forms and procedures established to qualify as a  
5 surplus lines insurer under the law of the home state; provided  
6 that such criteria, forms and procedures are consistent with  
7 the express provisions of the federal act on and after July 21,  
8 2011;

9 O. "member" means the person chosen by a compacting  
10 state as its representative to the commission; provided that  
11 each compacting state shall be limited to one vote;

12 P. "multistate risk" means a risk with insured  
13 exposures in more than one state;

14 Q. "non-compacting state" means a state that has  
15 not adopted this compact;

16 R. "non-admitted insurance" means surplus lines  
17 insurance and independently procured insurance;

18 S. "non-admitted insurer" means an insurer that is  
19 not authorized or admitted to transact the business of  
20 insurance under the law of the home state;

21 T. "policyholder notice" means the disclosure  
22 notice or stamp that is required to be furnished to the  
23 applicant or policyholder in connection with a surplus lines  
24 insurance placement;

25 U. "premium tax" means, with respect to

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1 non-admitted insurance, any tax, fee, assessment or other  
2 charge imposed by a government entity, directly or indirectly  
3 based on any payment made as consideration for such insurance,  
4 including premium deposits, assessments, registration fees and  
5 any other compensation given in consideration for a contract of  
6 insurance;

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

12 W. "purchasing group" means any group formed  
13 pursuant to the federal Liability Risk Retention Act, 15 U.S.C.  
14 65, that has as one of its purposes the purchase of liability  
15 insurance on a group basis; that purchases such insurance only  
16 for its group members and only to cover their similar or  
17 related liability exposure; that is composed of members whose  
18 businesses or activities are similar or related with respect to  
19 the liability to which members are exposed by virtue of any  
20 related, similar or common business, trade, product, services,  
21 premises or operations; and that is domiciled in any state;

22 X. "rule" means a statement of general or  
23 particular applicability and future effect promulgated by the  
24 commission designed to implement, interpret or prescribe law or  
25 policy or describing the organization, procedure or practice

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1 requirements of the commission that shall have the force and  
2 effect of law in the compacting states;

3 Y. "single-state risk" means a risk with insured  
4 exposures in only one state;

5 Z. "state" means any state, district or territory  
6 of the United States of America;

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

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

19 CC. "surplus lines insurer" means a non-admitted  
20 insurer eligible under the law of the home state to accept  
21 business from a surplus lines licensee; for purposes of this  
22 compact, "surplus lines insurer" also means an insurer that is  
23 permitted to write surplus lines insurance under the laws of  
24 the state where the insurer is domiciled; and

25 DD. "surplus lines licensee" means an individual,

1 firm or corporation licensed under the law of the home state to  
2 place surplus lines insurance.

3 ARTICLE 3

4 ESTABLISHMENT OF THE COMMISSION AND VENUE

5 A. The compacting states hereby create and  
6 establish a joint public agency known as the "surplus lines  
7 insurance multistate compliance compact commission".

8 B. Pursuant to Article 4 of this compact, the  
9 commission shall have the power to adopt mandatory rules that  
10 establish exclusive home state authority regarding non-admitted  
11 insurance of multistate risks, allocation formulas,  
12 clearinghouse transaction data, a clearinghouse for receipt and  
13 distribution of allocated premium tax and clearinghouse  
14 transaction data and uniform rulemaking procedures and rules  
15 for the purpose of financing, administering, operating and  
16 enforcing compliance with the provisions of this compact, its  
17 bylaws and rules.

18 C. Pursuant to Article 4 of this compact, the  
19 commission shall have the power to adopt mandatory rules  
20 establishing foreign insurer eligibility requirements and a  
21 concise and objective policyholder notice regarding the nature  
22 of a surplus lines placement.

23 D. The commission is a body corporate and politic  
24 and an instrumentality of the compacting states.

25 E. The commission is solely responsible for its

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1 liabilities, except as otherwise specifically provided in this  
2 compact.

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

9 ARTICLE 4

10 AUTHORITY TO ESTABLISH MANDATORY RULES

11 The commission shall adopt mandatory rules that establish:

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

22 B. uniform clearinghouse transaction data reporting  
23 requirements for all information reported to the clearinghouse;

24 C. methods by which compacting states and  
25 contracting states require surplus lines licensees and insureds

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1 to pay premium tax and to report clearinghouse transaction data  
2 to the clearinghouse, including, but not limited to, processing  
3 clearinghouse transaction data through state stamping and  
4 service offices, state insurance departments or other state-  
5 designated agencies or entities;

6 D. that non-admitted insurance of multistate risks  
7 shall be subject to all of the regulatory compliance  
8 requirements of the home state exclusively as follows:

9 (1) home state regulatory compliance  
10 requirements applicable to surplus lines insurance shall  
11 include, but not be limited to:

12 (a) persons required to be licensed to  
13 sell, solicit or negotiate surplus lines insurance;

14 (b) insurer eligibility requirements or  
15 other approved non-admitted insurer requirements;

16 (c) diligent search; and

17 (d) state transaction documentation and  
18 clearinghouse transaction data regarding the payment of premium  
19 tax as set forth in this compact and rules to be adopted by the  
20 commission; and

21 (2) home state regulatory compliance  
22 requirements applicable to independently procured insurance  
23 placements shall include, but not be limited to, providing  
24 state transaction documentation and clearinghouse transaction  
25 data regarding the payment of premium tax as set forth in this

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1 compact and rules to be adopted by the commission;

2 E. that each compacting state and contracting state  
3 may charge its own rate of taxation on the premium allocated to  
4 such state based on the applicable allocation formula; provided  
5 that the state establishes one single rate of taxation  
6 applicable to all non-admitted insurance transactions and no  
7 other tax, fee assessment or other charge by any governmental  
8 or quasi-governmental agency be permitted; and provided further  
9 that stamping office fees may be charged as a separate,  
10 additional cost unless such fees are incorporated into a  
11 state's single rate of taxation;

12 F. that any change in the rate of taxation by any  
13 compacting state or contracting state be restricted to changes  
14 made prospectively on not less than ninety days' advance notice  
15 to the commission;

16 G. that each compacting state and contracting state  
17 shall require premium tax payments either annually,  
18 semiannually or quarterly, using one or more of the following  
19 dates only: March 1, June 1, September 1 and December 1;

20 H. that each compacting state and contracting state  
21 prohibit any other state agency or political subdivision from  
22 requiring surplus lines licensees to provide clearinghouse  
23 transaction data and state transaction documentation other than  
24 to the insurance department or tax officials of the home state  
25 or one single designated agent thereof;

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1 I. the obligation of the home state by itself,  
2 through a designated agent, surplus lines stamping or service  
3 office, to collect clearinghouse transaction data from surplus  
4 lines licensees and from insureds for independently procured  
5 insurance, where applicable, for reporting to the  
6 clearinghouse;

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

14 K. that each surplus lines licensee is required to  
15 be licensed only in the home state of each insured for whom  
16 surplus lines insurance has been procured;

17 L. that a policy considered to be surplus lines  
18 insurance in the insured's home state shall be considered  
19 surplus lines insurance in all compacting states and  
20 contracting states and taxed as a surplus lines transaction in  
21 all states to which a portion of the risk is allocated. Each  
22 compacting state and contracting state shall require each  
23 surplus lines licensee to pay every other compacting state and  
24 contracting state premium taxes on each multistate risk through  
25 the clearinghouse at the tax rate charged on surplus lines

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

13 M. uniform foreign insurer eligibility requirements  
14 as authorized by the federal act;

15 N. a uniform policyholder notice; and

16 O. uniform treatment of purchasing group surplus  
17 lines insurance placements.

## 18 ARTICLE 5

### 19 POWERS OF THE COMMISSION

20 The commission shall have the power to:

21 A. promulgate rules and operating procedures,  
22 pursuant to Article 8 of this compact, that shall have the  
23 force and effect of law and shall be binding in the compacting  
24 states to the extent and in the manner provided in this  
25 compact; provided that, except as necessary for promulgating

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1 rules to fulfill the purposes of this compact, the commission  
2 shall not have authority to otherwise regulate insurance in the  
3 compacting states;

4 B. bring and prosecute legal proceedings or actions  
5 in the name of the commission; provided that the standing of  
6 any state insurance department to sue or be sued under  
7 applicable law shall not be affected;

8 C. issue subpoenas requiring the attendance and  
9 testimony of witnesses and the production of evidence;  
10 provided, however, that the commission not be empowered to  
11 demand or subpoena records or data from non-admitted insurers;

12 D. establish and maintain offices, including the  
13 creation of a clearinghouse, for the receipt of premium tax and  
14 clearinghouse transaction data regarding non-admitted insurance  
15 of multistate risks and single-state risks for states that  
16 elect to require surplus lines licensees to pay premium tax on  
17 single state risks through the clearinghouse and tax reporting  
18 forms;

19 E. purchase and maintain insurance and bonds;

20 F. borrow, accept or contract for services of  
21 personnel, including, but not limited to, employees of a  
22 compacting state or stamping office, pursuant to an open,  
23 transparent, objective competitive process and procedure  
24 adopted by the commission;

25 G. hire employees, professionals or specialists and

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1 elect or appoint officers and to:

2 (1) fix their compensation, define their  
3 duties and give them appropriate authority to carry out the  
4 purposes of this compact; and

5 (2) determine their qualifications, pursuant  
6 to an open, transparent, objective competitive process and  
7 procedure adopted by the commission;

8 H. establish the commission's personnel policies  
9 and programs relating to conflicts of interest, rates of  
10 compensation and qualifications of personnel and other related  
11 personnel matters;

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

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

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

25 L. provide for tax audit rules and procedures for

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1 the compacting states with respect to the allocation of premium  
2 taxes, including:

3 (1) minimum audit standards and sampling  
4 methods;

5 (2) review of internal controls;

6 (3) cooperation and sharing of audit  
7 responsibilities between compacting states;

8 (4) handling of refunds or credits due to  
9 overpayments or improper allocation of premium taxes;

10 (5) taxpayer records to be reviewed, including  
11 a minimum retention period; and

12 (6) authority of compacting states to review,  
13 challenge or re-audit taxpayer records;

14 M. enforce compliance by compacting states and  
15 contracting states with rules;

16 N. provide for dispute resolution among compacting  
17 states and contracting states;

18 O. advise compacting states and contracting states  
19 on tax-related issues relating to insurers, insureds, surplus  
20 lines licensees, agents or brokers domiciled or doing business  
21 in non-compacting states, consistent with the purposes of this  
22 compact;

23 P. make available advice and training to those  
24 personnel in state stamping offices, state insurance  
25 departments or other state departments for recordkeeping, tax

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1 compliance and tax allocations and be a resource for state  
2 insurance departments and other state departments;  
3 Q. establish a budget and make expenditures;  
4 R. borrow money;  
5 S. appoint and oversee committees, including  
6 advisory committees composed of members, state insurance  
7 regulators, state legislators or their representatives,  
8 insurance industry and consumer representatives and such other  
9 interested persons as may be designated in this compact and the  
10 bylaws;  
11 T. establish an executive committee pursuant to  
12 Subsection B of Article 6 of this compact;  
13 U. establish an operations committee pursuant to  
14 Subsection C of Article 6 of this compact;  
15 V. enter into contracts with contracting states so  
16 that contracting states can utilize the services of and fully  
17 participate in the clearinghouse subject to the terms and  
18 conditions set forth in such contracts;  
19 W. adopt and use a corporate seal; and  
20 X. perform other functions as may be necessary or  
21 appropriate to achieve the purposes of this compact consistent  
22 with the state regulation of the business of insurance.

## ARTICLE 6

### ORGANIZATION OF THE COMMISSION

25 A. The following provisions shall govern commission

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1 membership, voting and bylaws:

2 (1) each compacting state shall have and be  
3 limited to one member. Each state shall determine the  
4 qualifications and the method by which it selects a member and  
5 set forth the selection process in the enabling provision of  
6 the legislation that enacts this compact. In the absence of  
7 such a provision, the member shall be appointed by the governor  
8 of the compacting state. Any member may be removed or  
9 suspended from office as provided by the law of the state from  
10 which the member shall be appointed. Any vacancy occurring in  
11 the commission shall be filled in accordance with the laws of  
12 the compacting state wherein the vacancy exists;

13 (2) each member shall be entitled to one vote  
14 and shall otherwise have an opportunity to participate in the  
15 governance of the commission in accordance with the bylaws;

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

21 (a) establishing the fiscal year of the  
22 commission;

23 (b) providing reasonable procedures for  
24 holding meetings of the commission, the executive committee and  
25 the operations committee;

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1 (c) providing reasonable standards and  
2 procedures: 1) for the establishment and meetings of  
3 committees; and 2) governing any general or specific delegation  
4 of any authority or function of the commission;

5 (d) providing reasonable procedures for  
6 calling and conducting meetings of the commission that consist  
7 of a majority of commission members, ensuring reasonable  
8 advance notice of each meeting and providing for the right of  
9 citizens to attend each meeting with enumerated exceptions  
10 designed to protect the public's interest, the privacy of  
11 individuals and insurers and surplus lines licensees'  
12 proprietary information, including trade secrets. The  
13 commission may meet privately only after a majority of the  
14 entire membership votes to close a meeting in whole or in part.  
15 As soon as practicable, the commission must make public: 1) a  
16 copy of the vote to close the meeting, revealing the vote of  
17 each member with no proxy votes allowed; and 2) votes taken  
18 during the meeting;

19 (e) establishing the titles, duties and  
20 authority and reasonable procedures for the election of the  
21 officers of the commission;

22 (f) providing reasonable standards and  
23 procedures for the establishment of the personnel policies and  
24 programs of the commission. Notwithstanding any civil service  
25 or other similar laws of any compacting state, the bylaws shall

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1 exclusively govern the personnel policies and programs of the  
2 commission;

3 (g) promulgating a code of ethics to  
4 address permissible and prohibited activities of commission  
5 members and employees; and

6 (h) providing a mechanism for winding up  
7 the operations of the commission and the equitable disposition  
8 of any surplus funds that may exist after the termination of  
9 the compact and after the payment or reserving of all of its  
10 debts and obligations; and

11 (4) the commission shall publish its bylaws in  
12 a convenient form and file a copy thereof and a copy of any  
13 amendment thereto with the appropriate agency or officer in  
14 each of the compacting states.

15 B. An executive committee of the commission shall  
16 be established.

17 (1) All actions of the executive committee,  
18 including compliance and enforcement, are subject to the review  
19 and ratification of the commission as provided in the bylaws.

20 (2) The executive committee shall have no more  
21 than fifteen nor less than seven members, provided that, if  
22 there are fewer than fifteen compacting states, the executive  
23 committee shall have one member for each state. Each member  
24 shall be entitled to one vote. Members of the executive  
25 committee shall serve for a term of one year.

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

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

7                   (b) acting on behalf of the commission,  
8 with the exception of rulemaking, during periods when the  
9 commission is not in session;

10                   (c) establishing and overseeing an  
11 organizational structure within, and appropriate procedures for  
12 the commission to provide for the creation of, rules and  
13 operating procedures;

14                   (d) overseeing the day-to-day activities  
15 of the administration of the compact, including the activities  
16 of the operations committee and compliance with and enforcement  
17 of the provisions of the compact; and

18                   (e) planning, implementing and  
19 coordinating communications and activities with other state,  
20 federal and local government organizations in order to advance  
21 the goals of the commission.

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

25                   (5) The executive committee may, subject to

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1 the approval of the commission, appoint or retain an executive  
2 director for a period, upon terms and conditions and for a  
3 compensation as the commission may deem appropriate, and who  
4 shall:

5 (a) serve as secretary to the commission  
6 but not be a member of the commission; and

7 (b) hire and supervise other persons as  
8 may be authorized by the commission.

9 C. An operations committee shall be established.

10 (1) All actions of the operations committee  
11 are subject to the review and oversight of the commission and  
12 the executive committee and shall be approved by the  
13 commission.

14 (2) The executive committee shall accept the  
15 determinations and recommendations of the operations committee  
16 unless good cause is shown why such determinations and  
17 recommendations should not be approved.

18 (3) Any disputes as to whether good cause  
19 exists to reject any determination or recommendation of the  
20 operations committee shall be resolved by the majority vote of  
21 the commission.

22 (4) The operations committee shall have no  
23 more than fifteen nor less than seven members, provided that,  
24 if there are fewer than fifteen compacting states, the  
25 operations committee shall have one member for each state.

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1 Each member shall be entitled to one vote. Members of the  
2 operations committee shall serve for a term and shall be  
3 established as set forth in the bylaws.

4 (5) The operations committee shall have  
5 responsibility for:

6 (a) evaluating technology requirements  
7 for the clearinghouse, assessing existing systems used by state  
8 regulatory agencies and state stamping offices to maximize the  
9 efficiency and successful integration of the clearinghouse  
10 technology systems with state and state stamping office  
11 technology platforms and to minimize costs to the states, state  
12 stamping offices and the clearinghouse;

13 (b) making recommendations to the  
14 executive committee based on its analysis and determination of  
15 the clearinghouse technology requirements and compatibility  
16 with existing state and state stamping office systems;

17 (c) evaluating the most suitable  
18 proposals for adoption as mandatory rules, assessing proposals  
19 for ease of integration by states and likelihood of successful  
20 implementation and reporting to the executive committee its  
21 determinations and recommendations; and

22 (d) such other duties and  
23 responsibilities as are delegated to it by the bylaws, the  
24 executive committee or the commission.

25 (6) All members of the operations committee

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1 shall be individuals who have extensive experience or  
2 employment in the surplus lines insurance business, including,  
3 but not limited to, executives and attorneys employed by  
4 surplus lines insurers, surplus line licensees, law firms,  
5 state insurance departments or state stamping offices.

6 Operations committee representatives from compacting states  
7 that use the services of a state stamping office shall appoint  
8 the chief operating officer or a senior manager of the state  
9 stamping office to the operations committee.

10 D. A legislative committee composed of state  
11 legislators or their designees shall be established to monitor  
12 the operations of and make recommendations to the commission  
13 and the executive committee; provided that the manner of  
14 selection and term of any legislative committee member shall be  
15 as set forth in the bylaws. Prior to the adoption by the  
16 commission of any uniform standard, revision to the bylaws,  
17 annual budget or other significant matter as may be provided in  
18 the bylaws, the executive committee shall consult with, and  
19 report to, the legislative committee.

20 E. The commission may establish additional advisory  
21 committees as its bylaws may provide for the carrying out of  
22 its functions.

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

25 G. The members, officers, executive director,

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

14 H. The commission shall defend any member, officer,  
15 executive director, employee or representative of the  
16 commission, the executive committee or any other committee of  
17 the commission in any civil action seeking to impose liability  
18 arising out of any actual or alleged act, error or omission  
19 that occurred within the scope of commission employment, duties  
20 or responsibilities, or that the person against whom the claim  
21 is made had a reasonable basis for believing occurred within  
22 the scope of commission employment, duties or responsibilities;  
23 provided that nothing herein shall be construed to prohibit  
24 that person from retaining separate counsel; and provided  
25 further that the actual or alleged act, error or omission did

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1 not result from that person's intentional or willful or wanton  
2 misconduct.

3 I. The commission shall indemnify and hold harmless  
4 any member, officer, executive director, employee or  
5 representative of the commission, executive committee or any  
6 other committee of the commission for the amount of any  
7 settlement or judgment obtained against that person arising out  
8 of an actual or alleged act, error or omission that occurred  
9 within the scope of commission employment, duties or  
10 responsibilities, or that person had a reasonable basis for  
11 believing occurred within the scope of commission employment,  
12 duties or responsibilities; provided that the actual or alleged  
13 act, error or omission did not result from the intentional or  
14 willful or wanton misconduct of that person.

15 ARTICLE 7

16 MEETINGS AND ACTS OF THE COMMISSION

17 A. The commission shall meet and take such actions  
18 as are consistent with the provisions of this compact and the  
19 bylaws.

20 B. Each member of the commission shall have the  
21 right and power to cast a vote to which that compacting state  
22 is entitled and to participate in the business and affairs of  
23 the commission. A member shall vote in person or by such other  
24 means as provided in the bylaws. The bylaws may provide for  
25 members' participation in meetings by telephone or other means

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1 of communication.

2 C. The commission shall meet at least once during  
3 each calendar year. Additional meetings shall be held as set  
4 forth in the bylaws.

5 D. Public notice shall be given of all meetings,  
6 and all meetings shall be open to the public, except as set  
7 forth in the rules or otherwise provided in the compact.

8 E. The commission shall promulgate rules concerning  
9 its meetings consistent with the principles contained in the  
10 federal Government in the Sunshine Act, 4 U.S.C. Section 552b,  
11 as may be amended.

12 F. The commission and its committees may close a  
13 meeting, or portion thereof, when they determine by majority  
14 vote that an open meeting would be likely to:

15 (1) relate solely to the commission's internal  
16 personnel practices and procedures;

17 (2) disclose matters specifically exempted  
18 from disclosure by federal and state statute;

19 (3) disclose trade secrets or commercial or  
20 financial information that is privileged or confidential;

21 (4) involve accusing a person of a crime or  
22 involve formally censuring a person;

23 (5) disclose information of a personal nature  
24 when disclosure would constitute a clearly unwarranted invasion  
25 of personal privacy;

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

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

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

18 ARTICLE 8

19 RULEMAKING FUNCTIONS OF THE COMMISSION

20 A. The commission shall promulgate reasonable  
21 rules in order to effectively and efficiently achieve the  
22 purposes of this compact; provided that, in the event the  
23 commission exercises its rulemaking authority in a manner that  
24 is beyond the scope of the purposes of this compact or the  
25 powers that it grants, such an action by the commission shall

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1 be invalid and have no force or effect.

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

7 C. All rules shall become effective as of the date  
8 specified in each rule.

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

18 ARTICLE 9

19 COMMISSION RECORDS AND ENFORCEMENT

20 A. The commission shall promulgate rules  
21 establishing conditions and procedures for public inspection  
22 and copying of its information and official records, except for  
23 information and records involving the privacy of individuals,  
24 insurers, insureds or surplus lines licensee trade secrets.  
25 State transaction documentation and clearinghouse transaction

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1 data collected by the clearinghouse shall be used for only  
2 those purposes expressed in or reasonably implied under the  
3 provisions of this compact, and the commission shall afford  
4 this data the broadest protections as permitted by any  
5 applicable law for proprietary information, trade secrets or  
6 personal data. The commission may promulgate additional rules  
7 under which it may make available to federal and state  
8 agencies, including law enforcement agencies, records and  
9 information otherwise exempt from disclosure and may enter into  
10 agreements with such agencies to receive or exchange  
11 information or records subject to nondisclosure and  
12 confidentiality provisions.

13 B. Except as to privileged records, data and  
14 information, the laws of a compacting state pertaining to  
15 confidentiality or nondisclosure shall not relieve any  
16 compacting state member of the duty to disclose any relevant  
17 records, data or information to the commission; provided that  
18 disclosure to the commission shall not be deemed to waive or  
19 otherwise affect any confidentiality requirement; and provided  
20 further that, except as otherwise expressly provided in this  
21 compact, the commission shall not be subject to the compacting  
22 state's laws pertaining to confidentiality and nondisclosure  
23 with respect to records, data and information in its  
24 possession. Confidential information of the commission shall  
25 remain confidential after such information is provided to a

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1 member, and the commission shall maintain the confidentiality  
2 of information provided by a member that is confidential under  
3 that member's state law.

4 C. The commission shall monitor compacting states  
5 for compliance with duly adopted bylaws and rules. The  
6 commission shall notify a non-complying compacting state in  
7 writing of its noncompliance with commission bylaws or rules.  
8 If a non-complying compacting state fails to remedy its  
9 noncompliance within the time specified in the notice of  
10 noncompliance, the compacting state shall be deemed to be in  
11 default as set forth in Article 14 of this compact.

12 ARTICLE 10

13 DISPUTE RESOLUTION

14 A. Before a member may bring an action in a court  
15 of competent jurisdiction for violation of a provision,  
16 standard or requirement of the compact, the commission shall  
17 attempt, upon the request of a member, to resolve disputes or  
18 other issues that are subject to this compact and that may  
19 arise between two or more compacting states, contracting states  
20 or non-compacting states, and the commission shall promulgate a  
21 rule providing alternative dispute resolution procedures for  
22 such disputes.

23 B. The commission shall also provide alternative  
24 dispute resolution procedures to resolve disputes between  
25 insureds or surplus lines licensees concerning a tax

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1 calculation or allocation or related issues that are the  
2 subject of this compact.

3 C. Any alternative dispute resolution procedures  
4 shall be used in circumstances in which a dispute arises as to  
5 which state constitutes the home state.

6 ARTICLE 11

7 REVIEW OF COMMISSION DECISIONS

8 A. Not later than thirty days after the commission  
9 has given notice of a rule or allocation formula, a third party  
10 filer or compacting state may appeal the determination to a  
11 review panel appointed by the commission. The commission shall  
12 promulgate rules to establish procedures for appointing review  
13 panels and provide for notice and hearing. An allegation that  
14 the commission, in making compliance or tax determinations,  
15 acted arbitrarily, capriciously or in a manner that is an abuse  
16 of discretion or otherwise not in accordance with the law is  
17 subject to judicial review in accordance with Subsection F of  
18 Article 3 of this compact.

19 B. The commission shall have authority to monitor,  
20 review and reconsider commission decisions upon a finding that  
21 the determinations or allocations do not meet the relevant  
22 rule. Where appropriate, the commission may withdraw or modify  
23 its determination or allocation after proper notice and  
24 hearing, subject to the appeal process in Subsection A of this  
25 article.

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ARTICLE 12

FINANCE

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

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

C. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article 8 of this compact.

D. The commission shall be regarded as performing essential governmental functions in exercising its powers and functions and in carrying out the provisions of this compact. The commission shall not be required to pay taxes or assessments levied by any state or political subdivision thereof upon the property used by the commission in the performance of its duties, or on income or revenue that the commission receives, including any profit from a sale or

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1 exchange.

2 E. The commission shall keep complete and accurate  
3 accounts of all its internal receipts, including grants and  
4 donations, and disbursements for all funds under its control.  
5 The internal financial accounts of the commission shall be  
6 subject to the accounting procedures established under its  
7 bylaws. The financial accounts and reports, including the  
8 system of internal controls and procedures of the commission,  
9 shall be audited annually by an independent certified public  
10 accountant. Upon the determination of the commission, but not  
11 less frequently than every three years, the review of the  
12 independent auditor shall include a management and performance  
13 audit of the commission. The commission shall make an annual  
14 report to the governor and legislature of the compacting  
15 states, which report shall include a report of the independent  
16 audit. The commission's internal accounts shall not be  
17 confidential, and the materials may be shared with the  
18 commissioner, the controller or the stamping office of any  
19 compacting state upon request; provided, however, that work  
20 papers related to an internal or independent audit and any  
21 information regarding the privacy of individuals and licensees'  
22 and insurers' proprietary information, including trade secrets,  
23 shall remain confidential.

24 F. No compacting state shall have claim to or  
25 ownership of any property held by or vested in the commission

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1 or to any commission funds held pursuant to the provisions of  
2 this compact.

3 G. The commission shall not make any political  
4 contributions to candidates for elected office, elected  
5 officials, political parties or political action committees.  
6 The commission shall not engage in lobbying except with respect  
7 to changes to this compact.

8 ARTICLE 13

9 COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

10 A. Any state is eligible to become a compacting  
11 state.

12 B. The compact shall become effective and binding  
13 upon legislative enactment of the compact into law by two  
14 compacting states; provided that the commission shall become  
15 effective for purposes of adopting rules and creating the  
16 clearinghouse when there are a total of ten compacting states  
17 and contracting states or, alternatively, when there are  
18 compacting states and contracting states representing greater  
19 than forty percent of the surplus lines insurance premium  
20 volume based on records of the percentage of surplus lines  
21 insurance premium for calendar year 2005 as shown in a study  
22 dated February 27, 2007 by Mackin and Company. Thereafter, it  
23 shall become effective and binding as to any other compacting  
24 state upon enactment of the compact into law by that state;  
25 provided that the clearinghouse operations and the duty to

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1 report clearinghouse transaction data shall begin on the first  
2 January 1 or July 1 following the first anniversary of the  
3 commission's effective date. For states that join the compact  
4 subsequent to the effective date, a start date for reporting  
5 clearinghouse transaction data shall be set by the commission;  
6 provided that surplus lines licensees and all other interested  
7 parties receive not less than ninety days advance notice.

8 C. Amendments to the compact may be proposed by the  
9 commission for enactment by the compacting states. No  
10 amendment shall become effective and binding upon the  
11 commission and the compacting states unless and until all  
12 compacting states enact the amendment into law.

#### 13 ARTICLE 14

#### 14 WITHDRAWAL, DEFAULT AND TERMINATION

15 A. The following provisions govern withdrawal of a  
16 state from the commission:

17 (1) once effective, the compact shall continue  
18 in force and remain binding upon each compacting state;  
19 provided that a compacting state may withdraw from the compact  
20 by enacting a statute specifically repealing the statute that  
21 enacted the compact into law;

22 (2) the effective date of withdrawal is the  
23 effective date of the repealing statute; provided, however,  
24 that the withdrawal shall not apply to any tax or compliance  
25 determinations approved on the date the repealing statute

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1 becomes effective, except by mutual agreement of the commission  
2 and the withdrawing state, unless the approval is rescinded by  
3 the commission;

4 (3) the member of the withdrawing state shall  
5 immediately notify the executive committee of the commission in  
6 writing upon the introduction of legislation repealing this  
7 compact in the withdrawing state;

8 (4) the commission shall notify the other  
9 compacting states of the introduction of such legislation  
10 within ten days after its receipt of notice thereof;

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

21 (6) reinstatement following withdrawal of any  
22 compacting state shall occur upon the effective date of the  
23 withdrawing state reenacting the compact.

24 B. The following provisions govern default by a  
25 compacting state:

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

21                   (2) decisions of the commission that are  
22 issued on the effective date of termination shall remain in  
23 force in the defaulting state in the same manner as if the  
24 defaulting state had withdrawn voluntarily pursuant to  
25 Subsection A of this article; and

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1 (3) reinstatement following termination of a  
2 compacting state requires a reenactment of the compact.

3 C. The following provisions govern the dissolution  
4 of this compact:

5 (1) the compact dissolves effective upon the  
6 date of the withdrawal or default of the compacting state that  
7 reduces membership in the compact to one compacting state; and

8 (2) upon the dissolution of this compact, the  
9 compact becomes null and void and shall have no further force  
10 or effect, and the business and affairs of the commission shall  
11 be terminated and any surplus funds shall be distributed in  
12 accordance with the rules and bylaws.

13 ARTICLE 15

14 SEVERABILITY AND CONSTRUCTION

15 A. The provisions of this compact shall be  
16 severable and if any phrase, clause, sentence or provision is  
17 deemed unenforceable, the remaining provisions of the compact  
18 shall be enforceable.

19 B. The provisions of this compact shall be  
20 liberally construed to effectuate its purposes.

21 C. Throughout this compact the use of the singular  
22 shall include the plural and vice versa.

23 D. The headings and captions of articles used in  
24 this compact are for convenience only and shall be ignored in  
25 construing the substantive provisions of this compact.

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ARTICLE 16

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Nothing in this compact prevents the enforcement of any other law of a compacting state except as provided in Subsection B of this article.

B. Decisions of the commission and rules and other requirements of the commission shall constitute the exclusive rule or determination applicable to the compacting states. A law or rule regarding non-admitted insurance of multistate risks that is contrary to rules of the commission is preempted with respect to the following:

(1) clearinghouse transaction data reporting requirements;

(2) allocation formulas;

(3) clearinghouse transaction data collection requirements;

(4) premium tax payment time frames and rules concerning dissemination of data among the compacting states for non-admitted insurance of multistate risks and single-state risks;

(5) exclusive compliance with surplus lines law of the home state of the insured;

(6) rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to non-admitted insurance of multistate risks;

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1 (7) uniform foreign insurers eligibility  
2 requirements;

3 (8) uniform policyholder notice; and

4 (9) uniform treatment of purchasing groups  
5 procuring non-admitted insurance.

6 C. Except as stated in Subsection B of this  
7 article, a rule, uniform standard or other requirement of the  
8 commission shall constitute the exclusive provision that a  
9 commissioner may apply to compliance or tax determinations;  
10 provided, however, that no action taken by the commission shall  
11 abrogate or restrict:

12 (1) the access of a person to state courts;

13 (2) the availability of alternative dispute  
14 resolution under Article 10 of this compact;

15 (3) remedies available under state law related  
16 to breach of contract, tort or other laws not specifically  
17 directed to compliance or tax determinations;

18 (4) state law relating to the construction of  
19 insurance contracts; or

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

23 D. All lawful actions of the commission, including  
24 all rules promulgated by the commission, are binding upon the  
25 compacting states, except as provided in this compact.

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1 E. All agreements between the commission and the  
2 compacting states are binding in accordance with their terms.

3 F. Upon the request of a party to a conflict over  
4 the meaning or interpretation of commission actions and upon a  
5 majority vote of the compacting states, the commission may  
6 issue advisory opinions regarding the meaning or interpretation  
7 in dispute. This provision may be implemented by rule at the  
8 discretion of the commission.

9 G. In the event any provision of this compact  
10 exceeds the constitutional limits imposed on the legislature of  
11 any compacting state, the obligations, duties, powers or  
12 jurisdiction sought to be conferred by that provision upon the  
13 commission shall be ineffective as to that state and those  
14 obligations, duties, powers or jurisdiction shall remain in the  
15 compacting state and shall be exercised by the agency thereof  
16 to which those obligations, duties, powers or jurisdiction are  
17 delegated by law in effect at the time this compact becomes  
18 effective."

19 SECTION 2. [NEW MATERIAL] SURPLUS LINES INSURANCE  
20 MULTISTATE COMPLIANCE COMPACT--STATE REPRESENTATIVE.--New  
21 Mexico's member on the surplus lines insurance multistate  
22 compliance compact commission shall be the superintendent of  
23 insurance or the superintendent's designee.

24 SECTION 3. Section 59A-14-1 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 239, as amended) is amended to read:

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1 "59A-14-1. SCOPE OF ARTICLE--PURPOSE--NECESSITY FOR  
2 REGULATION.--

3 A. Chapter 59A, Article 14 NMSA 1978 governs the  
4 placing of insurance of New Mexico risks, through licensed  
5 surplus [~~line~~] lines brokers, in insurers not otherwise  
6 authorized to transact insurance in this state and subject to  
7 the conditions for such placing as stated in that article;  
8 qualifications, licensing and duties and responsibilities of  
9 surplus [~~line~~] lines brokers; and other provisions as to such  
10 surplus [~~line~~] lines business and surplus lines brokers.

11 Unless otherwise provided, Chapter 59A, Article 14 NMSA 1978  
12 shall not apply to the placing of insurance for risks governed  
13 by the Surplus Lines Insurance Multistate Compliance Compact.

14 As to unauthorized insurers in general, and in respects other  
15 than as to surplus [~~line~~] lines, refer to Chapter 59A, Article  
16 15 NMSA 1978.

17 B. Chapter 59A, Article 14 NMSA 1978 shall not  
18 apply as to reinsurance or to the following insurances when  
19 placed by general lines agents or surplus [~~line~~] lines brokers  
20 licensed as such by this state:

21 (1) wet marine and transportation insurance,  
22 as defined in Section 59A-7-5 NMSA 1978;

23 (2) insurance of subjects located, resident or  
24 to be performed wholly outside this state or on vehicles or  
25 aircraft owned and principally garaged outside this state;

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1 (3) insurance of property and operations of  
2 railroads engaged in interstate commerce;

3 (4) insurance of aircraft of common carriers,  
4 or cargo of such aircraft, or against liability, other than  
5 employer's liability, arising out of ownership, maintenance or  
6 use of such aircraft;

7 (5) insurance of automobile bodily injury and  
8 property damage liability risks when written in Mexican  
9 insurers and covering in Mexico and not in the United States;  
10 or

11 (6) insurance independently procured.

12 C. Chapter 59A, Article 14 NMSA 1978 shall be  
13 liberally construed and applied to promote its underlying  
14 purposes, which include:

15 (1) protecting insureds and persons seeking  
16 insurance in this state;

17 (2) permitting surplus lines insurance to be  
18 placed with reputable and financially sound unauthorized  
19 insurers, but only pursuant to Chapter 59A, Article 14 NMSA  
20 1978;

21 (3) establishing a system of regulation that  
22 will permit controlled access to surplus lines insurance in  
23 this state; and

24 (4) assuring collection of revenues and other  
25 amounts due to this state."

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1           SECTION 4. Section 59A-14-2 NMSA 1978 (being Laws 1991,  
2 Chapter 125, Section 12) is amended to read:

3           "59A-14-2. DEFINITIONS.--As used in Chapter 59A, Article  
4 14 NMSA 1978:

5           A. "compact" means the Surplus Lines Insurance  
6 Multistate Compliance Compact;

7           ~~[A.]~~ B. "eligible surplus lines insurer" means a  
8 qualified unauthorized foreign insurer, approved and listed  
9 pursuant to Section 59A-14-4 NMSA 1978, with which a surplus  
10 lines broker may place surplus lines insurance;

11           ~~[B.]~~ C. "export" means to place insurance with an  
12 unauthorized insurer;

13           ~~[C.]~~ D. "producing broker" means the broker or  
14 agent dealing directly with the person seeking insurance;

15           ~~[D.]~~ E. "surplus lines broker" means an individual,  
16 firm or corporation licensed under Chapter 59A, Article 14 NMSA  
17 1978 to place insurance with eligible surplus lines insurers;

18           ~~[E.]~~ F. "surplus lines insurance" means any  
19 insurance permitted to be exported through a surplus lines  
20 broker ~~[and]~~ or a surplus lines licensee;

21           G. "surplus lines licensee" means a person  
22 authorized under the compact to place surplus lines insurance;  
23 and

24           ~~[F.]~~ H. "type of insurance" means one of the types  
25 of insurance required to be reported in the annual statement

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1 that must be filed with the superintendent by authorized  
2 insurers."

3 SECTION 5. Section 59A-14-3 NMSA 1978 (being Laws 1991,  
4 Chapter 125, Section 13, as amended) is amended to read:

5 "59A-14-3. PLACEMENT OF SURPLUS LINES INSURANCE.--No  
6 surplus lines insurance shall be solicited, negotiated,  
7 contracted for, effectuated or otherwise transacted within the  
8 meaning of Section 59A-1-13 NMSA 1978, unless:

9 A. for risks governed by the compact, the insurance  
10 is procured through a surplus lines licensee in accordance with  
11 rules promulgated by the Surplus Lines Insurance Multistate  
12 Compliance Compact commission; or

13 B. for risks not covered by the compact:

14 (1) the insurance is procured through a  
15 surplus lines broker;

16 [~~B-~~] (2) each unauthorized insurer providing  
17 such insurance is an eligible surplus lines insurer;

18 [~~G-~~] (3) the full amount or type of insurance  
19 cannot be obtained from insurers authorized to do business in  
20 this state. The full amount or type of insurance may be  
21 procured from eligible surplus lines insurers, provided that a  
22 diligent search has been made among insurers authorized to  
23 transact and actually writing the particular type and class of  
24 insurance in this state;

25 [~~D-~~] (4) the surplus lines broker has taken

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1 such reasonable steps to ascertain that the insurer is in sound  
2 financial condition as may be required by regulations adopted  
3 by the superintendent; and

4 [E-] (5) all other requirements of Chapter  
5 59A, Article 14 NMSA 1978 are met."

6 SECTION 6. Section 59A-14-4 NMSA 1978 (being Laws 1991,  
7 Chapter 125, Section 14, as amended) is amended to read:

8 "59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--

9 A. No person shall export insurance except as  
10 authorized by and in accordance with the compact or with  
11 Chapter 59A, Article 14 NMSA 1978.

12 B. No surplus lines broker shall transact [~~any~~]  
13 surplus lines insurance with [~~any~~] an insurer other than an  
14 eligible surplus lines insurer.

15 C. To qualify as an eligible surplus lines insurer,  
16 an unauthorized foreign insurer shall file information  
17 demonstrating to the superintendent's satisfaction that:

18 (1) the insurer, its officers, owners, key  
19 employees and all persons exercising management or control of  
20 the insurer are of good repute and financial integrity; and

21 (2) the insurer qualifies under one of the  
22 following subparagraphs:

23 (a) the insurer shall have capital and  
24 surplus, or their equivalent, that equals fifteen million  
25 dollars (\$15,000,000); provided that unauthorized insurers on

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1 the New Mexico list of eligible surplus lines insurers as of  
2 [~~the effective date of this section~~] April 3, 1991 that do not  
3 meet the foregoing requirements shall have capital and surplus  
4 of ten million dollars (\$10,000,000) by December 31, 1991,  
5 twelve million five hundred thousand dollars (\$12,500,000) by  
6 December 31, 1992 and fifteen million dollars (\$15,000,000) by  
7 December 31, 1993;

8 (b) the requirements of Subparagraph (a)  
9 of this paragraph may be satisfied by an insurer possessing  
10 less than the capital and surplus upon an affirmative finding  
11 of acceptability by the superintendent. The finding shall be  
12 based upon such factors as quality of management, capital and  
13 surplus of any parent company, company underwriting profit and  
14 investment income trends and company record and reputation  
15 within the industry. In no event shall the superintendent make  
16 an affirmative finding of acceptability when the surplus lines  
17 insurer's capital and surplus is less than four million five  
18 hundred thousand dollars (\$4,500,000); or

19 (c) an "insurance exchange", which is an  
20 association of syndicates or insurers created by the laws of  
21 individual states, shall maintain capital and surplus, or the  
22 equivalent thereof, of not less than fifty million dollars  
23 (\$50,000,000) in the aggregate. For insurance exchanges that  
24 maintain funds for the protection of all insurance exchange  
25 policyholders, each individual syndicate shall maintain minimum

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1 capital and surplus, or the equivalent thereof, of not less  
2 than five million dollars (\$5,000,000). In the event the  
3 insurance exchange does not maintain funds for the protection  
4 of all insurance exchange policyholders, each individual  
5 syndicate shall meet the minimum capital and surplus  
6 requirements of Subparagraph (a) of this paragraph.

7 D. In addition to meeting the requirements of  
8 Subsection C of this section, an alien insurer shall have in  
9 force and on deposit in the United States in a qualified United  
10 States financial institution an irrevocable trust account for  
11 the exclusive benefit of United States policyholders of not  
12 less than two million five hundred thousand dollars  
13 (\$2,500,000), or any higher amount the superintendent may  
14 establish by regulation, consisting exclusively of cash,  
15 securities, letters of credit and of investments of the same  
16 character and quality, and subject to the same limitations as  
17 to percentage of assets that may be invested in each class of  
18 assets, as constitute eligible investments for the capital,  
19 surplus and statutory reserves of authorized insurers  
20 authorized to write like kinds of insurance in this state.  
21 Such trust fund, which shall be included in any calculation of  
22 capital and surplus or its equivalent, shall have an expiration  
23 date that at no time shall be less than five years from the  
24 last date on which the insurer accepts surplus lines insurance  
25 subject to Chapter 59A, Article 14 NMSA 1978.

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1           E. A Lloyds plan or other similar groups that  
2 include incorporated and individual unincorporated insurers  
3 shall maintain a trust fund of not less than fifty million  
4 dollars (\$50,000,000) as security to the full amount thereof  
5 for all policyholders and creditors in the United States of  
6 each member of the group, and such trust shall likewise comply  
7 with the terms and conditions established for alien insurers in  
8 Subsection D of this section; provided that the incorporated  
9 members of the group shall not engage in any business other  
10 than underwriting as a member of the group and shall be subject  
11 to the same level of solvency regulation and control by the  
12 group's domiciliary regulator as are the unincorporated members  
13 of the group.

14           F. In addition to meeting the requirements in  
15 Subsections C through E of this section, an unauthorized  
16 insurer shall be qualified as an eligible surplus lines insurer  
17 only if:

18                   (1) the superintendent has determined that the  
19 insurer meets the requirements of Chapter 59A, Article 14 NMSA  
20 1978 and has placed the insurer on the most recent list of  
21 eligible surplus lines insurers published by the  
22 superintendent; and

23                   (2) as to an alien insurer, the insurer  
24 appears on the most recent list of alien insurers published by  
25 the non-admitted insurers' information office of the national

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1 association of insurance commissioners or its substantial  
2 equivalent as determined by the superintendent.

3 G. In order to appear on the list of eligible  
4 surplus lines insurers, an unauthorized insurer shall provide  
5 to the superintendent a copy of its most current annual  
6 statement certified and sworn to by the insurer. The statement  
7 shall be provided at the same time it is provided to the  
8 insurer's domicile, but in no event more than nine months after  
9 the close of the period reported upon, and shall be either:

10 (1) filed with and approved by the regulatory  
11 authority in the insurer's domicile; or

12 (2) certified as correct and in accordance  
13 with applicable accounting principles by a public accounting  
14 firm licensed in the insurer's domicile.

15 In the case of an insurance exchange, the statement may be  
16 an aggregate combined statement of all underwriting syndicates  
17 operating during the period reported.

18 H. Nothing in this section shall create any duty of  
19 the superintendent to place or maintain any unauthorized  
20 insurer on the list of eligible surplus lines insurers. The  
21 superintendent in [~~his~~] the superintendent's discretion may  
22 refuse to list or continue to list an insurer for any reason  
23 even if the insurer otherwise meets the requirements of this  
24 section. No such listing shall be deemed to constitute or  
25 evidence the superintendent's approval or guaranty as to the

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1 financial condition or business practices of the insurer, and  
2 no insurer or other person shall allege orally or in writing  
3 that any such listing constitutes or implies the  
4 superintendent's approval.

5 I. The superintendent may adopt rules and  
6 regulations fixing reasonable conditions to be met by insurers  
7 for such listing, including but not limited to the requirement  
8 of a special deposit pursuant to Section 59A-5-19 NMSA 1978.  
9 For good cause shown, the superintendent may in writing waive  
10 the requirements of this section to permit insurance to be  
11 placed as to a particular risk and insurer if the insurance is  
12 not otherwise reasonably obtainable."

13 SECTION 7. Section 59A-14-7 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 245, as amended by Laws 1999, Chapter 272,  
15 Section 19 and also by Laws 1999, Chapter 289, Section 21) is  
16 amended to read:

17 "59A-14-7. SURPLUS [~~LINE~~] LINES BROKER LICENSE REQUIRED--  
18 QUALIFICATIONS FOR LICENSE.--

19 A. No person shall in New Mexico be, act as or hold  
20 out to be a surplus [~~line~~] lines broker, or place insurance of  
21 risks resident, located or to be performed in New Mexico, in  
22 any unauthorized insurer on behalf of others and for  
23 compensation as an independent contractor in any form, unless  
24 licensed as a surplus [~~line~~] lines broker under Chapter 59A,  
25 Article 14 NMSA 1978 or as a surplus lines licensee.

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1           B. The superintendent shall, upon due application  
2 and payment of the license fee, issue a license as surplus  
3 [~~line~~] lines broker to a person qualified as follows:

4                   (1) must be currently licensed as an insurance  
5 agent in this state as to the kinds of insurance to be exported  
6 under the surplus [~~line~~] lines broker license applied for, and  
7 have had experience or special training or education sufficient  
8 in duration and character as such an agent as to render the  
9 applicant, in the opinion of the superintendent, reasonably  
10 competent to engage in business as a surplus [~~line~~] lines  
11 broker; and

12                   (2) if applicant is a firm or corporation, all  
13 individuals to represent it in this state must be licensed  
14 agents. Each such individual shall be qualified as for an  
15 individual license as surplus [~~line~~] lines broker, and an  
16 additional license fee shall be paid as to each individual, in  
17 excess of one, who is to exercise the surplus [~~line~~] lines  
18 broker license powers [~~and~~

19                   ~~(3) must file with the application the bond~~  
20 ~~provided for in Section 59A-14-8 NMSA 1978].~~

21           C. Licensing procedure, duration and related  
22 matters are as provided in Chapter 59A, Article 11 NMSA 1978,  
23 and license fee is as specified in Section 59A-6-1 NMSA 1978."

24           SECTION 8. Section 59A-14-12 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 250, as amended) is amended to read:

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1 "59A-14-12. PREMIUM TAX ON SURPLUS [~~LINE~~] LINES

2 INSURANCE.--

3 A. Within sixty days after expiration of a calendar  
4 quarter, the surplus [~~line~~] lines broker shall pay to the  
5 superintendent for the use of the state [~~of New Mexico~~] a tax  
6 on gross premiums received, less returned premiums, on surplus  
7 [~~line~~] lines business transacted under the surplus [~~line~~] lines  
8 broker's license during such calendar quarter as shown by the  
9 quarterly statement filed with the superintendent [~~as provided~~  
10 ~~under~~] pursuant to Section 59A-14-11 NMSA 1978. The tax shall  
11 be at the same rate as is applicable to premiums of authorized  
12 insurers under Section 59A-6-2 NMSA 1978.

13 B. For purposes of this section, "premiums" shall  
14 include any additional amount charged the insured, including  
15 policy fees, risk purchasing group fees and inspection fees;  
16 but "premiums" shall not include any additional amount charged  
17 the insured for local, state or federal tax; regulatory  
18 authority fee; or examination fee, if any.

19 C. If a surplus [~~line~~] lines policy covers risks or  
20 exposures only partially in this state, the tax payable shall  
21 be computed [~~upon the proportion of the premium properly~~  
22 ~~allocable to risks or exposures located in this state~~] in  
23 accordance with the allocation formula promulgated by the  
24 Surplus Lines Insurance Multistate Compliance Compact  
25 commission pursuant to the compact. The tax shall be at the

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1 same rate as is applicable to premiums of authorized insurers  
2 under Section 59A-6-2 NMSA 1978.

3 D. A penalty of ten percent of the amount of tax  
4 originally due, plus one percent of such tax amount for each  
5 month or fraction thereof of delinquency after the first thirty  
6 days of delinquency, shall be paid by the surplus [~~line~~] lines  
7 broker for failure to pay the tax in full within sixty days  
8 after expiration of the calendar quarter as provided in  
9 Subsection A of this section; except that the superintendent  
10 may waive or remit the penalty if [~~he~~] the superintendent finds  
11 that the failure or delay in payment arose from excusable  
12 mistake or excusable inadvertence."

13 SECTION 9. CONTINGENT EFFECTIVE DATE--NOTIFICATION.--The  
14 effective date of the provisions of Sections 3 through 8 of  
15 this act is the date that the Surplus Lines Insurance  
16 Multistate Compliance Compact is effective and binding upon New  
17 Mexico. The superintendent of insurance shall notify the New  
18 Mexico compilation commission and the director of the  
19 legislative council service of the date that the Surplus Lines  
20 Insurance Multistate Compliance Compact is effective and  
21 binding upon New Mexico.