
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

PART I

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

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



1 The legislature further finds that SLIMPACT has been
2 endorsed by the National Conference of Insurance Legislators,
3 the Council of State Governments, the National Conference of
4 State Legislatures, and the majority of insurance industry and
5 producer groups who advocated for federal surplus lines reform.

6 The legislature additionally finds that nine states have
7 enacted legislation to join SLIMPACT. A tenth state is needed
8 to effectuate the compact for tax clearinghouse and rulemaking
9 purposes. It is the intent of the legislature for Hawaii to
10 become the tenth state to join SLIMPACT and thus streamline
11 surplus lines taxation and regulation in Hawaii.

12 The purpose of this Act is to:

- 13 (1) Direct the insurance commissioner to join the surplus
14 lines insurance multi-state compliance compact; and
15 (2) Enact the surplus lines insurance multi-state
16 compliance compact.

17 **PART II**

18 SECTION 2. The legislature finds that Act 68, Session Laws
19 of Hawaii 2011, amended the insurance code to comply with the
20 Nonadmitted and Reinsurance Reform Act of 2010 relating to
21 surplus lines insurance. Act 68 also permitted the insurance



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

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

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

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

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

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

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

21 (1) Shall:



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

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

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

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

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

10 **PART III**

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

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

16 **"PART . SURPLUS LINES INSURANCE MULTI-STATE**

17 **COMPLIANCE COMPACT**

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

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



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



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

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

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

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



(8) Adopt uniform mandatory rules with respect to regulatory compliance requirements for foreign insurer eligibility requirements and surplus lines policyholder notices;

(9) Establish the surplus lines insurance multi-state compliance compact commission;

(10) Coordinate reporting of clearinghouse transaction data on nonadmitted insurance of multi-state risks among compacting states and contracting states; and

(11) Perform these and other related functions as may be consistent with the purposes of the surplus lines insurance multi-state compliance compact.

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

"Admitted insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home state; for purposes of this compact, the term shall not include a domestic surplus lines insurer as may be defined by applicable state law.

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



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

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

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

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



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

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

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

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

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

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



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

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

10 "Insurer eligibility requirements" means the criteria,
11 forms, and procedures established to qualify as a surplus lines
12 insurer under the law of the home state; provided that the
13 criteria, forms, and procedures are consistent with the express
14 provisions of the Nonadmitted and Reinsurance Reform Act on and
15 after July 21, 2011.

16 "Member" means a person chosen by a compacting state as the
17 compacting state's representative to the commission; provided
18 that each compacting state is limited to one vote.

19 "Multi-state risk" means a risk with insured exposures in
20 more than one state.

21 "Nonadmitted and Reinsurance Reform Act" means the
22 Nonadmitted and Reinsurance Reform Act of 2010, 15 United States



1 Code 8201 et seq., which is subtitle B of title V of the Dodd-
2 Frank Wall Street Reform and Consumer Protection Act.

3 "Nonadmitted insurance" means surplus lines insurance and
4 independently procured insurance.

5 "Nonadmitted insurer" means an insurer that is not
6 authorized or admitted to transact the business of insurance
7 under the law of the home state.

8 "Noncompacting state" means a state that has not adopted
9 this compact.

10 "Policyholder notice" means the disclosure notice or stamp
11 that is required to be furnished to an applicant or a
12 policyholder in connection with a surplus lines insurance
13 placement.

14 "Premium tax" means, with respect to nonadmitted insurance,
15 a tax, fee, assessment, or other charge imposed by a government
16 entity directly or indirectly based on a payment made as
17 consideration for the nonadmitted insurance, including premium
18 deposits, assessments, registration fees, and other
19 compensation, given in consideration for a contract of
20 insurance.

21 "Principal place of business" means, with respect to
22 determining the home state of the insured, the state where the



1 insured maintains the insured's headquarters and where the
2 insured's high-level officers direct, control, and coordinate
3 the business activities of the insured.

4 "Purchasing group" means a group formed pursuant to the
5 Liability Risk Retention Act of 1986, which has as one of the
6 group's purposes the purchase of liability insurance on a group
7 basis, and purchases liability insurance only for its group
8 members and only to cover the members' similar or related
9 liability exposure, and is composed of members with similar or
10 related business or activity liability exposure due to the
11 members' related, similar, or common business, trade, product,
12 services, premises, or operations and is domiciled in any state.

13 "Rule" means a statement of general or particular
14 applicability and future effect adopted by the commission
15 designed to implement, interpret, or prescribe law or policy, or
16 describing the organization, procedure, or practice requirements
17 of the commission that shall have the force and effect of law in
18 the compacting states.

19 "Single state risk" means a risk with insured exposures in
20 only one state.

21 "Stamping office" means the insurance division of the
22 department of commerce and consumer affairs.



1 "State" means a state, district, or territory of the United
2 States of America.

3 "State transaction documentation" means information
4 required under the laws of the home state to be filed by surplus
5 lines licensees to report surplus lines insurance and verify
6 compliance with surplus lines laws, and by insureds to report
7 independently procured insurance.

8 "Surplus lines insurance" means insurance procured by a
9 surplus lines licensee from a surplus lines insurer or other
10 nonadmitted insurer as permitted under the law of the home
11 state. For purposes of this compact, the term also means excess
12 lines insurance as may be defined by applicable state law.

13 "Surplus lines insurer" means a nonadmitted insurer
14 eligible under the law of the home state to accept business from
15 a surplus lines licensee. For purposes of this compact, the
16 term also means an insurer that is permitted to write surplus
17 lines insurance under the laws of the state where the insurer is
18 domiciled.

19 "Surplus lines licensee" means an individual, firm, or
20 corporation licensed under the law of the home state to place
21 surplus lines insurance.



1 §431:8-D Establishment of the commission and venue. (a)

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

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

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

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

20 (e) The commission is solely responsible for the
21 commission's liabilities except as otherwise specifically
22 provided in this compact.



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

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

- 10 (1) Allocation formulas for each type of nonadmitted
11 insurance coverage, which shall be used by each
12 compacting state and contracting state in acquiring
13 premium tax and clearinghouse transaction data from
14 surplus lines licensees and insureds to report to the
15 clearinghouse. The allocation formulas shall be
16 established with input from surplus lines licensees
17 and shall be based upon readily available data with
18 simplicity and uniformity for the surplus lines
19 licensee as a material consideration;
- 20 (2) Uniform clearinghouse transaction data reporting
21 requirements for all information reported to the
22 clearinghouse;



1 (3) Methods by which compacting states and contracting
2 states shall require surplus lines licensees and
3 insureds to pay premium tax and report clearinghouse
4 transaction data to the clearinghouse, including
5 processing clearinghouse transaction data through
6 state stamping and service offices, state insurance
7 departments, or other state designated agencies or
8 entities;

9 (4) That nonadmitted insurance of multi-state risks shall
10 be subject to all regulatory compliance requirements
11 of the home state exclusively. Home state regulatory
12 compliance requirements applicable to surplus lines
13 insurance shall include licensure requirements for
14 persons to sell, solicit, or negotiate surplus lines
15 insurance; insurer eligibility requirements or other
16 approved nonadmitted insurer requirements, diligent
17 search requirements, and state transaction
18 documentation and clearinghouse transaction data
19 regarding the payment of premium tax under this
20 compact and in rules to be adopted by the commission.
21 Home state regulatory compliance requirements
22 applicable to independently procured insurance



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



1 semiannually, or quarterly, using only one or more of
2 the following dates: March 1, June 1, September 1,
3 and December 1;

4 (8) That each compacting state and contracting state shall
5 prohibit any other state agency or political
6 subdivision from requiring surplus lines licensees to
7 provide clearinghouse transaction data and state
8 transaction documentation other than to the insurance
9 department or tax officials of the home state or a
10 single designated agent of the insurance department or
11 tax officials of the home state;

12 (9) The obligation of the home state itself, through a
13 designated agent, or surplus lines stamping or service
14 office, to collect clearinghouse transaction data from
15 surplus lines licensees and from insureds for
16 independently procured insurance, where applicable,
17 for reporting to the clearinghouse;

18 (10) A method for the clearinghouse to periodically report
19 to compacting states, contracting states, surplus
20 lines licensees, and insureds who independently
21 procure insurance all premium taxes owed to each of
22 the compacting states and contracting states, the



1 dates upon which payment of such premium taxes is due,
2 and a method to pay them through the clearinghouse;

3 (11) That each surplus lines licensee is required to be
4 licensed only in the home state of each insured for
5 whom surplus lines insurance has been procured;

6 (12) That a policy considered to be surplus lines insurance
7 in the insured's home state shall be considered
8 surplus lines insurance in all compacting states and
9 contracting states, and taxed as a surplus lines
10 transaction in all states to which a portion of the
11 risk is allocated. Each compacting state and
12 contracting state shall require each surplus lines
13 licensee to pay to every other compacting state and
14 contracting state premium taxes on each multi-state
15 risk through the clearinghouse at the tax rate charged
16 on surplus lines transactions in the other compacting
17 states and contracting states on the portion of the
18 risk in the compacting state or contracting state, as
19 determined by the applicable uniform allocation
20 formula adopted by the commission. A policy
21 considered to be independently procured insurance in
22 the insured's home state shall be considered



1 independently procured insurance in all compacting
2 states and contracting states. Each compacting state
3 and each contracting state shall require the insured
4 to pay every other compacting state and contracting
5 state the independently procured insurance premium tax
6 on each multi-state risk through the clearinghouse
7 pursuant to the uniform allocation formula adopted by
8 the commission;

9 (13) Uniform foreign insurer eligibility requirements as
10 authorized by the Nonadmitted and Reinsurance Reform
11 Act;

12 (14) A uniform policyholder notice; and

13 (15) Uniform treatment of purchasing group surplus lines
14 insurance placements.

15 **§431:8-F Powers of the commission.** The commission shall
16 have the power to:

17 (1) Adopt rules and operating procedures, pursuant to
18 section 431:8-I of this compact, which shall have the
19 force and effect of law and shall be binding in the
20 compacting states to the extent and in the manner
21 provided in this compact;



- 1 (2) Bring and prosecute legal proceedings or actions in
2 the name of the commission; provided that the standing
3 of a state insurance department to sue or be sued
4 under applicable law shall not be affected;
- 5 (3) Issue subpoenas requiring the attendance and testimony
6 of witnesses and the production of evidence; provided
7 that the commission is not empowered to demand or
8 subpoena records or data from nonadmitted insurers;
- 9 (4) Establish and maintain offices, including the creation
10 of a clearinghouse for the receipt of premium tax and
11 clearinghouse transaction data regarding nonadmitted
12 insurance of multi-state risks, single state risks for
13 states that elect to require surplus lines licensees
14 to pay premium tax on single state risks through the
15 clearinghouse, and tax reporting forms;
- 16 (5) Purchase and maintain insurance and bonds;
- 17 (6) Borrow, accept, or contract for services of personnel,
18 including employees of a compacting state or stamping
19 office, under an open, transparent, objective,
20 competitive process and procedure adopted by the
21 commission;



(7) Hire employees, professionals, or specialists, elect or appoint officers, fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, under an open, transparent, objective, competitive process and procedure adopted by the commission, and establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, qualifications of personnel, and other related personnel matters;

(8) Accept, receive, utilize, and dispose of any appropriate donations and grants of money, equipment, supplies, materials, and services; provided that the commission shall avoid at all times any appearance of impropriety or conflict of interest;

(9) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use any real, personal, or mixed property; provided that the commission shall avoid at all times any appearance of impropriety or conflict of interest;



1 (10) Sell, convey, mortgage, pledge, lease, exchange,
2 abandon, or otherwise dispose of any real, personal,
3 or mixed property;

4 (11) Provide for tax audit rules and procedures for the
5 compacting states with respect to the allocation of
6 premium taxes, including:

7 (A) Minimum audit standards, including sampling
8 methods;

9 (B) Review of internal controls;

10 (C) Cooperation and sharing of audit responsibilities
11 between compacting states;

12 (D) Handling of refunds or credits due to
13 overpayments or improper allocation of premium
14 taxes;

15 (E) Taxpayer records to be reviewed, including a
16 minimum retention period; and

17 (F) Authority of compacting states to review,
18 challenge, or reaudit taxpayer records;

19 (12) Enforce compliance by compacting states and
20 contracting states with rules and bylaws pursuant to
21 section 431:8-0;



1 (13) Provide for dispute resolution among compacting states
2 and contracting states;

3 (14) Advise compacting states and contracting states on tax
4 issues relating to insurers, insureds, surplus lines
5 licensees, agents, or brokers domiciled or doing
6 business in noncompacting states, consistent with the
7 purposes of this compact;

8 (15) Make available advice and training to those personnel
9 in state stamping offices, state insurance
10 departments, or other state departments for record
11 keeping, tax compliance, and tax allocations; and be a
12 resource for state insurance departments and other
13 state departments;

14 (16) Establish a budget and make expenditures;

15 (17) Borrow money;

16 (18) Appoint and oversee committees, including advisory
17 committees comprised of members, state insurance
18 regulators, state legislators or their
19 representatives, insurance industry and consumer
20 representatives, and other interested persons as
21 designated in this compact and the bylaws;



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

18 (20) Establish an operations committee of at least seven
19 and not more than fifteen representatives to provide
20 analysis, advice, determinations, and recommendations
21 regarding technology, software, and systems
22 integration to be acquired by the commission and to



1 provide analysis, advice, determinations, and
2 recommendations regarding the establishment of
3 mandatory rules to be adopted by the commission;

4 (21) Enter into contracts with contracting states to enable
5 contracting states to use the services of and fully
6 participate in the clearinghouse under the terms and
7 conditions set forth in the contracts;

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

9 (23) Perform other functions that are necessary or
10 appropriate to achieve the purposes of this compact
11 consistent with state regulation of the business of
12 insurance.

13 §431:8-G Organization of the commission. (a) The
14 following provisions shall govern commission membership, voting,
15 and bylaws:

16 (1) Each compacting state shall have and is limited to one
17 member. A member shall be chosen through a process
18 and according to the qualifications and method of
19 selection determined by the compacting state. In the
20 absence of a selection provision, the member shall be
21 appointed by the governor of the compacting state. A
22 member may be removed or suspended from office as



1 provided by the law of the compacting state
2 represented by the member. A vacancy occurring in the
3 commission shall be filled in accordance with the laws
4 of the compacting state represented by the member
5 whose position has become vacant;

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

9 (3) The commission, by a majority vote of the members,
10 shall prescribe bylaws to govern its conduct as
11 necessary or appropriate to carry out the purposes and
12 exercise the powers of the compact, including:

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

14 (B) Providing reasonable procedures for holding
15 meetings of the commission, the executive
16 committee, and the operations committee;

17 (C) Providing reasonable standards and procedures for
18 the establishment and meetings of committees and
19 governing any general or specific delegation of
20 any authority or function of the commission;

21 (D) Providing reasonable procedures for calling and
22 conducting meetings of the commission that



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

16 (E) Establishing the titles, duties, authority, and
17 reasonable procedures for the election of the
18 officers of the commission;

19 (F) Providing reasonable standards and procedures for
20 the establishment of the personnel policies and
21 programs of the commission. Notwithstanding any
22 civil service or other similar laws of a



1 compacting state, the bylaws shall exclusively
2 govern the personnel policies and programs of the
3 commission;

4 (G) Adopting a code of ethics to address permissible
5 and prohibited activities of commission members
6 and employees; and

7 (H) Providing a mechanism for winding up the
8 operations of the commission and the equitable
9 disposition of surplus funds that exist after the
10 termination of the compact after the payment or
11 reservation or both of the commission's debts and
12 obligations; and

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

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

19 (1) An executive committee of the commission is
20 established. All actions of the executive committee,
21 including compliance and enforcement, are subject to
22 the review and ratification of the commission as



1 provided in the bylaws. The executive committee shall
2 have no more than fifteen representatives, or one
3 representative for each state if there are less than
4 fifteen compacting states, who are appointed and shall
5 serve for a term in accordance with the bylaws;

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

8 (A) Managing the affairs of the commission in a
9 manner consistent with the bylaws and purposes of
10 the commission;

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

15 (C) Overseeing the offices of the commission; and

16 (D) Planning, implementing, and coordinating
17 communications and activities with other state,
18 federal, and local government organizations to
19 advance the goals of the commission;

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



1 (4) The executive committee may, subject to the approval
2 of the commission and according to terms and
3 conditions, and for a period and compensation that the
4 commission determines to be appropriate, appoint or
5 retain an executive director. The executive director
6 shall serve as secretary to the commission, but shall
7 not serve as a member of the commission. The
8 executive director shall hire and supervise other
9 persons as authorized by the commission.

10 (c) The following provisions shall govern the commission's
11 operations committee:

12 (1) An operations committee is established. All actions
13 of the operations committee are subject to the review
14 and oversight of the commission and the executive
15 committee, and shall be approved by the commission.
16 The executive committee shall accept the
17 determinations and recommendations of the operations
18 committee unless good cause is shown why those
19 determinations and recommendations should not be
20 approved. Disputes as to whether good cause exists to
21 reject a determination or recommendation of the
22 operations committee shall be resolved by the majority



1 vote of the commission. The operations committee
2 shall have no more than fifteen representatives or one
3 representative for each state if there are fewer than
4 fifteen compacting states, who are appointed and shall
5 serve for a term in accordance with the bylaws. The
6 operations committee shall have responsibility for:

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

16 (B) Making recommendations to the executive committee
17 based on the operations committee's analysis and
18 determination of the clearinghouse technology
19 requirements and compatibility with existing
20 state and state stamping office systems;

21 (C) Evaluating the most suitable proposals for
22 adoption as mandatory rules, assessing the



1 proposals for ease of integration by states and
2 likelihood of successful implementation, and
3 reporting to the executive committee the
4 operations committee's determinations and
5 recommendations; and

6 (D) Other duties and responsibilities delegated to
7 the operations committee by the bylaws, the
8 executive committee, or the commission; and

9 (2) All representatives of the operations committee shall
10 be individuals who have extensive experience or
11 employment or both in the surplus lines insurance
12 business, including executives and attorneys employed
13 by surplus lines insurers, surplus lines licensees,
14 law firms, state insurance departments, or state
15 stamping offices, or any combination of these
16 entities. Operations committee representatives from
17 compacting states that utilize the services of a state
18 stamping office shall appoint the chief operating
19 officer or a senior manager of the state stamping
20 office to the operations committee.

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



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

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

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

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

(1) The members, officers, executive director, employees, and representatives of the commission, members of the executive committee, and members of any other



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

- 14 (2) The commission shall defend a member, officer,
15 executive director, employee, or representative of the
16 commission, the executive committee, or any other
17 committee of the commission in any civil action
18 seeking to impose liability arising out of an actual
19 or alleged act, error, or omission that occurred, or
20 that the person against whom the claim is made had a
21 reasonable basis for believing occurred, within the
22 scope of commission employment, duties, or



1 responsibilities; provided that the actual or alleged
2 act, error, or omission did not result from that
3 person's intentional or wilful or wanton misconduct.
4 Nothing in this paragraph may be construed to prohibit
5 the person from retaining the person's own counsel;
6 and

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

20 §431:8-H Meetings and acts of the commission. (a) The
21 commission shall meet and take actions that are consistent with
22 the provisions of this compact and the bylaws.



1 (b) Each member of the commission may cast a vote to which
2 the compacting state represented by the member is entitled, and
3 to participate in the business and affairs of the commission. A
4 member shall vote in person or by other means provided in the
5 bylaws. The bylaws may provide for members' participation in
6 meetings by telephone or other means of communication.

7 (c) The commission shall meet at least once during each
8 calendar year and shall hold additional meetings according to
9 the bylaws.

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

13 (e) The commission shall adopt rules concerning the
14 meetings consistent with the principles contained in the
15 Government in the Sunshine Act, 5 United States Code 552b, as
16 amended.

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

- 21 (1) Relate solely to the commission's internal personnel
22 practices and procedures;



1 (2) Disclose matters specifically exempted from disclosure
2 by federal and state statute;

3 (3) Disclose trade secrets or commercial or financial
4 information that is privileged or confidential;

5 (4) Involve accusing a person of a crime, or formally
6 censuring a person;

7 (5) Disclose information of a personal nature where
8 disclosure would constitute a clearly unwarranted
9 invasion of personal privacy;

10 (6) Disclose investigative records compiled for law
11 enforcement purposes; or

12 (7) Specifically relate to the commission's issuance of a
13 subpoena or the commission's participation in a civil
14 action or other legal proceeding.

15 (g) For a meeting or part of a meeting that is closed
16 pursuant to subsection (f), the commission's legal counsel or
17 the counsel's designee shall certify that the meeting may be
18 closed and shall reference each relevant exemptive provision.
19 The commission shall keep minutes that fully and clearly
20 describe all matters discussed in the meeting and shall provide
21 a full and accurate summary of actions taken and the reasons for
22 the actions, including a description of the views expressed and



1 the record of a roll call vote. All documents considered in
2 connection with an action shall be identified in the minutes.
3 All minutes and documents of a closed meeting shall remain under
4 seal, subject to release by a majority vote of the commission.

5 **§431:8-I Rules and operating procedures; rulemaking**
6 **functions of the commission.** (a) The commission shall adopt
7 reasonable rules to effectively and efficiently achieve the
8 purposes of this compact. If the commission exercises its
9 rulemaking authority in a manner that is beyond the scope of the
10 purposes of this compact, or the powers granted by this compact,
11 the action by the commission shall be invalid and shall have no
12 force or effect.

13 (b) Rules shall be made pursuant to a rulemaking process
14 that substantially conforms to the Model State Administrative
15 Procedure Act of 1981, Uniform Laws Annotated, vol. 15, p. 1
16 (2000) as amended, as appropriate for the operations of the
17 commission.

18 (c) A rule, operating procedure, or amendment to a rule is
19 effective on the date specified in the rule, operating
20 procedure, or amendment.

21 (d) Not later than thirty days after a rule is adopted,
22 any person may file a petition for judicial review of the rule;



1 provided that the filing of a petition for judicial review shall
2 not stay or otherwise prevent the rule from becoming effective
3 unless the court finds that the petitioner has a substantial
4 likelihood of success. The court shall give deference to the
5 actions of the commission consistent with applicable law and
6 shall not find the rule to be unlawful if the rule represents a
7 reasonable exercise of the commission's authority.

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



1 enforcement agencies, records and information otherwise exempt
2 from disclosure, and may enter agreements with the agencies to
3 receive or exchange information or records subject to
4 nondisclosure and confidentiality provisions.

5 (b) Except for privileged records, data, and information,
6 the laws of a compacting state pertaining to confidentiality or
7 nondisclosure shall not relieve a compacting state member of the
8 duty to disclose any relevant records, data, or information to
9 the commission; provided that disclosure to the commission shall
10 not waive or otherwise affect a confidentiality requirement.

11 Except as otherwise expressly provided for in this compact, the
12 commission shall not be subject to the compacting state's laws
13 pertaining to confidentiality and nondisclosure with respect to
14 records, data, and information in the commission's possession.

15 Confidential information of the commission shall remain
16 confidential after the information is provided to a member. The
17 commission shall maintain the confidentiality of information
18 provided by a member if that information is confidential under
19 the member's state's law.

20 (c) The commission shall monitor compacting states for
21 compliance with the bylaws and rules. The commission shall
22 provide written notice of noncompliance to a compacting state



1 that does not comply with the bylaws and rules. If a compacting
2 state that receives a notice of noncompliance fails to remedy
3 the noncompliance within the time specified in the notice of
4 noncompliance, the compacting state shall be considered in
5 default as set forth in section 431:8-0(b).

6 **§431:8-K Dispute resolution.** (a) The commission shall
7 attempt, upon the request of a member, to resolve disputes or
8 other issues that are subject to this compact and that may arise
9 between two or more compacting states, contracting states, or
10 noncompacting states. A member may not bring an action in a
11 court with competent jurisdiction alleging a violation of a
12 provision, standard, or requirement of this compact unless the
13 commission, at the member's request, has attempted to resolve
14 the dispute concerning the alleged violation.

15 (b) The commission shall provide alternative dispute
16 resolution procedures to resolve any disputes between insureds
17 or surplus lines licensees concerning tax calculation or
18 allocation or related issues that are the subject of this
19 compact.

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



1 §431:8-L Review of commission decisions. (a) Except as
2 necessary for adopting rules to fulfill the purposes of this
3 compact, the commission shall not otherwise regulate insurance
4 in the compacting states.

5 (b) No later than thirty days after the commission has
6 given notice of a rule or allocation formula, a third party
7 filer or compacting state may appeal the determination to a
8 review panel appointed by the commission. The commission shall
9 adopt rules to establish procedures for the appointment of
10 review panels and to provide for notice and hearing in the
11 appeal. An allegation that the commission, in making a
12 compliance or tax determination, acted arbitrarily,
13 capriciously, or in a manner that is an abuse of discretion or
14 otherwise not in accordance with the law, is subject to judicial
15 review in accordance with section 431:8-D(f).

16 (c) The commission may monitor, review, and reconsider
17 commission decisions upon a finding that the determinations or
18 allocations do not meet the relevant rule. Where appropriate,
19 the commission may withdraw or modify a determination or
20 allocation after proper notice and hearing, subject to the
21 appeal process in subsection (b).



1 **§431:8-M Finance.** (a) The commission shall pay or
2 provide for the payment of the reasonable expenses of the
3 commission's establishment and organization. To fund the cost
4 of the commission's initial operations, the commission may
5 accept contributions, grants, and other forms of funding from
6 state stamping offices, compacting states, and other sources.

7 (b) The commission shall collect a fee, payable by the
8 insured directly or through a surplus lines licensee, on each
9 transaction processed through the compact clearinghouse, to
10 cover the cost of the operations and activities of the
11 commission and the commission's staff. The revenue from the fee
12 shall be sufficient to cover the commission's annual budget.

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

16 (d) The commission shall be regarded as performing
17 essential governmental functions in exercising the commission's
18 powers and functions and carrying out the provisions of this
19 compact and any law relating to this compact. The commission
20 shall not be required to pay a tax or assessment of any kind
21 levied by a state or political subdivision upon property used by
22 the commission for, or income or revenue resulting from, the



1 purposes described in this subsection, including any profit from
2 a sale or exchange.

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



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

3 (f) A compacting state shall not have a claim to, or
4 ownership of, property held by or vested in the commission or to
5 commission funds held pursuant to this compact.

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

11 §431:8-N Compacting states; effective date; amendment.

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

13 (b) The compact shall become effective and binding upon
14 legislative enactment of the compact into law by two compacting
15 states. The commission established by this compact shall become
16 effective for purposes of adopting rules and creating the
17 clearinghouse when there are a total of ten compacting states
18 and contracting states or, when there are compacting states and
19 contracting states representing more than forty per cent of the
20 surplus lines insurance premium volume based on records of the
21 percentage of surplus lines insurance premium set forth in the
22 following table:



1	Surplus Line Insurance Premiums by State (Appendix A)		
2		Premiums based	Share of total
3	State	on taxes paid	premiums
4	Alabama	\$445,746,000	1.47%
5	Alaska	\$89,453,519	0.29%
6	Arizona	\$663,703,267	2.18%
7	Arkansas	\$201,859,750	0.66%
8	California	\$5,622,450,467	18.49%
9	Colorado	\$543,781,333	1.79%
10	Connecticut	\$329,358,800	1.08%
11	Delaware	\$92,835,950	0.31%
12	Florida	\$2,660,908,760	8.75%
13	Georgia	\$895,643,150	2.95%
14	Hawaii	\$232,951,489	0.77%
15	Idaho	\$74,202,255	0.24%
16	Illinois	\$1,016,504,629	3.34%
17	Indiana	\$412,265,320	1.36%
18	Iowa	\$135,130,933	0.44%
19	Kansas	\$160,279,300	0.53%
20	Kentucky	\$167,996,133	0.55%
21	Louisiana	\$853,173,280	2.81%
22	Maine	\$60,111,200	0.20%



1	Maryland	\$434,887,600	1.43%
2	Massachusetts	\$708,640,225	2.33%
3	Michigan	\$703,357,040	2.31%
4	Minnesota	\$393,128,400	1.29%
5	Mississippi	\$263,313,175	0.87%
6	Missouri	\$404,489,860	1.33%
7	Montana	\$64,692,873	0.21%
8	Nebraska	\$92,141,167	0.30%
9	Nevada	\$354,271,514	1.17%
10	New Hampshire	\$102,946,250	0.34%
11	New Jersey	\$1,087,994,033	3.58%
12	New Mexico	\$67,608,458	0.22%
13	New York	\$2,768,618,083	9.11%
14	North Carolina	\$514,965,060	1.69%
15	North Dakota	\$36,223,943	0.12%
16	Ohio	\$342,000,000	1.12%
17	Oklahoma	\$319,526,400	1.05%
18	Oregon	\$312,702,150	1.03%
19	Pennsylvania	\$780,666,667	2.57%
20	Rhode Island	\$71,794,067	0.24%
21	South Carolina	\$412,489,825	1.36%
22	South Dakota	\$38,702,120	0.13%



1	Tennessee	\$451,775,240	1.49%
2	Texas	\$3,059,170,454	10.06%
3	Utah	\$142,593,412	0.47%
4	Vermont	\$41,919,433	0.14%
5	Virginia	\$611,530,667	2.01%
6	Washington	\$739,932,050	2.43%
7	West Virginia	\$130,476,250	0.43%
8	Wisconsin	\$248,758,333	0.82%
9	Wyoming	\$40,526,967	0.13%
10	Total	\$30,400,197,251	100.00%

11 This data is 2005 calendar year data excerpted from a study
12 dated February 27, 2007, by Mackin & Company.

13 Thereafter, it shall become effective and binding as to any
14 other compacting state upon the enactment of the compact into
15 law by that state. Notwithstanding the foregoing, the
16 clearinghouse operations and the duty to report clearinghouse
17 transaction data shall begin on the first January 1 or July 1
18 following the first anniversary of the commission's effective
19 date. The commission shall set a date for the reporting of
20 clearinghouse transaction data by states that become compacting
21 states after the commission's effective date, and provide at
22 least ninety days advance notice of the date for the reporting



1 of clearinghouse data to surplus lines licensees and all other
2 interested parties.

3 (c) Amendments to this compact may be proposed by the
4 commission for enactment by the compacting states. An amendment
5 to this compact is not effective and binding upon the commission
6 and the compacting states unless and until all compacting states
7 enact the amendment into law.

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

10 (1) Once effective, the compact shall continue in force
11 and remain binding upon every compacting state;
12 provided that a compacting state may withdraw from the
13 compact by enacting a statute specifically repealing
14 the statute that enacted the compact into law;

15 (2) The effective date of a compacting state's withdrawal
16 under paragraph (1) is the effective date of the
17 repealing statute; provided that the withdrawal under
18 paragraph (1) shall not apply to a tax or compliance
19 determination that has already been approved on the
20 date the repealing statute becomes effective, except
21 by mutual agreement of the commission and the
22 withdrawing state unless the approval of the tax or



1 compliance determination is rescinded by the
2 commission;

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

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

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



1 (6) Reinstatement following withdrawal of any compacting
2 state shall occur upon the effective date of the
3 withdrawing state's legislature reenacting the
4 compact.

5 (b) The following provisions shall govern default by a
6 compacting state:

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



1 conditions and the time period within which the
2 defaulting state shall cure its default. If the
3 defaulting state fails to cure the default within the
4 time period specified by the commission, the
5 defaulting state shall be terminated from this compact
6 and all rights, privileges, and benefits conferred by
7 this compact shall be terminated on the effective date
8 of the state's termination from this compact;

9 (2) Decisions of the commission that have already been
10 issued on the effective date of a state's termination
11 shall remain in force in the defaulting state in the
12 same manner as if the defaulting state had withdrawn
13 voluntarily pursuant to subsection (a); and

14 (3) Reinstatement following termination of a compacting
15 state requires a legislative reenactment of the
16 compact.

17 (c) The following provisions shall govern termination of
18 the compact:

19 (1) The compact dissolves effective on the date of the
20 withdrawal or termination for default of the
21 compacting state whose withdrawal or termination



1 reduces membership in the compact to one compacting
2 state; and

3 (2) Upon the dissolution of this compact, the compact
4 becomes void and shall have no further force or
5 effect, and the business and affairs of the commission
6 shall be wound up and any surplus funds shall be
7 distributed in accordance with the bylaws and rules.

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

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

15 (c) Any headings and captions of sections and subsections
16 used in this compact are for convenience only and shall be
17 ignored in construing the substantive provisions of this
18 compact.

19 **§431:8-Q Binding effect of compact and other laws.** (a)
20 The following provisions shall govern the effect of the compact
21 on other laws:



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

4 (2) Decisions of the commission and rules and other
5 requirements of the commission shall constitute the
6 exclusive rule or determination applicable to the
7 compacting states. A law or regulation regarding
8 nonadmitted insurance of multi-state risks that is
9 contrary to rules of the commission is preempted with
10 respect to the following:

11 (A) Clearinghouse transaction data reporting
12 requirements;

13 (B) Allocation formula;

14 (C) Clearinghouse transaction data collection
15 requirements;

16 (D) Premium tax payment time frames and rules
17 concerning dissemination of data among the
18 compacting states for nonadmitted insurance of
19 multi-state risks and single state risks;

20 (E) Exclusive compliance with surplus lines law of
21 the home state of the insured;



(F) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to nonadmitted insurance of multi-state risks;

(G) Uniform foreign insurers eligibility requirements;

(H) Uniform policyholder notice; and

(I) Uniform treatment of purchasing groups procuring nonadmitted insurance; and

(3) Except as provided in paragraph (2), a rule, uniform standard, or other requirement of the commission constitutes the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, an action taken by the commission shall not abrogate or restrict: the access of any person to state courts; the availability of alternative dispute resolution under section 431:8-K; remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; state law relating to the construction of insurance contracts; or the authority of the



1 attorney general of the state, including maintaining
2 any actions or proceedings, as authorized by law.

3 (b) The following provisions shall govern the binding
4 effect of this compact:

5 (1) Except as provided in this subsection, lawful actions
6 of the commission, including rules adopted by the
7 commission, are binding upon the compacting states;

8 (2) Agreements between the commission and the compacting
9 states are binding in accordance with the terms of the
10 agreements;

11 (3) Upon the request of a party to a conflict over the
12 meaning or interpretation of a commission action, and
13 upon a majority vote of the compacting states, the
14 commission may issue advisory opinions regarding the
15 meaning or interpretation in dispute. This paragraph
16 may be implemented by rule at the discretion of the
17 commission; and

18 (4) If a provision of this compact exceeds the
19 constitutional limits imposed on the legislature of a
20 compacting state, the conferral upon the commission of
21 obligations, duties, powers, and jurisdiction through
22 this compact is ineffective as to the compacting



1 state, and the obligations, duties, powers, and
2 jurisdiction shall remain in the compacting state and
3 shall be exercised by the agency of the compacting
4 state to which the obligations, duties, powers, or
5 jurisdiction are delegated by law in effect at the
6 time this compact becomes effective."

7 **PART IV**

8 SECTION 7. In codifying the new sections added by section
9 6 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

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

14 SECTION 9. This Act shall take effect on July 1, 2050.



Report Title:

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

Description:

Directs the insurance commissioner to join the surplus lines
insurance multi-state compliance compact. Enacts the surplus
lines insurance multi-state compliance compact. Effective
07/01/2050. (SD2)

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

