

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 250

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11 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

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AN ACT

RELATING TO SURPLUS LINES INSURANCE; ENACTING AND ENTERING INTO  
THE SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT;  
LIMITING THE REGULATION OF NONADMITTED INSURERS TO CONFORM TO  
FEDERAL LAW; PROVIDING FOR THE ALLOCATION OF PREMIUMS; AMENDING  
AND ENACTING SECTIONS OF 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

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

3           A. implement the express provisions of the federal  
4 act;

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

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

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

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

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

22           G. streamline regulatory compliance with respect to  
23 non-admitted insurance placements by providing for exclusive  
24 single-state regulatory compliance for non-admitted insurance  
25 of multistate risks, in accordance with rules to be adopted by

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

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

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

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

19 K. adopt uniform mandatory rules with respect to  
 20 regulatory compliance requirements for:

21 (1) foreign insurer eligibility requirements;

22 and

23 (2) surplus lines policyholder notices;

24 L. establish the surplus lines insurance multistate  
 25 compliance compact commission;

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1 M. coordinate reporting of clearinghouse  
2 transaction data on non-admitted insurance of multistate risks  
3 among compacting states and contracting states; and

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

6 ARTICLE 2

7 DEFINITIONS

8 As used in the Surplus Lines Insurance Multistate  
9 Compliance Compact:

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

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

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

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

1 and rules to be adopted by the commission;

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

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

14 G. "commission" means the surplus lines insurance  
 15 multistate compliance compact commission;

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

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

24 J. "control" means:

25 (1) directly, indirectly or acting through one

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1 or more other persons, owning, controlling or having the power  
2 to vote twenty-five percent or more of any class of voting  
3 securities of another entity; or

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

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

10 L. "home state" means

11 (1) with respect to an insured:

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

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

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

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1 M. "independently procured insurance" means  
2 insurance procured by an insured directly from a surplus lines  
3 insurer or other non-admitted insurer as permitted by the laws  
4 of the home state;

5 N. "insurer eligibility requirements" means the  
6 criteria, forms and procedures established to qualify as a  
7 surplus lines insurer under the law of the home state; provided  
8 that such criteria, forms and procedures are consistent with  
9 the express provisions of the federal act on and after July 21,  
10 2011;

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

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

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

18 R. "non-admitted insurance" means surplus lines  
19 insurance and independently procured insurance;

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

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

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1 insurance placement;

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

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

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

24 X. "rule" means a statement of general or  
25 particular applicability and future effect promulgated by the

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

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

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

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

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

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

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1 the state where the insurer is domiciled; and

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

5 ARTICLE 3

6 ESTABLISHMENT OF THE COMMISSION AND VENUE

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

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

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

25 D. The commission is a body corporate and politic

1 and an instrumentality of the compacting states.

2 E. The commission is solely responsible for its  
 3 liabilities, except as otherwise specifically provided in this  
 4 compact.

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

11 ARTICLE 4

12 AUTHORITY TO ESTABLISH MANDATORY RULES

13 The commission shall adopt mandatory rules that establish:

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

24 B. uniform clearinghouse transaction data reporting  
 25 requirements for all information reported to the clearinghouse;

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1 C. methods by which compacting states and  
2 contracting states require surplus lines licensees and insureds  
3 to pay premium tax and to report clearinghouse transaction data  
4 to the clearinghouse, including, but not limited to, processing  
5 clearinghouse transaction data through state stamping and  
6 service offices, state insurance departments or other state-  
7 designated agencies or entities;

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

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

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

16 (b) insurer eligibility requirements or  
17 other approved non-admitted insurer requirements;

18 (c) diligent search; and

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

23 (2) home state regulatory compliance  
24 requirements applicable to independently procured insurance  
25 placements shall include, but not be limited to, providing

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1 state transaction documentation and clearinghouse transaction  
2 data regarding the payment of premium tax as set forth in this  
3 compact and rules to be adopted by the commission;

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

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

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

22 H. that each compacting state and contracting state  
23 prohibit any other state agency or political subdivision from  
24 requiring surplus lines licensees to provide clearinghouse  
25 transaction data and state transaction documentation other than

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1 to the insurance department or tax officials of the home state  
2 or one single designated agent thereof;

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

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

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

19 L. that a policy considered to be surplus lines  
20 insurance in the insured's home state shall be considered  
21 surplus lines insurance in all compacting states and  
22 contracting states and taxed as a surplus lines transaction in  
23 all states to which a portion of the risk is allocated. Each  
24 compacting state and contracting state shall require each  
25 surplus lines licensee to pay every other compacting state and

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

15 M. uniform foreign insurer eligibility requirements  
 16 as authorized by the federal act;

17 N. a uniform policyholder notice; and

18 O. uniform treatment of purchasing group surplus  
 19 lines insurance placements.

## 20 ARTICLE 5

### 21 POWERS OF THE COMMISSION

22 The commission shall have the power to:

23 A. promulgate rules and operating procedures,  
 24 pursuant to Article 8 of this compact, that shall have the  
 25 force and effect of law and shall be binding in the compacting

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1 states to the extent and in the manner provided in this  
2 compact; provided that, except as necessary for promulgating  
3 rules to fulfill the purposes of this compact, the commission  
4 shall not have authority to otherwise regulate insurance in the  
5 compacting states;

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

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

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

21 E. purchase and maintain insurance and bonds;

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

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1 adopted by the commission;

2 G. hire employees, professionals or specialists and  
 3 elect or appoint officers and to:

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

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

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

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

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

24 K. sell, convey, mortgage, pledge, lease, exchange,  
 25 abandon or otherwise dispose of any property, real, personal or

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1 mixed;

2 L. provide for tax audit rules and procedures for  
3 the compacting states with respect to the allocation of premium  
4 taxes, including:

5 (1) minimum audit standards and sampling  
6 methods;

7 (2) review of internal controls;

8 (3) cooperation and sharing of audit  
9 responsibilities between compacting states;

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

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

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

16 M. enforce compliance by compacting states and  
17 contracting states with rules;

18 N. provide for dispute resolution among compacting  
19 states and contracting states;

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

25 P. make available advice and training to those

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1 personnel in state stamping offices, state insurance  
 2 departments or other state departments for recordkeeping, tax  
 3 compliance and tax allocations and be a resource for state  
 4 insurance departments and other state departments;

5 Q. establish a budget and make expenditures;

6 R. borrow money;

7 S. appoint and oversee committees, including  
 8 advisory committees composed of members, state insurance  
 9 regulators, state legislators or their representatives,  
 10 insurance industry and consumer representatives and such other  
 11 interested persons as may be designated in this compact and the  
 12 bylaws;

13 T. establish an executive committee pursuant to  
 14 Subsection B of Article 6 of this compact;

15 U. establish an operations committee pursuant to  
 16 Subsection C of Article 6 of this compact;

17 V. enter into contracts with contracting states so  
 18 that contracting states can utilize the services of and fully  
 19 participate in the clearinghouse subject to the terms and  
 20 conditions set forth in such contracts;

21 W. adopt and use a corporate seal; and

22 X. perform other functions as may be necessary or  
 23 appropriate to achieve the purposes of this compact consistent  
 24 with the state regulation of the business of insurance.

ARTICLE 6

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1 ORGANIZATION OF THE COMMISSION

2 A. The following provisions shall govern commission  
3 membership, voting and bylaws:

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

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

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

23 (a) establishing the fiscal year of the  
24 commission;

25 (b) providing reasonable procedures for

1 holding meetings of the commission, the executive committee and  
 2 the operations committee;

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

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

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

24 (f) providing reasonable standards and  
 25 procedures for the establishment of the personnel policies and

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1 programs of the commission. Notwithstanding any civil service  
2 or other similar laws of any compacting state, the bylaws shall  
3 exclusively govern the personnel policies and programs of the  
4 commission;

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

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

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

17 B. An executive committee of the commission shall  
18 be established.

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

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

1 shall be entitled to one vote. Members of the executive  
2 committee shall serve for a term of one year.

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

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

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

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

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

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

24 (4) The commission shall annually elect  
25 officers from the executive committee, with each officer having

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1 such authority and duties as may be specified in the bylaws.

2 (5) The executive committee may, subject to  
3 the approval of the commission, appoint or retain an executive  
4 director for a period, upon terms and conditions and for a  
5 compensation as the commission may deem appropriate, and who  
6 shall:

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

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

11 C. An operations committee shall be established.

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

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

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

24 (4) The operations committee shall have no  
25 more than fifteen nor less than seven members, provided that,

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1 if there are fewer than fifteen compacting states, the  
2 operations committee shall have one member for each state.  
3 Each member shall be entitled to one vote. Members of the  
4 operations committee shall serve for a term and shall be  
5 established as set forth in the bylaws.

6 (5) The operations committee shall have  
7 responsibility for:

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

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

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

24 (d) such other duties and  
25 responsibilities as are delegated to it by the bylaws, the

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1 executive committee or the commission.

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

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

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

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

25 F. The commission shall maintain its corporate

1 books and records in accordance with the bylaws.

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

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

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1 that person from retaining separate counsel; and provided  
2 further that the actual or alleged act, error or omission did  
3 not result from that person's intentional or willful or wanton  
4 misconduct.

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

17 ARTICLE 7

18 MEETINGS AND ACTS OF THE COMMISSION

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

22 B. Each member of the commission shall have the  
23 right and power to cast a vote to which that compacting state  
24 is entitled and to participate in the business and affairs of  
25 the commission. A member shall vote in person or by such other

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1 means as provided in the bylaws. The bylaws may provide for  
 2 members' participation in meetings by telephone or other means  
 3 of communication.

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

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

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

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

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

19 (2) disclose matters specifically exempted  
 20 from disclosure by federal and state statute;

21 (3) disclose trade secrets or commercial or  
 22 financial information that is privileged or confidential;

23 (4) involve accusing a person of a crime or  
 24 involve formally censuring a person;

25 (5) disclose information of a personal nature

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1 when disclosure would constitute a clearly unwarranted invasion  
2 of personal privacy;

3 (6) disclose investigative records compiled  
4 for law enforcement purposes; or

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

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

20 ARTICLE 8

21 RULEMAKING FUNCTIONS OF THE COMMISSION

22 A. The commission shall promulgate reasonable  
23 rules in order to effectively and efficiently achieve the  
24 purposes of this compact; provided that, in the event the  
25 commission exercises its rulemaking authority in a manner that

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1 is beyond the scope of the purposes of this compact or the  
2 powers that it grants, such an action by the commission shall  
3 be invalid and have no force or effect.

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

9 C. All rules shall become effective as of the date  
10 specified in each rule.

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

## 20 ARTICLE 9

### 21 COMMISSION RECORDS AND ENFORCEMENT

22 A. The commission shall promulgate rules  
23 establishing conditions and procedures for public inspection  
24 and copying of its information and official records, except for  
25 information and records involving the privacy of individuals,

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

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

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1 possession. Confidential information of the commission shall  
2 remain confidential after such information is provided to a  
3 member, and the commission shall maintain the confidentiality  
4 of information provided by a member that is confidential under  
5 that member's state law.

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

#### 14 ARTICLE 10

#### 15 DISPUTE RESOLUTION

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

25 B. The commission shall also provide alternative

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1 dispute resolution procedures to resolve disputes between  
2 insureds or surplus lines licensees concerning a tax  
3 calculation or allocation or related issues that are the  
4 subject of this compact.

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

8 ARTICLE 11

9 REVIEW OF COMMISSION DECISIONS

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

21 B. The commission shall have authority to monitor,  
22 review and reconsider commission decisions upon a finding that  
23 the determinations or allocations do not meet the relevant  
24 rule. Where appropriate, the commission may withdraw or modify  
25 its determination or allocation after proper notice and

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1 hearing, subject to the appeal process in Subsection A of this  
 2 article.

3 ARTICLE 12

4 FINANCE

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

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

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

20 D. The commission shall be regarded as performing  
 21 essential governmental functions in exercising its powers and  
 22 functions and in carrying out the provisions of this compact.  
 23 The commission shall not be required to pay taxes or  
 24 assessments levied by any state or political subdivision  
 25 thereof upon the property used by the commission in the

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1 performance of its duties, or on income or revenue that the  
2 commission receives, including any profit from a sale or  
3 exchange.

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

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1 F. No compacting state shall have claim to or  
 2 ownership of any property held by or vested in the commission  
 3 or to any commission funds held pursuant to the provisions of  
 4 this compact.

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

10 ARTICLE 13

11 COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

12 A. Any state is eligible to become a compacting  
 13 state.

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

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

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

15 ARTICLE 14

16 WITHDRAWAL, DEFAULT AND TERMINATION

17 A. The following provisions govern withdrawal of a  
18 state from the commission:

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

24 (2) the effective date of withdrawal is the  
25 effective date of the repealing statute; provided, however,

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

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

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

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

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

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1           B. The following provisions govern default by a  
2 compacting state:

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

23                   (2) decisions of the commission that are  
24 issued on the effective date of termination shall remain in  
25 force in the defaulting state in the same manner as if the

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1 defaulting state had withdrawn voluntarily pursuant to  
2 Subsection A of this article; and

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

5 C. The following provisions govern the dissolution  
6 of this compact:

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

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

15 ARTICLE 15

16 SEVERABILITY AND CONSTRUCTION

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

21 B. The provisions of this compact shall be  
22 liberally construed to effectuate its purposes.

23 C. Throughout this compact the use of the singular  
24 shall include the plural and vice versa.

25 D. The headings and captions of articles used in

1 this compact are for convenience only and shall be ignored in  
2 construing the substantive provisions of this compact.

3 ARTICLE 16

4 BINDING EFFECT OF COMPACT AND OTHER LAWS

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

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

14 (1) clearinghouse transaction data reporting  
15 requirements;

16 (2) allocation formulas;

17 (3) clearinghouse transaction data collection  
18 requirements;

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

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

25 (6) rules for reporting to a clearinghouse for

1 receipt and distribution of clearinghouse transaction data  
 2 related to non-admitted insurance of multistate risks;

3 (7) uniform foreign insurers eligibility  
 4 requirements;

5 (8) uniform policyholder notice; and

6 (9) uniform treatment of purchasing groups  
 7 procuring non-admitted insurance.

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

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

15 (2) the availability of alternative dispute  
 16 resolution under Article 10 of this compact;

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

20 (4) state law relating to the construction of  
 21 insurance contracts; or

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

25 D. All lawful actions of the commission, including

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1 all rules promulgated by the commission, are binding upon the  
2 compacting states, except as provided in this compact.

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

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

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

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

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1           **SECTION 3.** Section 59A-6-5 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 105, as amended) is amended to read:

3           "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

4           A. All money received by the division for fees,  
5 licenses, penalties and taxes shall be paid daily by the  
6 superintendent to the state treasurer and credited to the  
7 "insurance department suspense fund" except as provided by:

- 8                     (1) the Law Enforcement Protection Fund Act;
- 9                     (2) Section 59A-6-1.1 NMSA 1978; and
- 10                    (3) the Voter Action Act.

11           B. The superintendent may authorize refund of money  
12 erroneously paid as fees, licenses, penalties or taxes from the  
13 insurance department suspense fund under request for refund  
14 made within three years after the erroneous payment. In the  
15 case of premium taxes erroneously paid or overpaid in  
16 accordance with law, refund may also be requested as a credit  
17 against premium taxes due in any annual or quarterly premium  
18 tax return filed within three years of the erroneous or excess  
19 payment.

20           C. If required by a compact to which New Mexico has  
21 joined pursuant to law, the superintendent shall authorize the  
22 allocation of premiums collected pursuant to Section 59A-14-12  
23 NMSA 1978 to other states that have joined the compact pursuant  
24 to an allocation formula agreed upon by the compacting states.

25           [~~C.~~] D. The "insurance operations fund" is created

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1 in the state treasury. The fund shall consist of the  
2 distributions made to it pursuant to Subsection [D] E of this  
3 section. The legislature shall annually appropriate from the  
4 fund to the division those amounts necessary for the division  
5 to carry out its responsibilities pursuant to the Insurance  
6 Code and other laws. Any balance in the fund at the end of a  
7 fiscal year greater than one-half of that fiscal year's  
8 appropriation shall revert to the general fund.

9 ~~[D-]~~ E. At the end of every month, after applicable  
10 refunds are made pursuant to Subsection B of this section and  
11 after any allocations have been made pursuant to Subsection C  
12 of this section, the treasurer shall make the following  
13 transfers from the balance remaining in the insurance  
14 department suspense fund:

15 (1) to the "fire protection fund", that part  
16 of the balance derived from property and vehicle insurance  
17 business;

18 (2) to the insurance operations fund, that  
19 part of the balance derived from the fees imposed pursuant to  
20 Subsections A and E of Section 59A-6-1 NMSA 1978 other than  
21 fees derived from property and vehicle insurance business; and

22 (3) to the general fund, the balance remaining  
23 in the insurance department suspense fund derived from all  
24 other kinds of insurance business."

25 **SECTION 4.** Section 59A-14-1 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 239, as amended) is amended to read:

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

4 A. Chapter 59A, Article 14 NMSA 1978 governs the  
5 placing of insurance [~~of New Mexico risks~~] where New Mexico is  
6 the home state of the insured, through licensed surplus [~~line~~]  
7 lines brokers, in insurers not otherwise authorized to transact  
8 insurance in this state and subject to the conditions for such  
9 placing as stated in that article; qualifications, licensing  
10 and duties and responsibilities of surplus [~~line~~] lines  
11 brokers; and other provisions as to such surplus [~~line~~] lines  
12 business and brokers. As to unauthorized insurers in general,  
13 and in respects other than as to surplus [~~line~~] lines, refer to  
14 Chapter 59A, Article 15 NMSA 1978.

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

19 (1) any insurance where New Mexico is not the  
20 home state of the insured;

21 [~~(1)~~] (2) wet marine and transportation  
22 insurance, as defined in Section 59A-7-5 NMSA 1978;

23 [~~(2)~~] (3) insurance [~~of subjects located,~~  
24 resident or to be performed wholly outside this state or] on  
25 vehicles or aircraft owned and principally garaged outside this

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1 state;

2 [~~(3)~~] (4) insurance of property and operations  
3 of railroads engaged in interstate commerce;

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

8 [~~(5)~~] (6) insurance of automobile bodily  
9 injury and property damage liability risks when written in  
10 Mexican insurers and covering in Mexico and not in the United  
11 States; or

12 [~~(6)~~] (7) insurance independently procured.

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

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

18 (2) permitting surplus lines insurance to be  
19 placed with reputable and financially sound unauthorized  
20 insurers, but only pursuant to Chapter 59A, Article 14 NMSA  
21 1978;

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

25 (4) assuring collection of revenues and other

1 amounts due to this state."

2 SECTION 5. Section 59A-14-2 NMSA 1978 (being Laws 1991,  
3 Chapter 125, Section 12) is amended to read:

4 "59A-14-2. DEFINITIONS.--As used in Chapter 59A, Article  
5 14 NMSA 1978:

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

9 B. "affiliated group" means any group of entities  
10 that are all affiliated;

11 C. "association" means the national association of  
12 insurance commissioners or any successor entity;

13 D. "control" means that:

14 (1) an entity directly or indirectly or acting  
15 through one or more other persons owns, controls or has the  
16 power to vote twenty-five percent or more of any class of  
17 voting securities of another entity; or

18 (2) an entity controls in any manner the  
19 election of a majority of the directors or trustees of another  
20 entity;

21 [A.] E. "eligible surplus lines insurer" means a  
22 qualified [~~unauthorized foreign~~] nonadmitted insurer, approved  
23 and listed pursuant to Section 59A-14-4 NMSA 1978, with which a  
24 surplus lines broker may place surplus lines insurance;

25 F. "exempt commercial purchaser" means any person

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1 purchasing commercial insurance that, at the time of placement,  
2 meets the following requirements:

3 (1) the person employs or retains a qualified  
4 risk manager to negotiate insurance coverage;

5 (2) the person has paid aggregate nationwide  
6 commercial property and casualty insurance premiums in excess  
7 of one hundred thousand dollars (\$100,000) in the immediately  
8 preceding twelve months; and

9 (3) the person:

10 (a) possesses a net worth in excess of  
11 twenty million dollars (\$20,000,000), provided that this amount  
12 shall be adjusted every five years by rule of the  
13 superintendent to account for the percentage change in the  
14 consumer price index;

15 (b) generates annual revenues in excess  
16 of fifty million dollars (\$50,000,000), provided that this  
17 amount shall be adjusted every five years by rule of the  
18 superintendent to account for the percentage change in the  
19 consumer price index;

20 (c) employs more than five hundred  
21 full-time or full-time-equivalent employees per insured entity  
22 or is a member of an affiliated group employing more than one  
23 thousand employees in the aggregate;

24 (d) is a not-for-profit organization or  
25 public entity generating annual budgeted expenditures of at

1 least thirty million dollars (\$30,000,000), provided that this  
 2 amount shall be adjusted every five years by rule of the  
 3 superintendent to account for the percentage change in the  
 4 consumer price index; or

5 (e) is a municipality with a population  
 6 in excess of fifty thousand persons;

7 ~~[B.]~~ G. "export" means to place insurance with [an  
 8 unauthorized] a nonadmitted insurer;

9 H. "home state" means, with respect to an insured:

10 (1) except as provided in Paragraph (3) of  
 11 this subsection, the state in which an insured maintains its  
 12 principal place of business or, in the case of an individual,  
 13 the individual's principal residence;

14 (2) except as provided in Paragraph (3) of  
 15 this subsection, if one hundred percent of the insured risk is  
 16 located out of the state referred to in Paragraph (1) of this  
 17 subsection, the state to which the greatest percentage of the  
 18 insured's taxable premium for that insurance contract is  
 19 allocated; or

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

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1 contract;

2 I. "nonadmitted insurance" means any property and  
3 casualty insurance permitted to be placed directly or through a  
4 surplus lines broker with an eligible surplus lines insurer;

5 J. "nonadmitted insurer" means an insurer not  
6 licensed to engage in the business of insurance in New Mexico;

7 ~~[G.]~~ K. "producing broker" means the broker or  
8 agent dealing directly with the person seeking insurance if the  
9 home state of the person seeking insurance is New Mexico;

10 L. "professional designation" means:

11 (1) a designation as a chartered property and  
12 casualty underwriter issued by the American institute for  
13 chartered property and casualty underwriters;

14 (2) a designation as an associate in risk  
15 management issued by the insurance institute of America;

16 (3) a designation as a certified risk manager  
17 issued by the national alliance for insurance education and  
18 research;

19 (4) a designation as a RIMS fellow issued by  
20 the global risk management institute; or

21 (5) any other designation, certification or  
22 license determined by the superintendent to demonstrate minimum  
23 competency in risk management;

24 M. "qualified risk manager" means, with respect to  
25 an exempt commercial purchaser, a person who:

1                   (1) is an employee of, or a third-party  
2 consultant retained by, the exempt commercial purchaser;

3                   (2) provides skilled services in loss  
4 prevention, loss reduction, risk and insurance coverage  
5 analysis and purchase of insurance; and

6                   (3) has:

7                   (a) a bachelor's degree or higher from  
8 an accredited college or university in risk management,  
9 business administration, finance, economics or any other field  
10 determined by the superintendent to demonstrate minimum  
11 competence in risk management and either: 1) three years of  
12 experience in risk financing, claims administration, loss  
13 prevention, risk and insurance coverage analysis or purchase of  
14 commercial lines of insurance; or 2) a professional  
15 designation;

16                   (b) a professional designation and at  
17 least seven years of experience in risk financing, claims  
18 administration, loss prevention, risk and insurance coverage  
19 analysis or purchase of commercial lines of insurance;

20                   (c) at least ten years of experience in  
21 risk financing, claims administration, loss prevention, risk  
22 and insurance coverage analysis or purchase of commercial lines  
23 of insurance; or

24                   (d) a graduate degree from an accredited  
25 college or university in risk management, business

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1 administration, finance, economics or any other field  
2 determined by the superintendent to demonstrate minimum  
3 competence in risk management;

4 ~~[D.]~~ N. "surplus lines broker" means an individual,  
5 firm or corporation licensed under Chapter 59A, Article 14 NMSA  
6 1978 to place insurance with eligible surplus lines insurers;

7 ~~[E.]~~ O. "surplus lines insurance" means any  
8 insurance permitted to be exported through a surplus lines  
9 broker; ~~and~~

10 ~~[F.]~~ P. "type of insurance" means one of the types  
11 of insurance required to be reported in the annual statement  
12 that must be filed with the superintendent by authorized  
13 insurers; and

14 Q. "unauthorized insurer" means a nonadmitted  
15 insurer."

16 SECTION 6. Section 59A-14-3 NMSA 1978 (being Laws 1991,  
17 Chapter 125, Section 13, as amended) is amended to read:

18 "59A-14-3. PLACEMENT OF SURPLUS LINES INSURANCE.--No  
19 surplus lines insurance for an insured whose home state is New  
20 Mexico shall be solicited, negotiated, contracted for,  
21 effectuated or otherwise transacted within the meaning of  
22 Section 59A-1-13 NMSA 1978, unless:

23 A. the insurance is procured through a surplus  
24 lines broker;

25 B. each ~~[unauthorized]~~ nonadmitted insurer

1 providing such insurance is an eligible surplus lines insurer;

2 C. either:

3 (1) the full amount or type of insurance  
4 cannot be obtained from insurers authorized to do business in  
5 this state [~~The full amount or type of insurance may be~~  
6 ~~procured from eligible surplus lines insurers, provided that]~~  
7 as determined after making a diligent search [has been made]  
8 among insurers authorized to transact and actually writing the  
9 particular type and class of insurance in this state; or

10  
11 (2) the insurance is being procured for an  
12 exempt commercial purchaser and:

13 (a) the surplus lines broker procuring  
14 or placing the surplus lines insurance has disclosed to the  
15 exempt commercial purchaser that the insurance may or may not  
16 be available from insurers authorized to do business in this  
17 state, which may provide greater protection with more  
18 regulatory oversight; and

19 (b) the exempt commercial purchaser has  
20 subsequently requested in writing the surplus lines broker to  
21 procure or place the insurance from an eligible surplus lines  
22 insurer;

23 D. the surplus lines broker has taken such  
24 reasonable steps to ascertain that the insurer is in sound  
25 financial condition as may be required by regulations adopted

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1 by the superintendent; and

2 E. all other requirements of Chapter 59A, Article  
3 14 NMSA 1978 are met."

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

6 "59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--

7 A. No person shall export insurance on behalf of an  
8 insured whose home state is New Mexico except as authorized by  
9 and in accordance with Chapter 59A, Article 14 NMSA 1978.

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

13 C. To qualify as an eligible surplus lines insurer,  
14 [~~an unauthorized foreign~~] a nonadmitted insurer shall file  
15 information demonstrating to the superintendent's satisfaction  
16 that:

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

20 [~~(2) the insurer qualifies under one of the~~  
21 ~~following subparagraphs:~~

22 [~~(a) the insurer shall have capital and~~  
23 ~~surplus, or their equivalent, that equals fifteen million~~  
24 ~~dollars (\$15,000,000); provided that unauthorized insurers on~~  
25 ~~the New Mexico list of eligible surplus lines insurers as of~~

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

7 ~~(b) the requirements of Subparagraph (a)~~  
 8 ~~of this paragraph may be satisfied by an insurer possessing~~  
 9 ~~less than the capital and surplus upon an affirmative finding~~  
 10 ~~of acceptability by the superintendent.]~~

11 (1) the insurer is authorized to write the  
 12 particular line of business in the state in which it is  
 13 domiciled and;

14 (a) the insurer has capital and surplus  
 15 or their equivalent that equals the greater of: 1) fifteen  
 16 million dollars (\$15,000,000); or 2) the minimum capital and  
 17 surplus required in this state for that particular line of  
 18 business; or

19 (b) the insurer has capital and surplus  
 20 less than the amounts required in Subparagraph (a) of this  
 21 paragraph but the superintendent affirmatively finds that the  
 22 insurer is acceptable as an eligible surplus lines insurer.

23 The finding shall be based upon such factors as quality of  
 24 management, capital and surplus of any parent company, company  
 25 underwriting profit and investment income trends and company

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1 record and reputation within the industry. In no event shall  
2 the superintendent make an affirmative finding of acceptability  
3 when the surplus lines insurer's capital and surplus is less  
4 than four million five hundred thousand dollars (\$4,500,000);  
5 [~~or~~

6 ~~(e)]~~ (2) the insurer is a member of an  
7 "insurance exchange", which is an association of syndicates or  
8 insurers created by the laws of individual states, and shall  
9 maintain capital and surplus, or the equivalent thereof, of not  
10 less than fifty million dollars (\$50,000,000) in the aggregate.  
11 For insurance exchanges that maintain funds for the protection  
12 of all insurance exchange policyholders, each individual  
13 syndicate shall maintain minimum capital and surplus, or the  
14 equivalent thereof, of not less than five million dollars  
15 (\$5,000,000). In the event the insurance exchange does not  
16 maintain funds for the protection of all insurance exchange  
17 policyholders, each individual syndicate shall meet the minimum  
18 capital and surplus requirements of Subparagraph (a) of  
19 Paragraph (1) of this [paragraph] subsection;

20 ~~[D. In addition to meeting the requirements of~~  
21 ~~Subsection C of this section, an alien insurer shall have in~~  
22 ~~force and on deposit in the United States in a qualified United~~  
23 ~~States financial institution an irrevocable trust account for~~  
24 ~~the exclusive benefit of United States policyholders of not~~  
25 ~~less than two million five hundred thousand dollars~~

1 ~~(\$2,500,000), or any higher amount the superintendent may~~  
2 ~~establish by regulation, consisting exclusively of cash,~~  
3 ~~securities, letters of credit and of investments of the same~~  
4 ~~character and quality, and subject to the same limitations as~~  
5 ~~to percentage of assets that may be invested in each class of~~  
6 ~~assets, as constitute eligible investments for the capital,~~  
7 ~~surplus and statutory reserves of authorized insurers~~  
8 ~~authorized to write like kinds of insurance in this state.~~  
9 ~~Such trust fund, which shall be included in any calculation of~~  
10 ~~capital and surplus or its equivalent, shall have an expiration~~  
11 ~~date that at no time shall be less than five years from the~~  
12 ~~last date on which the insurer accepts surplus lines insurance~~  
13 ~~subject to Chapter 59A, Article 14 NMSA 1978.~~

14 ~~E. A Lloyds plan or other similar groups that~~  
15 ~~include incorporated and individual unincorporated insurers~~  
16 ~~shall maintain a trust fund of not less than fifty million~~  
17 ~~dollars (\$50,000,000) as security to the full amount thereof~~  
18 ~~for all policyholders and creditors in the United States of~~  
19 ~~each member of the group, and such trust shall likewise comply~~  
20 ~~with the terms and conditions established for alien insurers in~~  
21 ~~Subsection D of this section; provided that the incorporated~~  
22 ~~members of the group shall not engage in any business other~~  
23 ~~than underwriting as a member of the group and shall be subject~~  
24 ~~to the same level of solvency regulation and control by the~~  
25 ~~group's domiciliary regulator as are the unincorporated members~~

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1 of the group.

2 F. ~~In addition to meeting the requirements in~~  
3 ~~Subsections C through E of this section, an unauthorized~~  
4 ~~insurer shall be qualified as an eligible surplus lines insurer~~  
5 ~~only if:~~

6 (1) ~~the superintendent has determined that the~~  
7 ~~insurer meets the requirements of Chapter 59A, Article 14 NMSA~~  
8 ~~1978 and has placed the insurer on the most recent list of~~  
9 ~~eligible surplus lines insurers published by the~~  
10 ~~superintendent; and~~

11 (2) ~~as to an alien insurer, the insurer~~  
12 ~~appears on the most recent list of alien insurers published by~~  
13 ~~the non-admitted insurers information office of the national~~  
14 ~~association of insurance commissioners or its substantial~~  
15 ~~equivalent as determined by the superintendent]~~

16 (3) if the insurer is an alien insurer, the  
17 insurer is listed on the quarterly listing of alien insurers  
18 maintained by the international insurers department of the  
19 association; or

20 (4) if, pursuant to law, New Mexico has joined  
21 a compact for the regulation of surplus lines insurance and the  
22 state, through the compact commission, has adopted nationwide  
23 uniform eligibility requirements, the insurer is in compliance  
24 with those requirements.

25 [~~G.~~] D. The superintendent shall maintain a list of

1 nonadmitted insurers that qualify as an eligible surplus lines  
 2 insurer under this section. In addition to the requirements of  
 3 Subsection C of this section, in order to appear on the list of  
 4 eligible surplus lines insurers, [~~an unauthorized~~] a  
 5 nonadmitted insurer shall provide to the superintendent a copy  
 6 of its most current annual statement certified and sworn to by  
 7 the insurer. The statement shall be provided at the same time  
 8 it is provided to the insurer's domicile, but in no event more  
 9 than nine months after the close of the period reported upon,  
 10 and shall be either:

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

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

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

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

25 E. The listing required by Subsection D of this

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1 section shall not be deemed to constitute or evidence the  
2 superintendent's approval or guaranty as to the financial  
3 condition or business practices of the insurer, and no insurer  
4 or other person shall allege orally or in writing that any such  
5 listing constitutes or implies the superintendent's approval.

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

14 **SECTION 8.** Section 59A-14-7 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 245, as amended by Laws 1999, Chapter 272,  
16 Section 19 and also by Laws 1999, Chapter 289, Section 21) is  
17 amended to read:

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

20 A. No person shall in New Mexico be, act as or hold  
21 out to be a surplus ~~[line]~~ lines broker, or place insurance of  
22 risks ~~[resident, located or to be performed in New Mexico in~~  
23 ~~any unauthorized]~~ where New Mexico is the home state of the  
24 insured in any nonadmitted insurer on behalf of others and for  
25 compensation as an independent contractor in any form, unless

1 licensed as a surplus [~~line~~] lines broker under Chapter 59A,  
2 Article 14 NMSA 1978.

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

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

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

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

23 ~~G. Licensing procedure, duration and related matters~~  
24 ~~are as provided in Chapter 59A, Article 11 NMSA 1978, and~~  
25 ~~license fee is as specified in Section 59A-6-1 NMSA 1978]."~~

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1           SECTION 9. Section 59A-14-12 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 250, as amended) is amended to read:

3           "59A-14-12. PREMIUM TAX ON SURPLUS [~~LINE~~] LINES  
4 INSURANCE.--

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

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

22           ~~[C. If a surplus line policy covers risks or~~  
23 ~~exposures only partially in this state the tax payable shall be~~  
24 ~~computed upon the proportion of the premium properly allocable~~  
25 ~~to risks or exposures located in this state.]~~

1           C. The superintendent may require surplus lines  
 2 brokers and insureds who have independently procured insurance  
 3 to file tax allocation reports annually detailing the portion  
 4 of the nonadmitted insurance policy premiums attributable to  
 5 properties, risks or exposures located in each state.

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

16           **SECTION 10.** A new section of Chapter 59A, Article 14 NMSA  
 17 1978 is enacted to read:

18           "[NEW MATERIAL] NATIONAL DATABASE--PARTICIPATION  
 19 REQUIRED.--No later than July 21, 2012, the superintendent  
 20 shall participate in the national insurance producer database  
 21 of the association, or any other equivalent uniform national  
 22 database, for the licensure of surplus lines brokers and the  
 23 renewal of the licenses."

24           **SECTION 11.** APPLICABILITY OF ACT.--The provisions of  
 25 Sections 3 through 10 of this act are applicable to insurance

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1 policies issued on or after July 21, 2011.

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