

NONADMITTED INSURANCE MODEL ACT

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Section 1. Short Title

This Act shall be known and may be cited as “The Nonadmitted Insurance Act.”

Section 2. Purpose—Necessity for Regulation

- § 2. This Act shall be liberally construed and applied to promote its underlying purposes, which are:
- A. Protecting persons seeking insurance in this state;
 - B. Permitting surplus lines insurance to be placed with reputable and financially sound insurers and exported from this state pursuant to this Act;
 - C. Establishing a system of regulation which will permit orderly access to surplus lines in this state and encourage admitted insurers to provide new and innovative types of insurance available to consumers in this state;
 - D. Providing a system through which persons may purchase insurance other than from admitted insurers, from nonadmitted insurers pursuant to this Act;
 - E. Protecting revenues of this state; and
 - F. Providing a system pursuant to this Act which subjects nonadmitted insurance activity in this state to the jurisdiction of the insurance commissioner and state and federal courts on behalf of the state.

Section 3. Definitions

As used in this Act:

- A. "Admitted insurer" means an insurer licensed to engage in the business of insurance in this state.
- B. "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- C. "Affiliated group" means any group of entities that are all affiliated.
- D. "Commissioner" means the insurance commissioner of [insert name of state], or the commissioner's deputies or staff, or the commissioner, director or superintendent of insurance in any other state.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- E. "Control" means with respect to an insured:
 - (1) A person, either directly or indirectly n

- (2) If the person's high-level officers direct, control, and coordinate the business activities in more than one state, or if the person's principal place of business is located outside any state, then it is the state to which the greatest percentage of the person's taxable premium for that insurance contract is allocated.

P. "Principal residence" means:

- (1) The state where the person resides for the greatest number of days during a calendar year; or
- (2) If the person's principal residence is located outside any state, the state to which the greatest percentage of the person's taxable premium is allocated.

- (f) The solicitation, negotiation, procurement or effectuation of insurance or renewals thereof;
 - (g) The dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates or investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of risks with respect to properties, risks or exposures located or to be performed in this state;
 - (h) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;
 - (i) The offering of insurance or the transacting of insurance business; or
 - (j) Offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.
- (2) The provisions of this subsection shall not operate to prohibit employees, officers, directors or partners of a commercial insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer, provided that the person's compensation is not based on buying insurance.
- (3) The venue of an act committed by mail is the location where the matter transmitted by mail is delivered or issued for delivery or takes effect.

Drafting Note:

of personal property and interests therein shall not be considered wet marine and transportation insurance if the property has:

- (a) Been transported solely by land; or
- (b) Reached its final destination as specified in the bill of lading or other shipping document; or
- (c) The insured no longer has an insurable interest in the property.

Drafting Note: In addition to the definitions provided in this section, individual states may wish to consider adopting definitions for “agent,” “broker” or “producer” in a manner consistent with its other laws. Additionally, states may want to cross-reference the definition of “insurance” as it appears elsewhere in the state i(f)-5.7 (d-0.004 Tc.c 0.006 Te 0.10a53l 0.003 Tw 2.174 853l 0.00n t (g)-0.7 (def6-20 (i)-.7 (ddi)-2.7 (t)-3.3

- (1) Surplus lines insurance as provided in Section 5. For the purposes of this subsection, a licensee shall be deemed to be in material compliance with the insurance laws of this state, unless the licensee committed a violation of Section 5 that proximately caused loss to the insured;
- (2) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this state;
- (3) Reinsurance provided that, unless the commissioner waives the requirements of this subsection:
 - (a) The assuming insurer is authorized to engage in the business of insurance or reinsurance in its domiciliary jurisdiction and is authorized to write the type of reinsurance in its domiciliary jurisdiction; and
 - (b) The assuming insurer satisfies all legal requirements for such reinsurance in the state of domicile of the reinsured.

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Drafting Note: The diligent search requirement of Section 5A(3) must be satisfied in accordance with the statutes and regulations of the governing state. Diligent search statutes and regulations vary from state to state in terms of the number of declinations required and the person designated to conduct the search. Several states permit surplus lines placement without a diligent search for or without regard to the availability of admitted coverage. States may want to consider changing diligent search requirements in light of electronic transactions. Section 5A(3) does not prohibit a regulatory system in which a surplus lines licensee may place with an eligible nonadmitted insurer any coverage listed on a current “Export List” maintained by the commissioner. The export list would identify types of insurance for which no admitted market exists. The commissioner may waive the diligent search requirement for any such type of insurance.

Drafting Note: Utilizing the “full amount” standard in Section 5A(3) of this Act may have certain market implications. An alternative to this approach would be to require that whatever part of the coverage is attainable through the admitted market be placed in the ad

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- (c) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed Uniform Application; and
- (d) The person's home state awards nonresident surplus lines licenses to residents of this state on the same basis.

Drafting Note: In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act") states should not require any additional attachments to the Uniform Application or impose any other conditions on applicants that exceed the information requested within the Uniform Application.

- (4) The insurance commissioner may verify the person's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.
- (5) A nonresident surplus lines licensee who moves from one state to another state or a resident surplus lines licensee who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.
- (6) The insurance commissioner shall waive any requirements for a nonresident surplus lines license applicant with a valid license from his or her home state, except the requirements imposed by this subsection, if the applicant's home state awards nonresident surplus lines licenses to residents of this state on the same basis.
- (7) Each surplus lines license shall expire on [insert date] of each year, and an application for

K. Actions Against Eligible Surplus Lines Insurers Transacting Surplus Lines Business

- (1) An eligible surplus lines insurer may be sued upon a cause of action arising in this state under a surplus lines insurance contract.1 pte Caoad(a) L itaot(t)4.v(nc)54.3 (i)-3.8 (d)-0.7 (e)-3 (n)-C
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- (a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The plan of operation shall provide for the election of a board of directors by the members of the association from its membership. The plan of operation shall fix the manner of voting and may weigh each member's vote to reflect the annual surplus lines insurance premium written by the member.
 - (b) The board of directors shall elect officers as provided for in the plan of operation.
- (3) The (m)-3.31 (o)-6.6 (v)-5.5 (idl.6 ()BDC782 -1.217 Td[((3)-2.9 ())]TJ0 Tc 0 Tw 1.109 0 Td()Tj-0(s)-1.3 s

- (7) Within [insert number] days after a surplus lines policy is procured, a licensee shall submit to the association for recording and stamping all documents which surplus lines brokers are required to file with the association. Every insurance document submitted to the association pursuant to this subsection shall set forth:
- (a) The name and address of the insured;
 - (b) The gross premium charged;
 - (c) The name of the nonadmitted insurer; and
 - (d) The class of insurance procured.

Drafting Note: The appropriate time limits for submitting documents required for stamping will vary by state.

- (8) It shall be unlawful for an insurance agent, broker or surplus lines broker to deliver in this state any insurance document which surplus lines brokers are required to file with the association unless the insurance document is stamped by the association or is exempt from such requirements. However, a licensee's failure to comply with the requirements of this subsection shall not affect the validity of the coverage.
- (9) The services performed by the association shall be funded by a stamping fee assessed for each premium-bearing document submitted to the association. The stamping fee shall be established by the board of directors of the association from time to time. The stamping fee shall be paid by the insured.
- (10) The commissioner may declare a nonadmitted insurer ineligible and order the association not to stamp insurance documents issued by the nonadmitted insurer and issue any other appropriate order.

N. Evidence of the Insurance and Subsequent Changes to the Insurance

- (1) Upon placing surplus lines insurance, the surplus lines licensee shall promptly deliver to the insured or the producing broker the policy, or if the policy is not then available, a certificate as described in Paragraph (4) of this subsection, cover note, binder or other evidence of insurance. The certificate described in Paragraph (4) of this subsection, cover note, binder or other evidence of insurance shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number.
- (2) A surplus lines licensee shall not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any surplus lines insurer or a nonadmitted insurer unless the licensee has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted.

- (3) If, after delivery of any evidence of insurance, there is any change in the identity of the

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Drafting Note: States may wish to extend the five-year period prescribed for open access to insurance records because of the long-term nature of this business.

S. Reports—Summary of Exported Business

On or before the end of the month following each [insert month, quarter, year], each surplus lines licensee shall file with the commissioner, on forms prescribed by the commissioner, a verified report in duplicate of all surplus lines insurance transacted during the preceding period, showing:

- (1) Aggregate gross premium written;
- (2) Aggregate return premium;
- (3) Amount of aggregate tax remitted to this state; and
- (4) Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to Subsection G of this section.

Drafting Note: States desiring to have taxes remitted annually may call for more frequent detailed listing of business.

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Section 6. Insurance Independently Procured—Duty to Report and Pay Tax

- A. Each insured whose home state is this state, who procures or continues or renews insurance with a nonadmitted insurer, other than insurance procured through a surplus lines licensee, shall, within [insert number] days after the date the insurance was so procured, continued or renewed, file a written report with the commissioner, upon forms prescribed by the commissioner, showing the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a genera(n)(a w)-3.47 (e)-6 ((t)-6.3 (c)-4.9 (r)-2.9 (i8 ge)-6 (n)3d)-0.8 5 () a T329.6 (f)7.5 ()].9.

Section 9. Service of Process

- A. Any act of transacting insurance by an unauthorized person or a nonadmitted insurer is equivalent to and shall constitute an irrevocable appointment by the unauthorized person or insurer, binding

- D. A plaintiff shall not be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the commissioner is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.
- E. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand upon any person or insurer in any other manner now or hereafter permitted by law.
- F. Each nonadmitted insurer assuming insurance in this state, or relative to property, risks or exposures located or to be performed in this state, shall be deemed to have subjected itself to this Act.
- G. Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer may be sued upon any cause of action arising in this state, or relative to property, risks or exposures located or to be performed in this state, under any insurance contract made by it.
- H. Except with regard to exempt commercial purchasers, independently procured insurance, [aviation], and wet marine and transportation insurance, conditions or stipulations in the policy or contract notwithstanding, a nonadmitted insurer subject to arbitration or other alternative dispute resolution mechanism shall conduct the arbitration or other alternative dispute resolution mechanism in the home state of the insured.

Drafting Note: Provisions of a state's constitution, statutes, regulations, and public policy may necessitate amendment of the prior Section 9H. States should consider adoption or modification of Section 9H in light of their own laws on arbitration or other alternative dispute resolution in insurance and commercial transactions. States should cross-reference their state insurance code to verify the inclusion of "Aviation" within this provision.

- I. A policy or contract issued by the nonadmitted insurer or one which is otherwise valid and contains a condition or provision not in compliance with the requirements of this Act is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions which would have applied had the policy or contract been issued or delivered in full compliance with this Act.

Section 10. Legal or Administrative Procedures

- A. Before any nonadmitted insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against the person or insurer, by services made as provided in this Act, the insurer shall either:
 - (1) Deposit with the clerk of the court in which the action, suit or proceeding is pending, or with the commissioner of Insurance in administrative proceedings before the commissioner, cash or securities, or file with the clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in the action or administrative proceeding; or

- (2) Procure a certificate of authority to transact the business of insurance in this state. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph the commissioner need not assert the provisions of [insert sections of insurance laws relating to retaliation] against the insurer with respect to its application if the commissioner determines that the company would otherwise comply with the requirements for a certificate of authority.
- B. The commissioner of insurance, in any administrative proceeding in which service is made as provided in this Act, may in the commissioner's discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of Subsection A of this section and to defend the action.
- C. Nothing in Subsection A of this section shall be construed to prevent a nonadmitted insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in this Act, on the ground that the nonadmitted insurer has not done any of the acts enumerated in the pleadings.
- D. Nothing in Subsection A of this section shall apply to placements of insurance which were lawful in the home state of the insured and which were not unlawful placements under the laws of this state. Without limiting the generality of the foregoing, nothing in Subsection A shall apply to a placement made pursuant to Section 5 of this Act.

Section 11. Enforcement

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- D. Surplus lines insurance placed by a licensee under authority of Section 5 of this Act;
- E. Reinsurance placed under the authority of [insert citations of state’s reinsurance intermediary act and other reinsurance laws];
- F. The continuation and servicing of life insurance, health insurance policies or annuity contracts remaining in force as to residents of this state where the formerly authorized insurer has withdrawn from the state and is not transacting new insurance in the state;
- G. Servicing of policies written by an admitted insurer in a state to which the insured has moved but in which the company does not have a certificate of authority until the term expires;
- H. Claims under policies covering wet marine and transportation insurance;
- I. Placements of insurance which were lawful in the jurisdiction in which the transaction took place and which were not unlawful placements under the laws of this state.

Drafting Note: Provisions of a state’s constitution, statutes, regulations, and public policy may necessitate amendment of the opening paragraph of this section.

Section 13. Severability

