

1 HB76
2 125347-3
3 By Representatives Wren and Canfield
4 RFD: Insurance
5 First Read: 01-MAR-11

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. The Surplus Lines Insurance Multi-State
3 Compliance Compact Act is enacted into law and entered into
4 with all jurisdictions mutually adopting the compact in the
5 form substantially as follows:

6 PREAMBLE

7 WHEREAS, with regard to Non-Admitted Insurance
8 policies with risk exposures located in multiple states, the
9 111th United States Congress has stipulated in Title V,
10 Subtitle B, the Non-Admitted and Reinsurance Reform Act of
11 2010, of the Dodd-Frank Wall Street Reform and Consumer
12 Protection Act, hereafter, the NRRRA, that:

13 (A) The placement of Non-Admitted Insurance shall be
14 subject to the statutory and regulatory requirements solely of
15 the insured's Home State, and

16 (B) Any law, regulation, provision, or action of any
17 State that applies or purports to apply to Non-Admitted
18 Insurance sold to, solicited by, or negotiated with an insured
19 whose Home State is another State shall be preempted with
20 respect to such application; except that any State law, rule,
21 or regulation that restricts the placement of worker's
22 compensation insurance or excess insurance for self-funded
23 worker's compensation plans with a Non-Admitted Insurer shall
24 not be preempted;

25 WHEREAS, in compliance with NRRRA, no State other
26 than the Home State of an insured may require any premium tax
27 payment for Non-Admitted Insurance; and no State other than an

1 insured's Home State may require a Surplus Lines Broker to be
2 licensed in order to sell, solicit, or negotiate Non-Admitted
3 Insurance with respect to such insured;

4 WHEREAS, the NRRA intends to allocate that the
5 states may enter into a compact or otherwise establish
6 procedures to allocate among the States the premium taxes paid
7 to an insured's Home State and that each State adopt
8 nationwide uniform requirements, forms, and procedures, such
9 as an interstate compact, that provide for the reporting,
10 payment, collection, and allocation of premium taxes for
11 Non-Admitted Insurance;

12 WHEREAS, after the expiration of the two-year period
13 beginning on the date of the enactment of the NRRA, a State
14 may not collect any fees relating to licensing of an
15 individual or entity as a Surplus Lines Licensee in the State
16 unless the State has in effect at such time laws or
17 regulations that provide for participation by the State in the
18 national insurance producer database of the NAIC, or any other
19 equivalent uniform national database, for the licensure of
20 Surplus Lines Licensees and the renewal of such licenses;

21 WHEREAS, a need exists for a system of regulation
22 that will provide for Surplus Lines Insurance to be placed
23 with reputable and financially sound Non-Admitted Insurers and
24 that will permit orderly access to Surplus Lines Insurance in
25 this State and encourage insurers to make new and innovative
26 types of insurance available to consumers in this State;

1 WHEREAS, protecting the revenue of this state and
2 other Compacting States may be accomplished by facilitating
3 the payment and collection of Premium Tax on Non-Admitted
4 Insurance and providing for allocation of Premium Tax for
5 Non-Admitted Insurance of Multi-State Risks among the States
6 in accordance with Uniform Allocation Formulas;

7 WHEREAS, the efficiency of the surplus lines market
8 may be improved by eliminating duplicative and inconsistent
9 tax and regulatory requirements among the States and by
10 promoting and protecting the interests of Surplus Lines
11 Licensees who assist such insureds and Non-Admitted Insurers,
12 thereby ensuring the continued availability of Non-Admitted
13 Insurance to consumers;

14 WHEREAS, regulatory compliance with respect to
15 Non-Admitted Insurance placements may be streamlined by
16 providing for exclusive single-state regulatory compliance for
17 Non-Admitted Insurance of Multi-State Risks, thereby providing
18 certainty regarding such compliance to all persons who have an
19 interest in such transactions, including, but not limited to,
20 insureds, regulators, Surplus Lines Licensees, other insurance
21 producers, and Surplus Lines Insurers;

22 WHEREAS, coordination of regulatory resources and
23 expertise between State insurance departments and other State
24 agencies, as well as State surplus lines stamping offices,
25 with respect to Non-Admitted Insurance will be improved;

1 Now, Therefore, in consideration of the foregoing,
2 the state of Alabama and the various other states do hereby
3 solemnly covenant and agree, each with the other, as follows:

4 SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE
5 COMPACT

6 ARTICLE I

7 PURPOSE

8 The purposes of this Compact are:

9 1. To implement the express provisions of Title V,
10 Subtitle B, the Non-Admitted and Reinsurance Reform Act of
11 2010, of the Dodd-Frank Wall Street Reform and Consumer
12 Protection Act.

13 2. To protect the Premium Tax revenues of the
14 Compacting States through facilitating the payment and
15 collection of Premium Tax on Non-Admitted Insurance; to
16 protect the interests of the Compacting States by supporting
17 the continued availability of such insurance to consumers; and
18 to provide for allocation of Premium Tax for Non-Admitted
19 Insurance of Multi-State Risks among the States in accordance
20 with uniform Allocation Formulas to be developed, adopted, and
21 implemented by the Commission.

22 3. To streamline and improve the efficiency of the
23 surplus lines market by eliminating duplicative and
24 inconsistent tax and regulatory requirements among the States
25 and promote and protect the interest of Surplus Lines
26 Licensees who assist such insureds and Surplus Lines Insurers,

1 thereby ensuring the continued availability of Surplus Lines
2 Insurance to consumers.

3 4. To streamline regulatory compliance with respect
4 to Non-Admitted Insurance placements by providing for
5 exclusive single-state regulatory compliance for Non-Admitted
6 Insurance of Multi-State Risks, in accordance with Rules to be
7 adopted by the Commission, thereby providing certainty
8 regarding such compliance to all persons who have an interest
9 in such transactions, including, but not limited to, insureds,
10 regulators, Surplus Lines Licensees, other insurance
11 producers, and Surplus Lines Insurers.

12 5. To establish a Clearinghouse for receipt and
13 dissemination of Premium Tax and Clearinghouse Transaction
14 Data related to Non-Admitted Insurance of Multi-State Risks,
15 in accordance with Rules to be adopted by the Commission.

16 6. To improve coordination of regulatory resources
17 and expertise between State insurance departments and other
18 State agencies, as well as State surplus lines stamping
19 offices, with respect to Non-Admitted Insurance.

20 7. To adopt uniform Rules to provide for Premium Tax
21 payment, reporting, allocation, data collection, and
22 dissemination for Non-Admitted Insurance of Multi-State Risks
23 and Single-State Risks, in accordance with Rules to be adopted
24 by the Commission, thereby promoting the overall efficiency of
25 the Non-Admitted Insurance market.

26 8. To adopt uniform mandatory Rules with respect to
27 regulatory compliance requirements for:

1 (i) foreign Insurer Eligibility Requirements;

2 (ii) surplus lines Policyholder Notices;

3 9. To establish the Surplus Lines Insurance
4 Multi-State Compliance Compact Commission.

5 10. To coordinate reporting of Clearinghouse
6 Transaction Data on Non-Admitted Insurance of Multi-State
7 Risks among Compacting States and Contracting States.

8 11. To perform these and such other related
9 functions as may be consistent with the purposes of the
10 Surplus Lines Insurance Multi-State Compliance Compact.

11 ARTICLE II DEFINITIONS

12 For purposes of this Compact, the following
13 definitions shall apply:

14 1. "Admitted Insurer" means an insurer that is
15 licensed, or authorized, to transact the business of insurance
16 under the law of the Home State; for purposes of this Compact,
17 "Admitted Insurer" shall not include a domestic surplus lines
18 insurer as may be defined by applicable State law.

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

22 3. "Allocation Formula" means the uniform methods
23 promulgated by the Commission by which insured risk exposures
24 will be apportioned to each State for the purpose of
25 calculating Premium Taxes due.

1 4. "Bylaws" means those bylaws established by the
2 Commission for its governance, or for directing or controlling
3 the Commission's actions or conduct.

4 5. "Clearinghouse" means the Commission's operations
5 involving the acceptance, processing, and dissemination, among
6 the Compacting States, Contracting States, Surplus Lines
7 Licensees, insureds and other persons, of Premium Tax and
8 Clearinghouse Transaction Data for Non-Admitted Insurance of
9 Multi-State Risks, in accordance with this Compact and Rules
10 to be adopted by the Commission.

11 6. "Clearinghouse Transaction Data" means the
12 information regarding Non-Admitted Insurance of Multi-State
13 Risks required to be reported, accepted, collected, processed,
14 and disseminated by Surplus Lines Licensees for Surplus Lines
15 Insurance and insureds for Independently Procured Insurance
16 under this Compact and Rules to be adopted by the Commission.
17 Clearinghouse Transaction Data includes information related to
18 Single-State Risks if a state elects to have the Clearinghouse
19 collect taxes on Single-State Risks for such state.

20 7. "Compacting State" means any State which has
21 enacted this Compact legislation and which has not withdrawn
22 pursuant to Article XIV, Section 1, or been terminated
23 pursuant to Article XIV, Section 2.

24 8. "Commission" means the "Surplus Lines Insurance
25 Multi-State Compliance Compact Commission" established by this
26 Compact.

1 9. "Commissioner" means the chief insurance
2 regulatory official of a State including, but not limited to,
3 commissioner, superintendent, director, or administrator or
4 their designees.

5 10. "Contracting State" means any State which has
6 not enacted this Compact legislation but has entered into a
7 written contract with the Commission to utilize the services
8 of and fully participate in the Clearinghouse.

9 11. "Control" means an entity has "control" over
10 another entity if:

11 (A) the entity directly or indirectly or acting
12 through one or more other persons owns, controls, or has the
13 power to vote 25 percent or more of any class of voting
14 securities of the other entity; or (B) the entity controls in
15 any manner the election of a majority of the directors or
16 trustees of the other entity.

17 12. "Home State" (A) IN GENERAL. Except as provided
18 in subparagraph (B), the term "Home State" means, with respect
19 to an insured:

20 (i) the State in which an insured maintains its
21 principal place of business or, in the case of an individual,
22 the individual's principal residence; or

23 (ii) if 100 percent of the insured risk is located
24 out of the State referred to in subparagraph (A)(i), the State
25 to which the greatest percentage of the insured's taxable
26 premium for that insurance contract is allocated.

1 (B) AFFILIATED GROUPS. If more than one insured from
2 an affiliated group are named insureds on a single
3 Non-Admitted Insurance contract, the term "Home State" means
4 the Home State, as determined pursuant to subparagraph (A), of
5 the member of the affiliated group that has the largest
6 percentage of premium attributed to it under such insurance
7 contract.

8 13. "Independently Procured Insurance" means
9 insurance procured by an insured directly from a Surplus Lines
10 Insurer or other Non-Admitted Insurer as permitted by the laws
11 of the Home State.

12 14. "Insurer Eligibility Requirements" means the
13 criteria, forms, and procedures established to qualify as a
14 Surplus Lines Insurer under the law of the Home State provided
15 that such criteria, forms, and procedures are consistent with
16 the express provisions of the NRRA on and after July 21, 2011.

17 15. "Member" means the person or persons chosen by a
18 Compacting State as its representative or representatives to
19 the Commission provided that each Compacting State shall be
20 limited to one vote.

21 16. "Multi-State Risk" means a risk with insured
22 exposures in more than one State.

23 17. "Non-Compacting State" means any State which has
24 not adopted this Compact.

25 18. "Non-Admitted Insurance" means Surplus Lines
26 Insurance and Independently Procured Insurance.

1 19. "Non-Admitted Insurer" means an insurer that is
2 not authorized or admitted to transact the business of
3 insurance under the law of the Home State.

4 20. "NRRA" means the Non-Admitted and Reinsurance
5 Reform Act, which is Title V, Subtitle B, of the Dodd-Frank
6 Wall Street Reform and Consumer Protection Act.

7 21. "Policyholder Notice" means the disclosure
8 notice or stamp that is required to be furnished to the
9 applicant or policyholder in connection with a Surplus Lines
10 Insurance placement.

11 22. "Premium Tax" means, with respect to
12 Non-Admitted Insurance, any tax, fee, assessment, or other
13 charge imposed by a government entity directly or indirectly
14 based on any payment made as consideration for such insurance,
15 including premium deposits, assessments, registration fees,
16 and any other compensation given in consideration for a
17 contract of insurance.

18 23. "Principal Place of Business" means, with
19 respect to determining the Home State of the insured, the
20 state where the insured maintains its headquarters and where
21 the insured's high-level officers direct, control, and
22 coordinate the business activities of the insured.

23 24. "Purchasing Group" means any group formed
24 pursuant to the Liability Risk Retention Act which has as one
25 of its purposes the purchase of liability insurance on a group
26 basis, purchases such insurance only for its group members and
27 only to cover their similar or related liability exposure, and

1 is composed of members whose businesses or activities are
2 similar or related with respect to the liability to which
3 members are exposed by virtue of any related, similar, or
4 common business, trade, product, services, premises, or
5 operations and is domiciled in any State.

6 25. "Rule" means a statement of general or
7 particular applicability and future effect promulgated by the
8 Commission designed to implement, interpret, or prescribe law
9 or policy or describing the organization, procedure, or
10 practice requirements of the Commission which shall have the
11 force and effect of law in the Compacting States.

12 26. "Single-State Risk" means a risk with insured
13 exposures in only one State.

14 27. "State" means any state, district, or territory
15 of the United States of America.

16 28. "State Transaction Documentation" means the
17 information required under the laws of the Home State to be
18 filed by Surplus Lines Licensees in order to report Surplus
19 Lines Insurance and verify compliance with surplus lines laws
20 and by insureds in order to report Independently Procured
21 Insurance.

22 29. "Surplus Lines Insurance" means insurance
23 procured by a Surplus Lines Licensee from a Surplus Lines
24 Insurer or other Non-Admitted Insurer as permitted under the
25 law of the Home State; for purposes of this Compact, "Surplus
26 Lines Insurance" shall also mean excess lines insurance as may
27 be defined by applicable State law.

1 30. "Surplus Lines Insurer" means a Non-Admitted
2 Insurer eligible under the law of the Home State to accept
3 business from a Surplus Lines Licensee; for purposes of this
4 Compact, "Surplus Lines Insurer" shall also mean an insurer
5 which is permitted to write Surplus Lines Insurance under the
6 laws of the State where such insurer is domiciled.

7 31. "Surplus Lines Licensee" means an individual,
8 firm, or corporation licensed under the law of the Home State
9 to place Surplus Lines Insurance.

10 ARTICLE III ESTABLISHMENT OF THE COMMISSION AND
11 VENUE

12 1. The Compacting States hereby create and establish
13 a joint public agency known as the "Surplus Lines Insurance
14 Multi-State Compliance Compact Commission."

15 2. Pursuant to Article IV, the Commission will have
16 the power to adopt mandatory Rules which establish exclusive
17 Home State authority regarding Non-Admitted Insurance of Multi
18 State Risks, Allocation Formulas, Clearinghouse Transaction
19 Data, a Clearinghouse for receipt and distribution of
20 allocated Premium Tax and Clearinghouse Transaction Data, and
21 uniform rulemaking procedures and Rules for the purpose of
22 financing, administering, operating, and enforcing compliance
23 with the provisions of this Compact, its Bylaws, and Rules.

24 3. Pursuant to Article IV, the Commission will have
25 the power to adopt mandatory Rules establishing foreign
26 Insurer Eligibility Requirements and a concise and objective

1 Policyholder Notice regarding the nature of a surplus lines
2 placement.

3 4. The Commission is a body corporate and politic,
4 and an instrumentality of the Compacting States.

5 5. The Commission is solely responsible for its
6 liabilities except as otherwise specifically provided in this
7 Compact.

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

15 ARTICLE IV

16 AUTHORITY TO ESTABLISH MANDATORY RULES

17 The Commission shall adopt mandatory Rules which
18 establish:

19 1. Allocation Formulas for each type of Non-Admitted
20 Insurance coverage, which Allocation Formulas must be used by
21 each Compacting State and Contracting State in acquiring
22 Premium Tax and Clearinghouse Transaction Data from Surplus
23 Lines Licensees and insureds for reporting to the
24 Clearinghouse created by the Compact Commission. Such
25 Allocation Formulas will be established with input from
26 Surplus Lines Licensees and be based upon readily available

1 data with simplicity and uniformity for the Surplus Lines
2 Licensee as a material consideration.

3 2. Uniform Clearinghouse Transaction Data reporting
4 requirements for all information reported to the
5 Clearinghouse.

6 3. Methods by which Compacting States and
7 Contracting States require Surplus Lines Licensees and
8 insureds to pay Premium Tax and to report Clearinghouse
9 Transaction Data to the Clearinghouse, including, but not
10 limited to, processing Clearinghouse Transaction Data through
11 State stamping and service offices, State insurance
12 departments, or other State designated agencies or entities.

13 4. That Non-Admitted Insurance of Multi-State Risks
14 shall be subject to all of the regulatory compliance
15 requirements of the Home State exclusively. Home State
16 regulatory compliance requirements applicable to Surplus Lines
17 Insurance shall include, but not be limited to:

18 (i) person(s) required to be licensed to sell,
19 solicit, or negotiate Surplus Lines Insurance;

20 (ii) Insurer Eligibility Requirements or other
21 approved Non-Admitted Insurer requirements;

22 (iii) Diligent Search;

23 (iv) State Transaction Documentation and
24 Clearinghouse Transaction Data regarding the payment of
25 Premium Tax as set forth in this Compact and Rules to be
26 adopted by the Commission. Home State regulatory compliance
27 requirements applicable to Independently Procured Insurance

1 placements shall include, but not be limited to, providing
2 State Transaction Documentation and Clearinghouse Transaction
3 Data regarding the payment of Premium Tax as set forth in this
4 Compact and Rules to be adopted by the Commission.

5 5. That each Compacting State and Contracting State
6 may charge its own rate of taxation on the premium allocated
7 to such State based on the applicable Allocation Formula,
8 provided that the State establishes one single rate of
9 taxation applicable to all Non-Admitted Insurance transactions
10 and no other tax, fee assessment, or other charge by any
11 governmental or quasi governmental agency be permitted.
12 Notwithstanding the foregoing, stamping office fees may be
13 charged as a separate, additional cost unless such fees are
14 incorporated into a State's single rate of taxation.

15 6. That any change in the rate of taxation by any
16 Compacting State or Contracting State be restricted to changes
17 made prospectively on not less than 90 days' advance notice to
18 the Compact Commission.

19 7. That each Compacting State and Contracting State
20 shall require Premium Tax payments either annually,
21 semi-annually, or quarterly utilizing one or more of the
22 following dates only: March 1, June 1, September 1, and
23 December 1.

24 8. That each Compacting State and Contracting State
25 prohibit any other State agency or political subdivision from
26 requiring Surplus Lines Licensees to provide Clearinghouse
27 Transaction Data and State Transaction Documentation other

1 than to the insurance department or tax officials of the Home
2 State or one single designated agent thereof.

3 9. 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 10. A method for the Clearinghouse to periodically
10 report to Compacting States, Contracting States, Surplus Lines
11 Licensees, and insureds who independently procure insurance,
12 all 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 11. 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 12. 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 to every other Compacting State
26 and Contracting State Premium Taxes on each Multi-State Risk
27 through the Clearinghouse at such tax rate charged on Surplus

1 Lines transactions in such other Compacting States and
2 Contracting States on the portion of the risk in each such
3 Compacting State and Contracting State as determined by the
4 applicable uniform Allocation Formula adopted by the
5 Commission. A policy considered to be Independently Procured
6 Insurance in the insured's Home State shall be considered
7 Independently Procured Insurance in all Compacting States and
8 Contracting States. Each Compacting State and Contracting
9 State shall require the insured to pay every other Compacting
10 State and Contracting State the Independently Procured
11 Insurance Premium Tax on each Multi-State Risk through the
12 Clearinghouse pursuant to the uniform Allocation Formula
13 adopted by the Commission.

14 13. Uniform foreign Insurer Eligibility Requirements
15 as authorized by the NRRA.

16 14. A uniform Policyholder Notice.

17 15. Uniform treatment of Purchasing Group Surplus
18 Lines Insurance placements.

19 ARTICLE V

20 POWERS OF THE COMMISSION

21 The Commission shall have the following powers:

22 1. To promulgate Rules and operating procedures,
23 pursuant to Article VIII of this Compact, which shall have the
24 force and effect of law and shall be binding in the Compacting
25 States to the extent and in the manner provided in this
26 Compact;

1 2. To bring and prosecute legal proceedings or
2 actions in the name of the Commission, provided that the
3 standing of any State insurance department to sue or be sued
4 under applicable law shall not be affected;

5 3. To issue subpoenas requiring the attendance and
6 testimony of witnesses and the production of evidence,
7 provided, however, the Commission is not empowered to demand
8 or subpoena records or data from Non-Admitted Insurers;

9 4. To establish and maintain offices including the
10 creation of a Clearinghouse for the receipt of Premium Tax and
11 Clearinghouse Transaction Data regarding Non-Admitted
12 Insurance of Multi-State Risks, Single-State Risks for states
13 which elect to require Surplus Lines Licensees to pay Premium
14 Tax on Single-State Risks through the Clearinghouse and tax
15 reporting forms;

16 5. To purchase and maintain insurance and bonds;

17 6. To borrow, accept, or contract for services of
18 personnel, including, but not limited to, employees of a
19 Compacting State or stamping office, pursuant to an open,
20 transparent, objective competitive process and procedure
21 adopted by the Commission;

22 7. To hire employees, professionals, or specialists,
23 pursuant to the Merit System of Alabama, and elect or appoint
24 officers, and to fix their compensation, define their duties,
25 and give them appropriate authority to carry out the purposes
26 of the Compact, and determine their qualifications, pursuant
27 to an open, transparent, objective, competitive process and

1 procedure adopted by the Commission; and to establish the
2 Commission's personnel policies and programs relating to
3 conflicts of interest, ~~rates of compensation and~~
4 ~~qualifications of personnel, and other related personnel~~
5 ~~matters;~~

6 8. To accept any and all appropriate donations and
7 grants of money, equipment, supplies, materials, and services
8 and to receive, utilize, and dispose of the same; provided
9 that at all times the Commission shall avoid any appearance of
10 impropriety and/or conflict of interest;

11 9. To lease, purchase, or accept appropriate gifts
12 or donations of, or otherwise to own, hold, improve, or use,
13 any property, real, personal, or mixed; provided that at all
14 times the Commission shall avoid any appearance of impropriety
15 and/or conflict of interest;

16 10. To sell, convey, mortgage, pledge, lease,
17 exchange, abandon, or otherwise dispose of any property, real,
18 personal, or mixed;

19 11. To provide for tax audit rules and procedures
20 for the Compacting States with respect to the allocation of
21 Premium Taxes including:

22 a. Minimum audit standards, including sampling
23 methods,

24 b. Review of internal controls,

25 c. Cooperation and sharing of audit responsibilities
26 between Compacting States,

1 d. Handling of refunds or credits due to
2 overpayments or improper allocation of Premium Taxes,

3 e. Taxpayer records to be reviewed including a
4 minimum retention period,

5 f. Authority of Compacting States to review,
6 challenge, or re-audit taxpayer records.

7 12. To enforce compliance by Compacting States and
8 Contracting States with Rules and Bylaws pursuant to the
9 authority set forth in Article XIV;

10 13. To provide for dispute resolution among
11 Compacting States and Contracting States;

12 14. To advise Compacting States and Contracting
13 States on tax-related issues relating to insurers, insureds,
14 Surplus Lines Licensees, agents, or brokers domiciled or doing
15 business in Non-Compacting States, consistent with the
16 purposes of this Compact;

17 15. To make available advice and training to those
18 personnel in State stamping offices, State insurance
19 departments, or other State departments for record keeping,
20 tax compliance, and tax allocations and to be a resource for
21 State insurance departments and other State departments;

22 16. To establish a budget and make expenditures;

23 17. To borrow money;

24 18. To appoint and oversee committees, including
25 advisory committees comprised of Members, State insurance
26 regulators, State legislators or their representatives,
27 insurance industry and consumer representatives, and such

1 other interested persons as may be designated in this Compact
2 and the Bylaws;

3 19. To establish an Executive Committee of not less
4 than seven nor more than 15 representatives, which shall
5 include officers elected by the Commission and such other
6 representatives as provided for herein and determined by the
7 Bylaws. Representatives of the Executive Committee shall serve
8 a one-year term. Representatives of the Executive Committee
9 shall be entitled to one vote each. The Executive Committee
10 shall have the power to act on behalf of the Commission, with
11 the exception of rulemaking, during periods when the
12 Commission is not in session. The Executive Committee shall
13 oversee the day-to-day activities of the administration of the
14 Compact, including the activities of the Operations Committee
15 created under this Article and compliance and enforcement of
16 the provisions of the Compact, its Bylaws, and Rules, and such
17 other duties as provided herein and as deemed necessary.

18 20. To establish an Operations Committee of not less
19 than seven and not more than 15 representatives to provide
20 analysis, advice, determinations, and recommendations
21 regarding technology, software, and systems integration to be
22 acquired by the Commission and to provide analysis, advice,
23 determinations, and recommendations regarding the
24 establishment of mandatory Rules to be adopted by the
25 Commission.

26 21. To enter into contracts with Contracting States
27 so that Contracting States can utilize the services of and

1 fully participate in the Clearinghouse subject to the terms
2 and conditions set forth in such contracts;

3 22. To adopt and use a corporate seal; and

4 23. To perform such other functions as may be
5 necessary or appropriate to achieve the purposes of this
6 Compact consistent with the State regulation of the business
7 of insurance.

8 ARTICLE VI

9 ORGANIZATION OF THE COMMISSION

10 1. Membership, Voting, and Bylaws

11 a. Each Compacting State shall have and be limited
12 to one Member. Each State shall determine the qualifications
13 and the method by which it selects a Member and set forth the
14 selection process in the enabling provision of the legislation
15 which enacts this Compact. In the absence of such a provision,
16 the Member shall be appointed by the governor of such
17 Compacting State. Any Member may be removed or suspended from
18 office as provided by the law of the State from which he or
19 she shall be appointed. Any vacancy occurring in the
20 Commission shall be filled in accordance with the laws of the
21 Compacting State wherein the vacancy exists.

22 b. Each Member shall be entitled to one vote and
23 shall otherwise have an opportunity to participate in the
24 governance of the Commission in accordance with the Bylaws.

25 c. The Commission shall, by a majority vote of the
26 Members, prescribe Bylaws to govern its conduct as may be
27 necessary or appropriate to carry out the purposes and

1 exercise the powers of the Compact including, but not limited
2 to:

3 i. Establishing the fiscal year of the Commission;

4 ii. Providing reasonable procedures for holding
5 meetings of the Commission, the Executive Committee, and the
6 Operations Committee;

7 iii. Providing reasonable standards and procedures:

8 (i) for the establishment and meetings of committees, and (ii)
9 governing any general or specific delegation of any authority
10 or function of the Commission;

11 iv. Providing reasonable procedures for calling and
12 conducting meetings of the Commission that consist of a
13 majority of Commission Members, ensuring reasonable advance
14 notice of each such meeting and providing for the right of
15 citizens to attend each such meeting with enumerated
16 exceptions designed to protect the public's interest, the
17 privacy of individuals, and insurers' and Surplus Lines
18 Licensees' proprietary information, including trade secrets.

19 The Commission may meet in camera only after a majority of the
20 entire membership votes to close a meeting in toto or in part.
21 As soon as practicable, the Commission must make public:

22 (i) a copy of the vote to close the meeting
23 revealing the vote of each Member with no proxy votes allowed,
24 and (ii) votes taken during such meeting;

25 v. Establishing the titles, duties, and authority
26 and reasonable procedures for the election of the officers of
27 the Commission;

1 vi. Providing reasonable standards and procedures
2 for the establishment of the personnel policies and programs
3 of the Commission. Notwithstanding any civil service or other
4 similar laws of any Compacting State, the Bylaws shall
5 exclusively govern the personnel policies and programs of the
6 Commission; vii. Promulgating a code of ethics to address
7 permissible and prohibited activities of Commission Members
8 and employees;

9 viii. Providing a mechanism for winding up the
10 operations of the Commission and the equitable disposition of
11 any surplus funds that may exist after the termination of the
12 Compact after the payment and/or reserving of all of its debts
13 and obligations;

14 d. The Commission shall publish its Bylaws in a
15 convenient form and file a copy thereof, and a copy of any
16 amendment thereto, with the appropriate agency or officer in
17 each of the Compacting States.

18 2. Executive Committee, Personnel, and Chairperson

19 a. An Executive Committee of the Commission
20 ("Executive Committee") shall be established. All actions of
21 the Executive Committee, including compliance and enforcement,
22 are subject to the review and ratification of the Commission
23 as provided in the Bylaws. The Executive Committee shall have
24 no more than 15 representatives, or one for each State if
25 there are less than 15 Compacting States, who shall serve for
26 a term to be established in accordance with the Bylaws.

1 b. The Executive Committee shall have such authority
2 and duties as may be set forth in the Bylaws, including, but
3 not limited to:

4 i. Managing the affairs of the Commission in a
5 manner consistent with the Bylaws and purposes of the
6 Commission;

7 ii. Establishing and overseeing an organizational
8 structure within, and appropriate procedures for the
9 Commission to provide for, the creation of Rules and operating
10 procedures;

11 iii. Overseeing the offices of the Commission; and

12 iv. Planning, implementing, and coordinating
13 communications and activities with other State, federal, and
14 local government organizations in order to advance the goals
15 of the Commission.

16 c. The Commission shall annually elect officers from
17 the Executive Committee, with each having such authority and
18 duties as may be specified in the Bylaws.

19 d. The Executive Committee may, subject to the
20 approval of the Commission, appoint or retain an executive
21 director for such period, upon such terms and conditions, and
22 for such compensation as the Commission may deem appropriate.
23 The executive director shall serve as secretary to the
24 Commission, but shall not be a Member of the Commission. The
25 executive director shall hire and supervise such other persons
26 as may be authorized by the Commission.

27 3. Operations Committee

1 a. An Operations Committee shall be established. All
2 actions of the Operations Committee are subject to the review
3 and oversight of the Commission and the Executive Committee
4 and must be approved by the Commission. The Executive
5 Committee will accept the determinations and recommendations
6 of the Operations Committee unless good cause is shown why
7 such determinations and recommendations should not be
8 approved. Any disputes as to whether good cause exists to
9 reject any determination or recommendation of the Operations
10 Committee shall be resolved by the majority vote of the
11 Commission.

12 The Operations Committee shall have no more than 15
13 representatives or one for each State if there are less than
14 15 Compacting States, who shall serve for a term as shall be
15 established as set forth in the Bylaws.

16 The Operations Committee shall have responsibility
17 for:

18 i. Evaluating technology requirements for the
19 Clearinghouse, assessing existing systems used by State
20 regulatory agencies and State stamping offices to maximize the
21 efficiency and successful integration of the Clearinghouse
22 technology systems with state and state stamping office
23 technology platforms and to minimize costs to the States,
24 State stamping offices, and the Clearinghouse;

25 ii. Making recommendations to the Executive
26 Committee based on its analysis and determination of the

1 Clearinghouse technology requirements and compatibility with
2 existing State and State stamping office systems;

3 iii. Evaluating the most suitable proposals for
4 adoption as mandatory Rules, assessing such proposals for ease
5 of integration by States and likelihood of successful
6 implementation, and reporting to the Executive Committee its
7 determinations and recommendations;

8 iv. Such other duties and responsibilities as are
9 delegated to it by the Bylaws, the Executive Committee, or the
10 Commission.

11 b. All representatives of the Operations Committee
12 shall be individuals who have extensive experience and/or
13 employment in the Surplus Lines Insurance business including,
14 but not limited to, executives and attorneys employed by
15 Surplus Lines Insurers, Surplus Lines Licensees, Law Firms,
16 State Insurance Departments, and/or State stamping offices.
17 Operations Committee representatives from Compacting States
18 which utilize the services of a State stamping office must
19 appoint the Chief Operating Officer or a senior manager of the
20 State stamping office to the Operations Committee.

21 4. Legislative and Advisory Committees

22 a. A legislative committee comprised of State
23 legislators or their designees shall be established to monitor
24 the operations of, and make recommendations to, the
25 Commission, including the Executive Committee; provided that
26 the manner of selection and term of any legislative committee
27 member shall be as set forth in the Bylaws. Prior to the

1 adoption by the Commission of any Uniform Standard, revision
2 to the Bylaws, annual budget, or other significant matter as
3 may be provided in the Bylaws, the Executive Committee shall
4 consult with and report to the legislative committee.

5 b. The Commission may establish additional advisory
6 committees as its Bylaws may provide for the carrying out of
7 its functions.

8 5. Corporate Records of the Commission

9 The Commission shall maintain its corporate books
10 and records in accordance with the Bylaws.

11 6. Qualified Immunity, Defense, and Indemnification

12 a. The Members, officers, executive director,
13 employees, and representatives of the Commission, the
14 Executive Committee, and any other Committee of the Commission
15 shall be immune from suit and liability, either personally or
16 in their official capacity, for any claim for damage to or
17 loss of property or personal injury or other civil liability
18 caused by or arising out of any actual or alleged act, error,
19 or omission that occurred, or that the person against whom the
20 claim is made had a reasonable basis for believing occurred
21 within the scope of Commission employment, duties, or
22 responsibilities; provided that nothing in this paragraph
23 shall be construed to protect any such person from suit and/or
24 liability for any damage, loss, injury, or liability caused by
25 the intentional or willful or wanton misconduct of that
26 person.

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

15 c. The Commission shall indemnify and hold harmless
16 any Member, officer, executive director, employee, or
17 representative of the Commission, Executive Committee, or any
18 other Committee of the Commission for the amount of any
19 settlement or judgment obtained against that person arising
20 out of any actual or alleged act, error, or omission that
21 occurred within the scope of Commission employment, duties, or
22 responsibilities, or that such person had a reasonable basis
23 for believing occurred within the scope of Commission
24 employment, duties, or responsibilities, provided that the
25 actual or alleged act, error, or omission did not result from
26 the intentional or willful or wanton misconduct of that
27 person.

1 ARTICLE VII

2 MEETINGS AND ACTS OF THE COMMISSION

3 1. The Commission shall meet and take such actions
4 as are consistent with the provisions of this Compact and the
5 Bylaws.

6 2. Each Member of the Commission shall have the
7 right and power to cast a vote to which that Compacting State
8 is entitled and to participate in the business and affairs of
9 the Commission. A Member shall vote in person or by such other
10 means as provided in the Bylaws. The Bylaws may provide for
11 Members' participation in meetings by telephone or other means
12 of communication.

13 3. The Commission shall meet at least once during
14 each calendar year. Additional meetings shall be held as set
15 forth in the Bylaws.

16 4. Public notice shall be given of all meetings and
17 all meetings shall be open to the public, except as set forth
18 in the Rules or otherwise provided in the Compact.

19 5. The Commission shall promulgate Rules concerning
20 its meetings consistent with the principles contained in the
21 Government in the Sunshine Act, "U.S.C., Section 552(b)", as
22 may be amended.

23 6. The Commission and its committees may close a
24 meeting, or portion thereof, where it determines by majority
25 vote that an open meeting would be likely to:

26 a. Relate solely to the Commission's internal
27 personnel practices and procedures;

1 b. Disclose matters specifically exempted from
2 disclosure by federal and State statute;

3 c. Disclose trade secrets or commercial or financial
4 information which is privileged or confidential;

5 d. Involve accusing a person of a crime, or formally
6 censuring a person;

7 e. Disclose information of a personal nature where
8 disclosure would constitute a clearly unwarranted invasion of
9 personal privacy;

10 f. Disclose investigative records compiled for law
11 enforcement purposes;

12 g. Specifically relate to the Commission's issuance
13 of a subpoena, or its participation in a civil action or other
14 legal proceeding.

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

1 ARTICLE VIII

2 RULES AND OPERATING PROCEDURES: RULEMAKING FUNCTIONS
3 OF THE COMMISSION

4 Rulemaking functions of the Commission:

5 1. Rulemaking Authority. The Commission shall
6 promulgate reasonable Rules in order to effectively and
7 efficiently achieve the purposes of this Compact.
8 Notwithstanding the foregoing, in the event the Commission
9 exercises its rulemaking authority in a manner that is beyond
10 the scope of the purposes of this Act, or the powers granted
11 hereunder, then such an action by the Commission shall be
12 invalid and have no force or effect.

13 2. Rulemaking Procedure. Rules shall be made
14 pursuant to a rulemaking process that substantially conforms
15 to the "Model State Administrative Procedure Act," of 1981,
16 Uniform Laws Annotated, Vol. 15, p. 1 (2000) as amended, as
17 may be appropriate to the operations of the Commission.

18 3. Effective Date. All Rules, and amendments
19 thereto, shall become effective as of the date specified in
20 each Rule, operating procedure, or amendment.

21 4. Not later than 30 days after a Rule is
22 promulgated, any person may file a petition for judicial
23 review of the Rule; provided that the filing of such a
24 petition shall not stay or otherwise prevent the Rule from
25 becoming effective unless the court finds that the Petitioner
26 has a substantial likelihood of success. The court shall give
27 deference to the actions of the Commission consistent with

1 applicable law and shall not find the Rule to be unlawful if
2 the Rule represents a reasonable exercise of the Commission's
3 authority.

4 ARTICLE IX

5 COMMISSION RECORDS AND ENFORCEMENT

6 1. The Commission shall promulgate Rules
7 establishing conditions and procedures for public inspection
8 and copying of its information and official records, except
9 such information and records involving the privacy of
10 individuals, insurers, insureds, or Surplus Lines Licensee
11 trade secrets. State Transaction Documentation and
12 Clearinghouse Transaction Data collected by the Clearinghouse
13 shall be used for only those purposes expressed in or
14 reasonably implied under the provisions of this Compact and
15 the Commission shall afford this data the broadest protections
16 as permitted by any applicable law for proprietary
17 information, trade secrets, or personal data. The Commission
18 may promulgate additional Rules under which it may make
19 available to federal and State agencies, including law
20 enforcement agencies, records and information otherwise exempt
21 from disclosure, and may enter into agreements with such
22 agencies to receive or exchange information or records subject
23 to nondisclosure and confidentiality provisions.

24 2. Except as to privileged records, data, and
25 information, the laws of any Compacting State pertaining to
26 confidentiality or nondisclosure shall not relieve any
27 Compacting State Member of the duty to disclose any relevant

1 records, data, or information to the Commission; provided that
2 disclosure to the Commission shall not be deemed to waive or
3 otherwise affect any confidentiality requirement, and further
4 provided that, except as otherwise expressly provided in this
5 Act, the Commission shall not be subject to the Compacting
6 State's laws pertaining to confidentiality and nondisclosure
7 with respect to records, data and information in its
8 possession. Confidential information of the Commission shall
9 remain confidential after such information is provided to any
10 Member, and the Commission shall maintain the confidentiality
11 of any information provided by a member that is confidential
12 under that Member's State Law.

13 3. The Commission shall monitor Compacting States
14 for compliance with duly adopted Bylaws and Rules. The
15 Commission shall notify any non-complying Compacting State in
16 writing of its noncompliance with Commission Bylaws or Rules.
17 If a non-complying Compacting State fails to remedy its
18 noncompliance within the time specified in the notice of
19 noncompliance, the Compacting State shall be deemed to be in
20 default as set forth in Article XIV.

21 ARTICLE X

22 DISPUTE RESOLUTION

23 1. Before a Member may bring an action in a court of
24 competent jurisdiction for violation of any provision,
25 standard, or requirement of the Compact, the Commission shall
26 attempt, upon the request of a Member, to resolve any disputes
27 or other issues that are subject to this Compact and which may

1 arise between two or more Compacting States, Contracting
2 States, or Non-Compacting States, and the Commission shall
3 promulgate a Rule providing alternative dispute resolution
4 procedures for such disputes.

5 2. The Commission shall also provide alternative
6 dispute resolution procedures to resolve any disputes between
7 insureds or Surplus Lines Licensees concerning a tax
8 calculation or allocation or related issues which are the
9 subject of this Compact.

10 3. Any alternative dispute resolution procedures
11 shall be utilized in circumstances where a dispute arises as
12 to which State constitutes the Home State.

13 ARTICLE XI

14 REVIEW OF COMMISSION DECISIONS Regarding Commission
15 decisions:

16 1. Except as necessary for promulgating Rules to
17 fulfill the purposes of this Compact, the Commission shall not
18 have authority to otherwise regulate insurance in the
19 Compacting States.

20 2. Not later than 30 days after the Commission has
21 given notice of any Rule or Allocation Formula, any third
22 party filer or Compacting State may appeal the determination
23 to a review panel appointed by the Commission. The Commission
24 shall promulgate Rules to establish procedures for appointing
25 such review panels and provide for notice and hearing. An
26 allegation that the Commission, in making compliance or tax
27 determinations acted arbitrarily, capriciously, or in a manner

1 that is an abuse of discretion or otherwise not in accordance
2 with the law, is subject to judicial review in accordance with
3 Article III, Section 6.

4 3. The Commission shall have authority to monitor,
5 review, and reconsider Commission decisions upon a finding
6 that the determinations or allocations do not meet the
7 relevant Rule. Where appropriate, the Commission may withdraw
8 or modify its determination or allocation after proper notice
9 and hearing, subject to the appeal process in Section 2 above.

10 ARTICLE XII

11 FINANCE 1. The Commission shall pay or provide for
12 the payment of the reasonable expenses of its establishment
13 and organization. To fund the cost of its initial operations,
14 the Commission may accept contributions, grants, and other
15 forms of funding from the State stamping offices, Compacting
16 States, and other sources.

17 2. The Commission shall collect a fee payable by the
18 insured directly or through a Surplus Lines Licensee on each
19 transaction processed through the Compact Clearinghouse, to
20 cover the cost of the operations and activities of the
21 Commission and its staff in a total amount sufficient to cover
22 the Commission's annual budget.

23 3. The Commission's budget for a fiscal year shall
24 not be approved until it has been subject to notice and
25 comment as set forth in Article VIII of this Compact.

26 4. The Commission shall be regarded as performing
27 essential governmental functions in exercising such powers and

1 functions and in carrying out the provisions of this Compact
2 and of any law relating thereto, and shall not be required to
3 pay any taxes or assessments of any character, levied by any
4 State or political subdivision thereof, upon any of the
5 property used by it for such purposes, or any income or
6 revenue therefrom, including any profit from a sale or
7 exchange.

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

1 insurers' proprietary information, including trade secrets,
2 shall remain confidential.

3 6. No Compacting State shall have any claim to or
4 ownership of any property held by or vested in the Commission
5 or to any Commission funds held pursuant to the provisions of
6 this Compact.

7 7. The Commission shall not make any political
8 contributions to candidates for elected office, elected
9 officials, political parties, nor political action committees.
10 The Commission shall not engage in lobbying except with
11 respect to changes to this Compact.

12 ARTICLE XIII

13 COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

14 1. Any State is eligible to become a Compacting
15 State.

16 2. The Compact shall become effective and binding
17 upon legislative enactment of the Compact into law by two
18 Compacting States, provided the Commission shall become
19 effective for purposes of adopting Rules and creating the
20 Clearinghouse when there are a total of 10 Compacting States
21 and Contracting States or, alternatively, when there are
22 Compacting States and Contracting States representing greater
23 than 40 percent of the Surplus Lines Insurance premium volume
24 based on records of the percentage of Surplus Lines Insurance
25 premium set forth as agreed to by the Compacting States.
26 Thereafter, it shall become effective and binding as to any
27 other Compacting State upon enactment of the Compact into law

1 by that State. Notwithstanding the foregoing, the
2 Clearinghouse operations and the duty to report Clearinghouse
3 Transaction Data shall begin on the first January 1st or July
4 1st following the first anniversary of the Commission
5 effective date. For States which join the Compact subsequent
6 to the effective date, a start date for reporting
7 Clearinghouse Transaction Data shall be set by the Commission
8 provided Surplus Lines Licensees and all other interested
9 parties receive not less than 90 days' advance notice.

10 3. 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 XIV

16 WITHDRAWAL, DEFAULT, AND TERMINATION

17 1. Withdrawal

18 a. Once effective, the Compact shall continue in
19 force and remain binding upon each and every Compacting State,
20 provided that a Compacting State may withdraw from the Compact
21 ("Withdrawing State") by enacting a statute specifically
22 repealing the statute which enacted the Compact into law.

23 b. The effective date of withdrawal is the effective
24 date of the repealing statute. However, the withdrawal shall
25 not apply to any tax or compliance determinations approved on
26 the date the repealing statute becomes effective, except by

1 mutual agreement of the Commission and the Withdrawing State
2 unless the approval is rescinded by the Commission.

3 c. The Member of the Withdrawing State shall
4 immediately notify the Executive Committee of the Commission
5 in writing upon the introduction of legislation repealing this
6 Compact in the Withdrawing State.

7 d. The Commission shall notify the other Compacting
8 States of the introduction of such legislation within 10 days
9 after its receipt of notice thereof.

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

21 f. Reinstatement following withdrawal of any
22 Compacting State shall occur upon the effective date of the
23 Withdrawing State reenacting the Compact.

24 2. Default

25 a. If the Commission determines that any Compacting
26 State has at any time defaulted ("Defaulting State") in the
27 performance of any of its obligations or responsibilities

1 under this Compact, the Bylaws, or duly promulgated Rules
2 then, after notice and hearing as set forth in the Bylaws, all
3 rights, privileges, and benefits conferred by this Compact on
4 the Defaulting State shall be suspended from the effective
5 date of default as fixed by the Commission. The grounds for
6 default include, but are not limited to, failure of a
7 Compacting State to perform its obligations or
8 responsibilities, and any other grounds designated in
9 Commission Rules. The Commission shall immediately notify the
10 Defaulting State in writing of the Defaulting State's
11 suspension pending a cure of the default. The Commission shall
12 stipulate the conditions and the time period within which the
13 Defaulting State must cure its default. If the Defaulting
14 State fails to cure the default within the time period
15 specified by the Commission, the Defaulting State shall be
16 terminated from the Compact and all rights, privileges, and
17 benefits conferred by this Compact shall be terminated from
18 the effective date of termination.

19 b. Decisions of the Commission that are issued on
20 the effective date of termination shall remain in force in the
21 Defaulting State in the same manner as if the Defaulting State
22 had withdrawn voluntarily pursuant to Section 1 of this
23 Article.

24 c. Reinstatement following termination of any
25 Compacting State requires a reenactment of the Compact.

26 3. Dissolution of Compact

1 a. The Compact dissolves effective upon the date of
2 the withdrawal or default of the Compacting State which
3 reduces membership in the Compact to one Compacting State.

4 b. Upon the dissolution of this Compact, the Compact
5 becomes null and void and shall have no further force or
6 effect, and the business and affairs of the Commission shall
7 be wound up and any surplus funds shall be distributed in
8 accordance with the Rules and Bylaws.

9 ARTICLE XV

10 SEVERABILITY AND CONSTRUCTION

11 1. The provisions of this Compact shall be severable
12 and if any phrase, clause, sentence, or provision is deemed
13 unenforceable, the remaining provisions of the Compact shall
14 be enforceable.

15 2. The provisions of this Compact shall be liberally
16 construed to effectuate its purposes.

17 3. Throughout this Compact the use of the singular
18 shall include the plural and vice-versa.

19 4. The headings and captions of articles, sections,
20 and sub-sections used in this Compact are for convenience only
21 and shall be ignored in construing the substantive provisions
22 of this Compact.

23 ARTICLE XVI

24 BINDING EFFECT OF COMPACT AND OTHER LAWS

25 1. Other Laws

1 a. Nothing herein prevents the enforcement of any
2 other law of a Compacting State except as provided in
3 paragraph b. of this section.

4 b. Decisions of the Commission, and any Rules, and
5 any other requirements of the Commission shall constitute the
6 exclusive Rule or determination applicable to the Compacting
7 States. Any law or regulation regarding Non-Admitted Insurance
8 of Multi-State Risks that is contrary to Rules of the
9 Commission is preempted with respect to the following:

10 (i) Clearinghouse Transaction Data reporting
11 requirements;

12 (ii) Allocation Formula;

13 (iii) Clearinghouse Transaction Data collection
14 requirements;

15 (iv) Premium Tax payment time frames and Rules
16 concerning dissemination of data among the Compacting States
17 for Non-Admitted Insurance of Multi-State Risks and
18 Single-State Risks;

19 (v) Exclusive compliance with surplus lines law of
20 the Home State of the insured;

21 (vi) Rules for reporting to a Clearinghouse for
22 receipt and distribution of Clearinghouse Transaction Data
23 related to Non-Admitted Insurance of Multi-State Risks;

24 (vii) Uniform foreign Insurers Eligibility
25 Requirements;

1 (viii) Uniform Policyholder Notice; and (ix) Uniform
2 treatment of Purchasing Groups procuring Non-Admitted
3 Insurance.

4 c. Except as stated in paragraph b., any Rule,
5 Uniform Standard, or other requirement of the Commission shall
6 constitute the exclusive provision that a Commissioner may
7 apply to compliance or tax determinations. Notwithstanding the
8 foregoing, no action taken by the Commission shall abrogate or
9 restrict:

10 (i) the access of any person to State courts;

11 (ii) the availability of alternative dispute
12 resolution under Article X of this Compact;

13 (iii) remedies available under State law related to
14 breach of contract, tort, or other laws not specifically
15 directed to compliance or tax determinations;

16 (iv) State law relating to the construction of
17 insurance contracts; or

18 (v) the authority of the attorney general of the
19 State, including, but not limited to, maintaining any actions
20 or proceedings, as authorized by law.

21 2. Binding Effect of this Compact

22 a. All lawful actions of the Commission, including
23 all Rules promulgated by the Commission, are binding upon the
24 Compacting States, except as provided herein.

25 b. All agreements between the Commission and the
26 Compacting States are binding in accordance with their terms.

1 c. Upon the request of a party to a conflict over
2 the meaning or interpretation of Commission actions, and upon
3 a majority vote of the Compacting States, the Commission may
4 issue advisory opinions regarding the meaning or
5 interpretation in dispute. This provision may be implemented
6 by Rule at the discretion of the Commission.

7 d. In the event any provision of this Compact
8 exceeds the constitutional limits imposed on the legislature
9 of any Compacting State, the obligations, duties, powers, or
10 jurisdiction sought to be conferred by that provision upon the
11 Commission shall be ineffective as to that State and those
12 obligations, duties, powers, or jurisdiction shall remain in
13 the Compacting State and shall be exercised by the agency
14 thereof to which those obligations, duties, powers, or
15 jurisdiction are delegated by law in effect at the time this
16 Compact becomes effective.

17 Section 2. The Governor is directed to enter into a
18 compact on behalf of the State of Alabama with any state in
19 the United States legally joining the compact in the form as
20 substantially provided for in Section 1

21 Section 3. The compact shall become effective and
22 binding upon legislative enactment of the Compact into law by
23 two Compacting States, and the Commission shall become
24 effective for purposes of adopting rules and creating the
25 clearinghouse when there are a total of 10 Compacting States
26 and Contracting States or, alternatively, when there are
27 Compacting States and Contracting States representing greater

1 than 40 percent of the Surplus Lines Insurance premium volume
2 based on records of the percentage of Surplus Lines Insurance
3 premium.

4 Section 4. Section 27-10-31, Code of Alabama 1975,
5 is amended to read as follows:

6 "§27-10-31.

7 "(a) On or before the first day of March each year,
8 the surplus line broker shall remit to the State Treasurer
9 through the commissioner, as a tax imposed for the privilege
10 of transacting business as a surplus line broker in this
11 state, a tax of six percent on the direct premiums, less
12 return premiums and exclusive of sums collected to cover state
13 or federal taxes, on surplus line insurance subject to tax
14 transacted by the broker during the preceding calendar year as
15 shown by the annual statement filed with the commissioner.

16 ~~"(b) If a surplus line policy covers risks or~~
17 ~~exposures only partially in this state, the tax so payable~~
18 ~~shall be computed on the proportion of the premium which is~~
19 ~~properly allocable to the risks or exposures located in this~~
20 ~~state.~~

21 ~~"(c)(b) The tax under the provisions of this section~~
22 ~~shall be subject to deduction of the full amount of all~~
23 ~~expenses of examination of the surplus line broker by the~~
24 ~~commissioner in the same manner as that allowed for domestic~~
25 ~~insurers for examination expenses under the provisions of~~
26 ~~subdivision (5) of subsection (c) of Section 27-4A-3. All~~

1 taxes collected under this section shall be deposited in the
2 State Treasury to the credit of the State General Fund."

3 Section 5. The provisions of Section 4 shall not be
4 effective if the Surplus Lines Insurance Multi-State
5 Compliance Compact is not enacted into law by two compacting
6 states.

7 Section 6. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Insurance 01-MAR-11

Read for the second time and placed on the calendar..... 06-APR-11

Read for the third time and passed as amended..... 05-MAY-11

Yeas 96, Nays 0, Abstains 1

Greg Pappas
Clerk