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

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

SECTION 1. SURPLUS LINES INSURANCE MULTISTATE
COMPLIANCE COMPACT ENTERED INTO.--The "Surplus Lines
Insurance Multistate Compliance Compact" is enacted into law
and entered into with all other jurisdictions legally joining
therein in the form substantially as follows:

"SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT

ARTICLE 1

PURPOSE

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

- A. implement the express provisions of the federal
act;
- B. protect the premium tax revenues of the
compacting states through facilitating the payment and
collection of premium tax on non-admitted insurance;
- C. protect the interests of the compacting states

1 by supporting the continued availability of such insurance to
2 consumers;

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

7 E. streamline and improve the efficiency of the
8 surplus lines market by eliminating duplicative and
9 inconsistent tax and regulatory requirements among the
10 states;

11 F. promote and protect the interest of surplus
12 lines licensees who assist insureds and surplus lines
13 insurers, thereby ensuring the continued availability of
14 surplus lines insurance to consumers;

15 G. streamline regulatory compliance with respect
16 to non-admitted insurance placements by providing for
17 exclusive single-state regulatory compliance for non-admitted
18 insurance of multistate risks, in accordance with rules to be
19 adopted by the commission, thereby providing certainty
20 regarding such compliance to all persons who have an interest
21 in such transactions, including, but not limited to,
22 insureds, regulators, surplus lines licensees, other
23 insurance producers and surplus lines insurers;

24 H. establish a clearinghouse for receipt and
25 dissemination of premium tax and clearinghouse transaction

1 data related to non-admitted insurance of multistate risks,
2 in accordance with rules to be adopted by the commission;

3 I. improve coordination of regulatory resources
4 and expertise between state insurance departments and other
5 state agencies, as well as state surplus lines stamping
6 offices, with respect to non-admitted insurance;

7 J. adopt uniform rules to provide for premium tax
8 payment, reporting, allocation, data collection and
9 dissemination for non-admitted insurance of multistate risks
10 and single-state risks, thereby promoting the overall
11 efficiency of the non-admitted insurance market;

12 K. adopt uniform mandatory rules with respect to
13 regulatory compliance requirements for:

14 (1) foreign insurer eligibility
15 requirements; and

16 (2) surplus lines policyholder notices;

17 L. establish the surplus lines insurance
18 multistate compliance compact commission;

19 M. coordinate reporting of clearinghouse
20 transaction data on non-admitted insurance of multistate
21 risks among compacting states and contracting states; and

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

24 ARTICLE 2

25 DEFINITIONS

1 As used in the Surplus Lines Insurance Multistate
2 Compliance Compact:

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

6 B. "allocation formula" means the uniform methods
7 promulgated by the commission by which insured risk exposures
8 will be apportioned to each state for the purpose of
9 calculating premium taxes due;

10 C. "bylaws" means those bylaws established by the
11 commission for its governance or for directing or controlling
12 the commission's actions or conduct;

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

20 E. "clearinghouse transaction data" means the
21 information regarding non-admitted insurance of multistate
22 risks required to be reported, accepted, collected, processed
23 and disseminated by surplus lines licensees for surplus lines
24 insurance and insureds for independently procured insurance
25 under this compact and rules to be adopted by the commission.

1 Clearinghouse transaction data includes information related
2 to single-state risks if a state elects to have the
3 clearinghouse collect taxes on single-state risks for such
4 state;

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

8 G. "commission" means the surplus lines insurance
9 multistate compliance compact commission;

10 H. "commissioner" means the chief insurance
11 regulatory official of a state, including, but not limited
12 to, commissioner, superintendent, director or administrator
13 or their designees;

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

18 J. "control" means:

19 (1) directly, indirectly or acting through
20 one or more other persons, owning, controlling or having the
21 power to vote twenty-five percent or more of any class of
22 voting securities of another entity; or

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

25 K. "federal act" means the federal Nonadmitted and

1 Reinsurance Reform Act of 2009, which is 30 Title V, Subtitle
2 B of the federal Dodd-Frank Wall Street Reform and Consumer
3 Protection Act;

4 L. "home state" means

5 (1) with respect to an insured:

6 (a) the state in which an insured
7 maintains its principal place of business or, in the case of
8 an individual, the individual's principal residence; or

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

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

21 M. "independently procured insurance" means
22 insurance procured by an insured directly from a surplus
23 lines insurer or other non-admitted insurer as permitted by
24 the laws of the home state;

25 N. "insurer eligibility requirements" means the

1 criteria, forms and procedures established to qualify as a
2 surplus lines insurer under the law of the home state;
3 provided that such criteria, forms and procedures are
4 consistent with the express provisions of the federal act on
5 and after July 21, 2011;

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

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

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

14 R. "non-admitted insurance" means surplus lines
15 insurance and independently procured insurance;

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

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

23 U. "premium tax" means, with respect to
24 non-admitted insurance, any tax, fee, assessment or other
25 charge imposed by a government entity, directly or indirectly

1 based on any payment made as consideration for such
2 insurance, including premium deposits, assessments,
3 registration fees and any other compensation given in
4 consideration for a contract of insurance;

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

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

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

1 force and effect of law in the compacting states;

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

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

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

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

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

24 DD. "surplus lines licensee" means an individual,
25 firm or corporation licensed under the law of the home state

1 to place surplus lines insurance.

2 ARTICLE 3

3 ESTABLISHMENT OF THE COMMISSION AND VENUE

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

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

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

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

24 E. The commission is solely responsible for its
25 liabilities, except as otherwise specifically provided in

1 this compact.

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

9 ARTICLE 4

10 AUTHORITY TO ESTABLISH MANDATORY RULES

11 The commission shall adopt mandatory rules that
12 establish:

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

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

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

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

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

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

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

18 (c) diligent search; and

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

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

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

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

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

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

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

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

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

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

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

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

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

17 M. uniform foreign insurer eligibility
18 requirements as authorized by the federal act;

19 N. a uniform policyholder notice; and

20 O. uniform treatment of purchasing group surplus
21 lines insurance placements.

22 ARTICLE 5

23 POWERS OF THE COMMISSION

24 The commission shall have the power to:

25 A. promulgate rules and operating procedures,

1 pursuant to Article 8 of this compact, that shall have the
2 force and effect of law and shall be binding in the
3 compacting states to the extent and in the manner provided in
4 this compact; provided that, except as necessary for
5 promulgating rules to fulfill the purposes of this compact,
6 the commission shall not have authority to otherwise regulate
7 insurance in the compacting states;

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

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

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

24 E. purchase and maintain insurance and bonds;

25 F. borrow, accept or contract for services of

1 personnel, including, but not limited to, employees of a
2 compacting state or stamping office, pursuant to an open,
3 transparent, objective competitive process and procedure
4 adopted by the commission;

5 G. hire employees, professionals or specialists
6 and elect or appoint officers and to:

7 (1) fix their compensation, define their
8 duties and give them appropriate authority to carry out the
9 purposes of this compact; and

10 (2) determine their qualifications, pursuant
11 to an open, transparent, objective competitive process and
12 procedure adopted by the commission;

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

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

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

1 conflict of interest;

2 K. sell, convey, mortgage, pledge, lease,
3 exchange, abandon or otherwise dispose of any property, real,
4 personal or mixed;

5 L. provide for tax audit rules and procedures for
6 the compacting states with respect to the allocation of
7 premium taxes, including:

8 (1) minimum audit standards and sampling
9 methods;

10 (2) review of internal controls;

11 (3) cooperation and sharing of audit
12 responsibilities between compacting states;

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

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

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

19 M. enforce compliance by compacting states and
20 contracting states with rules;

21 N. provide for dispute resolution among compacting
22 states and contracting states;

23 O. advise compacting states and contracting states
24 on tax-related issues relating to insurers, insureds, surplus
25 lines licensees, agents or brokers domiciled or doing

1 business in non-compacting states, consistent with the
2 purposes of this compact;

3 P. make available advice and training to those
4 personnel in state stamping offices, state insurance
5 departments or other state departments for recordkeeping, tax
6 compliance and tax allocations and be a resource for state
7 insurance departments and other state departments;

8 Q. establish a budget and make expenditures;

9 R. borrow money;

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

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

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

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

24 W. adopt and use a corporate seal; and

25 X. perform other functions as may be necessary or

1 appropriate to achieve the purposes of this compact
2 consistent with the state regulation of the business of
3 insurance.

4 ARTICLE 6

5 ORGANIZATION OF THE COMMISSION

6 A. The following provisions shall govern
7 commission membership, voting and bylaws:

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

20 (2) each member shall be entitled to one
21 vote and shall otherwise have an opportunity to participate
22 in the governance of the commission in accordance with the
23 bylaws;

24 (3) the commission shall, by a majority vote
25 of the members, prescribe bylaws to govern its conduct as may

1 be necessary or appropriate to carry out the purposes and
2 exercise the powers of the compact, including, but not
3 limited to:

4 (a) establishing the fiscal year of the
5 commission;

6 (b) providing reasonable procedures for
7 holding meetings of the commission, the executive committee
8 and the operations committee;

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

13 (d) providing reasonable procedures for
14 calling and conducting meetings of the commission that
15 consist of a majority of commission members, ensuring
16 reasonable advance notice of each meeting and providing for
17 the right of citizens to attend each meeting with enumerated
18 exceptions designed to protect the public's interest, the
19 privacy of individuals and insurers and surplus lines
20 licensees' proprietary information, including trade secrets.

21 The commission may meet privately only after a majority of
22 the entire membership votes to close a meeting in whole or in
23 part. As soon as practicable, the commission must make
24 public: 1) a copy of the vote to close the meeting,
25 revealing the vote of each member with no proxy votes

1 allowed; and 2) votes taken during the meeting;

2 (e) establishing the titles, duties and
3 authority and reasonable procedures for the election of the
4 officers of the commission;

5 (f) providing reasonable standards and
6 procedures for the establishment of the personnel policies
7 and programs of the commission. Notwithstanding any civil
8 service or other similar laws of any compacting state, the
9 bylaws shall exclusively govern the personnel policies and
10 programs of the commission;

11 (g) promulgating a code of ethics to
12 address permissible and prohibited activities of commission
13 members and employees; and

14 (h) providing a mechanism for winding
15 up the operations of the commission and the equitable
16 disposition of any surplus funds that may exist after the
17 termination of the compact and after the payment or reserving
18 of all of its debts and obligations; and

19 (4) the commission shall publish its bylaws
20 in a convenient form and file a copy thereof and a copy of
21 any amendment thereto with the appropriate agency or officer
22 in each of the compacting states.

23 B. An executive committee of the commission shall
24 be established.

25 (1) All actions of the executive committee,

1 including compliance and enforcement, are subject to the
2 review and ratification of the commission as provided in the
3 bylaws.

4 (2) The executive committee shall have no
5 more than fifteen nor less than seven members, provided that,
6 if there are fewer than fifteen compacting states, the
7 executive committee shall have one member for each state.
8 Each member shall be entitled to one vote. Members of the
9 executive committee shall serve for a term of one year.

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

13 (a) managing the affairs of the
14 commission in a manner consistent with the bylaws and
15 purposes of the commission;

16 (b) acting on behalf of the commission,
17 with the exception of rulemaking, during periods when the
18 commission is not in session;

19 (c) establishing and overseeing an
20 organizational structure within, and appropriate procedures
21 for the commission to provide for the creation of, rules and
22 operating procedures;

23 (d) overseeing the day-to-day
24 activities of the administration of the compact, including
25 the activities of the operations committee and compliance

1 with and enforcement of the provisions of the compact; and

2 (e) planning, implementing and
3 coordinating communications and activities with other state,
4 federal and local government organizations in order to
5 advance the goals of the commission.

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

10 (5) The executive committee may, subject to
11 the approval of the commission, appoint or retain an
12 executive director for a period, upon terms and conditions
13 and for a compensation as the commission may deem
14 appropriate, and who shall:

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

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

19 C. An operations committee shall be established.

20 (1) All actions of the operations committee
21 are subject to the review and oversight of the commission and
22 the executive committee and shall be approved by the
23 commission.

24 (2) The executive committee shall accept the
25 determinations and recommendations of the operations

1 committee unless good cause is shown why such determinations
2 and recommendations should not be approved.

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

7 (4) The operations committee shall have no
8 more than fifteen nor less than seven members, provided that,
9 if there are fewer than fifteen compacting states, the
10 operations committee shall have one member for each state.
11 Each member shall be entitled to one vote. Members of the
12 operations committee shall serve for a term and shall be
13 established as set forth in the bylaws.

14 (5) The operations committee shall have
15 responsibility for:

16 (a) evaluating technology requirements
17 for the clearinghouse, assessing existing systems used by
18 state regulatory agencies and state stamping offices to
19 maximize the efficiency and successful integration of the
20 clearinghouse technology systems with state and state
21 stamping office technology platforms and to minimize costs to
22 the states, state stamping offices and the clearinghouse;

23 (b) making recommendations to the
24 executive committee based on its analysis and determination
25 of the clearinghouse technology requirements and

1 compatibility with existing state and state stamping office
2 systems;

3 (c) evaluating the most suitable
4 proposals for adoption as mandatory rules, assessing
5 proposals for ease of integration by states and likelihood of
6 successful implementation and reporting to the executive
7 committee its determinations and recommendations; and

8 (d) such other duties and
9 responsibilities as are delegated to it by the bylaws, the
10 executive committee or the commission.

11 (6) All members of the operations committee
12 shall be individuals who have extensive experience or
13 employment in the surplus lines insurance business,
14 including, but not limited to, executives and attorneys
15 employed by surplus lines insurers, surplus line licensees,
16 law firms, state insurance departments or state stamping
17 offices. Operations committee representatives from
18 compacting states that use the services of a state stamping
19 office shall appoint the chief operating officer or a senior
20 manager of the state stamping office to the operations
21 committee.

22 D. A legislative committee composed of state
23 legislators or their designees shall be established to
24 monitor the operations of and make recommendations to the
25 commission and the executive committee; provided that the

1 manner of selection and term of any legislative committee
2 member shall be as set forth in the bylaws. Prior to the
3 adoption by the commission of any uniform standard, revision
4 to the bylaws, annual budget or other significant matter as
5 may be provided in the bylaws, the executive committee shall
6 consult with, and report to, the legislative committee.

7 E. The commission may establish additional
8 advisory committees as its bylaws may provide for the
9 carrying out of its functions.

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

12 G. 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, 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
20 the claim is made had a reasonable basis for believing
21 occurred, within the scope of commission employment, duties
22 or responsibilities; provided that nothing in this subsection
23 shall be construed to protect any person from suit or
24 liability for any damage, loss, injury or liability caused by
25 the intentional or willful or wanton misconduct of that

1 person.

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

16 I. The commission shall indemnify and hold
17 harmless any member, officer, executive director, employee or
18 representative of the commission, executive committee or any
19 other committee of the commission for the amount of any
20 settlement or judgment obtained against that person arising
21 out of an actual or alleged act, error or omission that
22 occurred within the scope of commission employment, duties or
23 responsibilities, or that person had a reasonable basis for
24 believing occurred within the scope of commission employment,
25 duties or responsibilities; provided that the actual or

1 alleged act, error or omission did not result from the
2 intentional or willful or wanton misconduct of that person.

3 ARTICLE 7

4 MEETINGS AND ACTS OF THE COMMISSION

5 A. The commission shall meet and take such actions
6 as are consistent with the provisions of this compact and the
7 bylaws.

8 B. Each member of the commission shall have the
9 right and power to cast a vote to which that compacting state
10 is entitled and to participate in the business and affairs of
11 the commission. A member shall vote in person or by such
12 other means as provided in the bylaws. The bylaws may
13 provide for members' participation in meetings by telephone
14 or other means of communication.

15 C. The commission shall meet at least once during
16 each calendar year. Additional meetings shall be held as set
17 forth in the bylaws.

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

21 E. The commission shall promulgate rules
22 concerning its meetings consistent with the principles
23 contained in the federal Government in the Sunshine Act,
24 4 U.S.C. Section 552b, as may be amended.

25 F. The commission and its committees may close a

1 meeting, or portion thereof, when they determine by majority
2 vote that an open meeting would be likely to:

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

5 (2) disclose matters specifically exempted
6 from disclosure by federal and state statute;

7 (3) disclose trade secrets or commercial or
8 financial information that is privileged or confidential;

9 (4) involve accusing a person of a crime or
10 involve formally censuring a person;

11 (5) disclose information of a personal
12 nature when disclosure would constitute a clearly unwarranted
13 invasion of personal privacy;

14 (6) disclose investigative records compiled
15 for law enforcement purposes; or

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

19 G. For a meeting, or portion of a meeting, closed
20 pursuant to this provision, the commission's legal counsel or
21 designee shall certify that the meeting may be closed and
22 shall reference each relevant exemptive provision. The
23 commission shall keep minutes that shall fully and clearly
24 describe all matters discussed in a meeting and shall provide
25 a full and accurate summary of actions taken, and the reasons

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

7 ARTICLE 8

8 RULEMAKING FUNCTIONS OF THE COMMISSION

9 A. The commission shall promulgate reasonable
10 rules in order to effectively and efficiently achieve the
11 purposes of this compact; provided that, in the event the
12 commission exercises its rulemaking authority in a manner
13 that is beyond the scope of the purposes of this compact or
14 the powers that it grants, such an action by the commission
15 shall be invalid and have no force or effect.

16 B. Rules shall be made pursuant to a rulemaking
17 process that substantially conforms to the 1981 Model State
18 Administrative Procedure Act, Uniform Laws Annotated, Vol.
19 15, p.1 (2000) as amended, as may be appropriate to the
20 operations of the commission.

21 C. All rules shall become effective as of the date
22 specified in each rule.

23 D. Not later than thirty days after a rule is
24 promulgated, a person may file a petition for judicial review
25 of the rule; provided that the filing of the petition shall

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

8 ARTICLE 9

9 COMMISSION RECORDS AND ENFORCEMENT

10 A. The commission shall promulgate rules
11 establishing conditions and procedures for public inspection
12 and copying of its information and official records, except
13 for information and records involving the privacy of
14 individuals, insurers, insureds or surplus lines licensee
15 trade secrets. State transaction documentation and
16 clearinghouse transaction data collected by the clearinghouse
17 shall be used for only those purposes expressed in or
18 reasonably implied under the provisions of this compact, and
19 the commission shall afford this data the broadest
20 protections as permitted by any applicable law for
21 proprietary information, trade secrets or personal data. The
22 commission may promulgate additional rules under which it may
23 make available to federal and state agencies, including law
24 enforcement agencies, records and information otherwise
25 exempt from disclosure and may enter into agreements with

1 such agencies to receive or exchange information or records
2 subject to nondisclosure and confidentiality provisions.

3 B. Except as to privileged records, data and
4 information, the laws of a compacting state pertaining to
5 confidentiality or nondisclosure shall not relieve any
6 compacting state member of the duty to disclose any relevant
7 records, data or information to the commission; provided that
8 disclosure to the commission shall not be deemed to waive or
9 otherwise affect any confidentiality requirement; and
10 provided further that, except as otherwise expressly provided
11 in this compact, the commission shall not be subject to the
12 compacting state's laws pertaining to confidentiality and
13 nondisclosure with respect to records, data and information
14 in its possession. Confidential information of the
15 commission shall remain confidential after such information
16 is provided to a member, and the commission shall maintain
17 the confidentiality of information provided by a member that
18 is confidential under that member's state law.

19 C. The commission shall monitor compacting states
20 for compliance with duly adopted bylaws and rules. The
21 commission shall notify a non-complying compacting state in
22 writing of its noncompliance with commission bylaws or rules.
23 If a non-complying compacting state fails to remedy its
24 noncompliance within the time specified in the notice of
25 noncompliance, the compacting state shall be deemed to be in

1 default as set forth in Article 14 of this compact.

2 ARTICLE 10

3 DISPUTE RESOLUTION

4 A. Before a member may bring an action in a court
5 of competent jurisdiction for violation of a provision,
6 standard or requirement of the compact, 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
9 arise between two or more compacting states, contracting
10 states or non-compacting states, and the commission shall
11 promulgate a rule providing alternative dispute resolution
12 procedures for such disputes.

13 B. The commission shall also provide alternative
14 dispute resolution procedures to resolve disputes between
15 insureds or surplus lines licensees concerning a tax
16 calculation or allocation or related issues that are the
17 subject of this compact.

18 C. Any alternative dispute resolution procedures
19 shall be used in circumstances in which a dispute arises as
20 to which state constitutes the home state.

21 ARTICLE 11

22 REVIEW OF COMMISSION DECISIONS

23 A. Not later than thirty days after the commission
24 has given notice of a rule or allocation formula, a third
25 party filer or compacting state may appeal the determination

1 to a review panel appointed by the commission. The
2 commission shall promulgate rules to establish procedures for
3 appointing review panels and provide for notice and hearing.
4 An allegation that the commission, in making compliance or
5 tax determinations, acted arbitrarily, capriciously or in a
6 manner that is an abuse of discretion or otherwise not in
7 accordance with the law is subject to judicial review in
8 accordance with Subsection F of Article 3 of this compact.

9 B. The commission shall have authority to monitor,
10 review and reconsider commission decisions upon a finding
11 that the determinations or allocations do not meet the
12 relevant rule. Where appropriate, the commission may
13 withdraw or modify its determination or allocation after
14 proper notice and hearing, subject to the appeal process in
15 Subsection A of this article.

16 ARTICLE 12

17 FINANCE

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

24 B. The commission shall collect a fee payable by
25 the insured directly or through a surplus lines licensee on

1 each transaction processed through the compact clearinghouse
2 to cover the cost of the operations and activities of the
3 commission and its staff in a total amount sufficient to
4 cover the commission's annual budget.

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

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

17 E. The commission shall keep complete and accurate
18 accounts of all its internal receipts, including grants and
19 donations, and disbursements for all funds under its control.
20 The internal financial accounts of the commission shall be
21 subject to the accounting procedures established under its
22 bylaws. The financial accounts and reports, including the
23 system of internal controls and procedures of the commission,
24 shall be audited annually by an independent certified public
25 accountant. Upon the determination of the commission, but

1 not less frequently than every three years, the review of the
2 independent auditor shall include a management and
3 performance audit of the commission. The commission shall
4 make an annual report to the governor and legislature of the
5 compacting states, which report shall include a report of the
6 independent audit. The commission's internal accounts shall
7 not be confidential, and the materials may be shared with the
8 commissioner, the controller or the stamping office of any
9 compacting state upon request; provided, however, that work
10 papers related to an internal or independent audit and any
11 information regarding the privacy of individuals and
12 licensees' and insurers' proprietary information, including
13 trade secrets, shall remain confidential.

14 F. No compacting state shall have claim to or
15 ownership of any property held by or vested in the commission
16 or to any commission funds held pursuant to the provisions of
17 this compact.

18 G. The commission shall not make any political
19 contributions to candidates for elected office, elected
20 officials, political parties or political action committees.
21 The commission shall not engage in lobbying except with
22 respect to changes to this compact.

23 ARTICLE 13

24 COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

25 A. Any state is eligible to become a compacting

1 state.

2 B. The compact shall become effective and binding
3 upon legislative enactment of the compact into law by two
4 compacting states; provided that the commission shall become
5 effective for purposes of adopting rules and creating the
6 clearinghouse when there are a total of ten compacting states
7 and contracting states or, alternatively, when there are
8 compacting states and contracting states representing greater
9 than forty percent of the surplus lines insurance premium
10 volume based on records of the percentage of surplus lines
11 insurance premium for calendar year 2005 as shown in a study
12 dated February 27, 2007 by Mackin and Company. Thereafter,
13 it shall become effective and binding as to any other
14 compacting state upon enactment of the compact into law by
15 that state; provided that the clearinghouse operations and
16 the duty to report clearinghouse transaction data shall begin
17 on the first January 1 or July 1 following the first
18 anniversary of the commission's effective date. For states
19 that join the compact subsequent to the effective date, a
20 start date for reporting clearinghouse transaction data shall
21 be set by the commission; provided that surplus lines
22 licensees and all other interested parties receive not less
23 than ninety days advance notice.

24 C. Amendments to the compact may be proposed by
25 the commission for enactment by the compacting states. No

1 amendment shall become effective and binding upon the
2 commission and the compacting states unless and until all
3 compacting states enact the amendment into law.

4 ARTICLE 14

5 WITHDRAWAL, DEFAULT AND TERMINATION

6 A. The following provisions govern withdrawal of a
7 state from the commission:

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

13 (2) the effective date of withdrawal is the
14 effective date of the repealing statute; provided, however,
15 that the withdrawal shall not apply to any tax or compliance
16 determinations approved on the date the repealing statute
17 becomes effective, except by mutual agreement of the
18 commission and the withdrawing state, unless the approval is
19 rescinded by the commission;

20 (3) the member of the withdrawing state
21 shall immediately notify the executive committee of the
22 commission in writing upon the introduction of legislation
23 repealing this compact in the withdrawing state;

24 (4) the commission shall notify the other
25 compacting states of the introduction of such legislation

1 within ten days after its receipt of notice thereof;

2 (5) the withdrawing state is responsible for
3 all obligations, duties and liabilities incurred through the
4 effective date of withdrawal, including any obligations, the
5 performance of which extend beyond the effective date of
6 withdrawal. To the extent those obligations may have been
7 released or relinquished by mutual agreement of the
8 commission and the withdrawing state, the commission's
9 determinations prior to the effective date of withdrawal
10 shall continue to be effective and be given full force and
11 effect in the withdrawing state, unless formally rescinded by
12 the commission; and

13 (6) reinstatement following withdrawal of
14 any compacting state shall occur upon the effective date of
15 the withdrawing state reenacting the compact.

16 B. The following provisions govern default by a
17 compacting state:

18 (1) if the commission determines that any
19 compacting state has at any time defaulted in the performance
20 of any of its obligations or responsibilities under this
21 compact, the bylaws or duly promulgated rules, then after
22 notice and hearing as set forth in the bylaws, all rights,
23 privileges and benefits conferred by this compact on the
24 defaulting state shall be suspended from the effective date
25 of default as fixed by the commission. The grounds for

1 default include the failure of a compacting state to perform
2 its obligations or responsibilities and other grounds
3 designated in commission rules. The commission shall
4 immediately notify the defaulting state in writing of the
5 defaulting state's suspension pending a cure of the default.
6 The commission shall stipulate the conditions and the time
7 period within which the defaulting state must cure its
8 default. If the defaulting state fails to cure the default
9 within the time period specified by the commission, the
10 defaulting state shall be terminated from the compact and all
11 rights, privileges and benefits conferred by this compact
12 shall be terminated from the effective date of termination;

13 (2) decisions of the commission that are
14 issued on the effective date of termination shall remain in
15 force in the defaulting state in the same manner as if the
16 defaulting state had withdrawn voluntarily pursuant to
17 Subsection A of this article; and

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

20 C. The following provisions govern the dissolution
21 of this compact:

22 (1) the compact dissolves effective upon the
23 date of the withdrawal or default of the compacting state
24 that reduces membership in the compact to one compacting
25 state; and

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

6 ARTICLE 15

7 SEVERABILITY AND CONSTRUCTION

8 A. The provisions of this compact shall be
9 severable and if any phrase, clause, sentence or provision is
10 deemed unenforceable, the remaining provisions of the compact
11 shall be enforceable.

12 B. The provisions of this compact shall be
13 liberally construed to effectuate its purposes.

14 C. Throughout this compact the use of the singular
15 shall include the plural and vice versa.

16 D. The headings and captions of articles used in
17 this compact are for convenience only and shall be ignored in
18 construing the substantive provisions of this compact.

19 ARTICLE 16

20 BINDING EFFECT OF COMPACT AND OTHER LAWS

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

24 B. Decisions of the commission and rules and other
25 requirements of the commission shall constitute the exclusive

1 rule or determination applicable to the compacting states. A
2 law or rule regarding non-admitted insurance of multistate
3 risks that is contrary to rules of the commission is
4 preempted with respect to the following:

5 (1) clearinghouse transaction data reporting
6 requirements;

7 (2) allocation formulas;

8 (3) clearinghouse transaction data
9 collection requirements;

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

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

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

19 (7) uniform foreign insurers eligibility
20 requirements;

21 (8) uniform policyholder notice; and

22 (9) uniform treatment of purchasing groups
23 procuring non-admitted insurance.

24 C. Except as stated in Subsection B of this
25 article, a rule, uniform standard or other requirement of the

1 commission shall constitute the exclusive provision that a
2 commissioner may apply to compliance or tax determinations;
3 provided, however, that no action taken by the commission
4 shall abrogate or restrict:

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

6 (2) the availability of alternative dispute
7 resolution under Article 10 of this compact;

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

11 (4) state law relating to the construction
12 of insurance contracts; or

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

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

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

21 F. Upon the request of a party to a conflict over
22 the meaning or interpretation of commission actions and upon
23 a majority vote of the compacting states, the commission may
24 issue advisory opinions regarding the meaning or
25 interpretation in dispute. This provision may be implemented

1 by rule at the discretion of the commission.

2 G. In the event any provision of this compact
3 exceeds the constitutional limits imposed on the legislature
4 of any compacting state, the obligations, duties, powers or
5 jurisdiction sought to be conferred by that provision upon
6 the commission shall be ineffective as to that state and
7 those obligations, duties, powers or jurisdiction shall
8 remain in the compacting state and shall be exercised by the
9 agency thereof to which those obligations, duties, powers or
10 jurisdiction are delegated by law in effect at the time this
11 compact becomes effective."

12 SECTION 2. SURPLUS LINES INSURANCE MULTISTATE
13 COMPLIANCE COMPACT--STATE REPRESENTATIVE.--New Mexico's
14 member on the surplus lines insurance multistate compliance
15 compact commission shall be the superintendent of insurance
16 or the superintendent's designee.

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

19 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

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

24 (1) the Law Enforcement Protection Fund Act;

25 (2) Section 59A-6-1.1 NMSA 1978; and

1 (3) the Voter Action Act.

2 B. The superintendent may authorize refund of
3 money erroneously paid as fees, licenses, penalties or taxes
4 from the insurance department suspense fund under request for
5 refund made within three years after the erroneous payment.
6 In the case of premium taxes erroneously paid or overpaid in
7 accordance with law, refund may also be requested as a credit
8 against premium taxes due in any annual or quarterly premium
9 tax return filed within three years of the erroneous or
10 excess payment.

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

17 D. The "insurance operations fund" is created in
18 the state treasury. The fund shall consist of the
19 distributions made to it pursuant to Subsection E of this
20 section. The legislature shall annually appropriate from the
21 fund to the division those amounts necessary for the division
22 to carry out its responsibilities pursuant to the Insurance
23 Code and other laws. Any balance in the fund at the end of a
24 fiscal year greater than one-half of that fiscal year's
25 appropriation shall revert to the general fund.

1 E. At the end of every month, after applicable
2 refunds are made pursuant to Subsection B of this section and
3 after any allocations have been made pursuant to Subsection C
4 of this section, the treasurer shall make the following
5 transfers from the balance remaining in the insurance
6 department suspense fund:

7 (1) to the "fire protection fund", that part
8 of the balance derived from property and vehicle insurance
9 business;

10 (2) to the insurance operations fund, that
11 part of the balance derived from the fees imposed pursuant to
12 Subsections A and E of Section 59A-6-1 NMSA 1978 other than
13 fees derived from property and vehicle insurance business;
14 and

15 (3) to the general fund, the balance
16 remaining in the insurance department suspense fund derived
17 from all other kinds of insurance business."

18 SECTION 4. Section 59A-14-1 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 239, as amended) is amended to read:

20 "59A-14-1. SCOPE OF ARTICLE--PURPOSE--NECESSITY FOR
21 REGULATION.--

22 A. Chapter 59A, Article 14 NMSA 1978 governs the
23 placing of insurance where New Mexico is the home state of
24 the insured, through licensed surplus lines brokers, in
25 insurers not otherwise authorized to transact insurance in

1 this state and subject to the conditions for such placing as
2 stated in that article; qualifications, licensing and duties
3 and responsibilities of surplus lines brokers; and other
4 provisions as to such surplus lines business and brokers. As
5 to unauthorized insurers in general, and in respects other
6 than as to surplus lines, refer to Chapter 59A, Article 15
7 NMSA 1978.

8 B. Chapter 59A, Article 14 NMSA 1978 shall not
9 apply as to reinsurance or to the following insurances when
10 placed by general lines agents or surplus lines brokers
11 licensed as such by this state:

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

14 (2) wet marine and transportation insurance,
15 as defined in Section 59A-7-5 NMSA 1978;

16 (3) insurance on vehicles or aircraft owned
17 and principally garaged outside this state;

18 (4) insurance of property and operations of
19 railroads engaged in interstate commerce;

20 (5) insurance of aircraft of common
21 carriers, or cargo of such aircraft, or against liability,
22 other than employer's liability, arising out of ownership,
23 maintenance or use of such aircraft;

24 (6) insurance of automobile bodily injury
25 and property damage liability risks when written in Mexican

1 insurers and covering in Mexico and not in the United States;
2 or

3 (7) insurance independently procured.

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

7 (1) protecting insureds and persons seeking
8 insurance in this state;

9 (2) permitting surplus lines insurance to be
10 placed with reputable and financially sound unauthorized
11 insurers, but only pursuant to Chapter 59A, Article 14 NMSA
12 1978;

13 (3) establishing a system of regulation that
14 will permit controlled access to surplus lines insurance in
15 this state; and

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

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

20 "59A-14-2. DEFINITIONS.--As used in Chapter 59A,
21 Article 14 NMSA 1978:

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

25 B. "affiliated group" means any group of entities

1 that are all affiliated;

2 C. "association" means the national association of
3 insurance commissioners or any successor entity;

4 D. "control" means that:

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

9 (2) an entity controls in any manner the
10 election of a majority of the directors or trustees of
11 another entity;

12 E. "eligible surplus lines insurer" means a
13 qualified nonadmitted insurer, approved and listed pursuant
14 to Section 59A-14-4 NMSA 1978, with which a surplus lines
15 broker may place surplus lines insurance;

16 F. "exempt commercial purchaser" means any person
17 purchasing commercial insurance that, at the time of
18 placement, meets the following requirements:

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

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

25 (3) the person:

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

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

11 (c) employs more than five hundred
12 full-time or full-time-equivalent employees per insured
13 entity or is a member of an affiliated group employing more
14 than one thousand employees in the aggregate;

15 (d) is a not-for-profit organization or
16 public entity generating annual budgeted expenditures of at
17 least thirty million dollars (\$30,000,000), provided that
18 this amount shall be adjusted every five years by rule of the
19 superintendent to account for the percentage change in the
20 consumer price index; or

21 (e) is a municipality with a population
22 in excess of fifty thousand persons;

23 G. "export" means to place insurance with a
24 nonadmitted insurer;

25 H. "home state" means, with respect to an insured: SCORC/SB 250
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1 (1) except as provided in Paragraph (3) of
2 this subsection, the state in which an insured maintains its
3 principal place of business or, in the case of an individual,
4 the individual's principal residence;

5 (2) except as provided in Paragraph (3) of
6 this subsection, if one hundred percent of the insured risk
7 is located out of the state referred to in Paragraph (1) of
8 this subsection, the state to which the greatest percentage
9 of the insured's taxable premium for that insurance contract
10 is allocated; or

11 (3) if more than one insured from an
12 affiliated group are named insureds on a single nonadmitted
13 insurance contract, "home state" means the home state, as
14 determined pursuant to Paragraph (1) or (2) of this
15 subsection, of the member of the affiliated group that has
16 the largest percentage of premium attributed to it under the
17 insurance contract;

18 I. "nonadmitted insurance" means any property and
19 casualty insurance permitted to be placed directly or through
20 a surplus lines broker with an eligible surplus lines
21 insurer;

22 J. "nonadmitted insurer" means an insurer not
23 licensed to engage in the business of insurance in New
24 Mexico;

25 K. "producing broker" means the broker or agent

1 dealing directly with the person seeking insurance if the
2 home state of the person seeking insurance is New Mexico;

3 L. "professional designation" means:

4 (1) a designation as a chartered property
5 and casualty underwriter issued by the American institute for
6 chartered property and casualty underwriters;

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

9 (3) a designation as a certified risk
10 manager issued by the national alliance for insurance
11 education and research;

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

14 (5) any other designation, certification or
15 license determined by the superintendent to demonstrate
16 minimum competency in risk management;

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

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

21 (2) provides skilled services in loss
22 prevention, loss reduction, risk and insurance coverage
23 analysis and purchase of insurance; and

24 (3) has:

25 (a) a bachelor's degree or higher from

1 an accredited college or university in risk management,
2 business administration, finance, economics or any other
3 field determined by the superintendent to demonstrate minimum
4 competence in risk management and either: 1) three years of
5 experience in risk financing, claims administration, loss
6 prevention, risk and insurance coverage analysis or purchase
7 of commercial lines of insurance; or 2) a professional
8 designation;

9 (b) a professional designation and at
10 least seven years of experience in risk financing, claims
11 administration, loss prevention, risk and insurance coverage
12 analysis or purchase of commercial lines of insurance;

13 (c) at least ten years of experience in
14 risk financing, claims administration, loss prevention, risk
15 and insurance coverage analysis or purchase of commercial
16 lines of insurance; or

17 (d) a graduate degree from an
18 accredited college or university in risk management, business
19 administration, finance, economics or any other field
20 determined by the superintendent to demonstrate minimum
21 competence in risk management;

22 N. "surplus lines broker" means an individual,
23 firm or corporation licensed under Chapter 59A, Article 14
24 NMSA 1978 to place insurance with eligible surplus lines
25 insurers;

1 O. "surplus lines insurance" means any insurance
2 permitted to be exported through a surplus lines broker;

3 P. "type of insurance" means one of the types of
4 insurance required to be reported in the annual statement
5 that must be filed with the superintendent by authorized
6 insurers; and

7 Q. "unauthorized insurer" means a nonadmitted
8 insurer."

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

11 "59A-14-3. PLACEMENT OF SURPLUS LINES INSURANCE.--No
12 surplus lines insurance for an insured whose home state is
13 New Mexico shall be solicited, negotiated, contracted for,
14 effectuated or otherwise transacted within the meaning of
15 Section 59A-1-13 NMSA 1978, unless:

16 A. the insurance is procured through a surplus
17 lines broker;

18 B. each nonadmitted insurer providing such
19 insurance is an eligible surplus lines insurer;

20 C. either:

21 (1) the full amount or type of insurance
22 cannot be obtained from insurers authorized to do business in
23 this state as determined after making a diligent search among
24 insurers authorized to transact and actually writing the
25 particular type and class of insurance in this state; or

1 (2) the insurance is being procured for an
2 exempt commercial purchaser and:

3 (a) the surplus lines broker procuring
4 or placing the surplus lines insurance has disclosed to the
5 exempt commercial purchaser that the insurance may or may not
6 be available from insurers authorized to do business in this
7 state, which may provide greater protection with more
8 regulatory oversight; and

9 (b) the exempt commercial purchaser has
10 subsequently requested in writing the surplus lines broker to
11 procure or place the insurance from an eligible surplus lines
12 insurer;

13 D. the surplus lines broker has taken such
14 reasonable steps to ascertain that the insurer is in sound
15 financial condition as may be required by regulations adopted
16 by the superintendent; and

17 E. all other requirements of Chapter 59A, Article
18 14 NMSA 1978 are met."

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

21 "59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--

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

1 B. No surplus lines broker shall transact surplus
2 lines insurance with an insurer other than an eligible
3 surplus lines insurer.

4 C. To qualify as an eligible surplus lines
5 insurer, a nonadmitted insurer shall file information
6 demonstrating to the superintendent's satisfaction that:

7 (1) the insurer is authorized to write the
8 particular line of business in the state in which it is
9 domiciled and:

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

15 (b) the insurer has capital and surplus
16 less than the amounts required in Subparagraph (a) of this
17 paragraph but the superintendent affirmatively finds that the
18 insurer is acceptable as an eligible surplus lines insurer.

19 The finding shall be based upon such factors as quality of
20 management, capital and surplus of any parent company,
21 company underwriting profit and investment income trends and
22 company record and reputation within the industry. In no
23 event shall the superintendent make an affirmative finding of
24 acceptability when the surplus lines insurer's capital and
25 surplus is less than four million five hundred thousand

1 dollars (\$4,500,000);

2 (2) the insurer is a member of an "insurance
3 exchange", which is an association of syndicates or insurers
4 created by the laws of individual states, and shall maintain
5 capital and surplus, or the equivalent thereof, of not less
6 than fifty million dollars (\$50,000,000) in the aggregate.

7 For insurance exchanges that maintain funds for the
8 protection of all insurance exchange policyholders, each
9 individual syndicate shall maintain minimum capital and
10 surplus, or the equivalent thereof, of not less than five
11 million dollars (\$5,000,000). In the event the insurance
12 exchange does not maintain funds for the protection of all
13 insurance exchange policyholders, each individual syndicate
14 shall meet the minimum capital and surplus requirements of
15 Subparagraph (a) of Paragraph (1) of this subsection;

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

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

25 D. The superintendent shall maintain a list of

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

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

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

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

19 E. The listing required by Subsection D of this
20 section shall not be deemed to constitute or evidence the
21 superintendent's approval or guaranty as to the financial
22 condition or business practices of the insurer, and no
23 insurer or other person shall allege orally or in writing
24 that any such listing constitutes or implies the
25 superintendent's approval.

1 F. The superintendent may adopt rules fixing
2 reasonable conditions to be met by insurers for the listing.
3 For good cause shown, the superintendent may in writing waive
4 the requirements of this section to permit insurance to be
5 placed as to a particular risk and insurer if the insurance
6 is not otherwise reasonably obtainable."

7 SECTION 8. Section 59A-14-7 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 245, as amended by Laws 1999, Chapter
9 272, Section 19 and also by Laws 1999, Chapter 289, Section
10 21) is amended to read:

11 "59A-14-7. SURPLUS LINES BROKER LICENSE REQUIRED--
12 QUALIFICATIONS FOR LICENSE.--

13 A. No person shall in New Mexico be, act as or
14 hold out to be a surplus lines broker, or place insurance of
15 risks where New Mexico is the home state of the insured in
16 any nonadmitted insurer on behalf of others and for
17 compensation as an independent contractor in any form, unless
18 licensed as a surplus lines broker under Chapter 59A, Article
19 14 NMSA 1978.

20 B. The superintendent shall, upon due application
21 and payment of the license fee, issue a license as surplus
22 lines broker to a person qualified as follows:

23 (1) must be currently licensed as an
24 insurance agent in this state as to the kinds of insurance to
25 be exported under the surplus lines broker license applied

1 for and have had experience or special training or education
2 sufficient in duration and character as such an agent as to
3 render the applicant, in the opinion of the superintendent,
4 reasonably competent to engage in business as a surplus lines
5 broker; and

6 (2) if the applicant is a firm or
7 corporation, all individuals to represent it in this state
8 must be licensed agents. Each such individual shall be
9 qualified as for an individual license as surplus lines
10 broker, and an additional license fee shall be paid as to
11 each individual, in excess of one, who is to exercise the
12 surplus lines broker license powers."

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

15 "59A-14-12. PREMIUM TAX ON SURPLUS LINES INSURANCE.--

16 A. Within sixty days after expiration of a calendar
17 quarter, the surplus lines broker shall pay to the
18 superintendent for the use of the state a tax on gross
19 premiums received, less returned premiums, on surplus lines
20 business where New Mexico is the home state of the insured
21 transacted under the surplus lines broker's license during
22 such calendar quarter as shown by the quarterly statement
23 filed with the superintendent pursuant to Section 59A-14-11
24 NMSA 1978. The tax shall be at the same rate as is
25 applicable to premiums of authorized insurers under Section

1 59A-6-2 NMSA 1978.

2 B. For purposes of this section, "premiums" shall
3 include any additional amount charged the insured, including
4 policy fees, risk purchasing group fees and inspection fees;
5 but "premiums" shall not include any additional amount
6 charged the insured for local, state or federal tax;
7 regulatory authority fee; or examination fee, if any.

8 C. The superintendent may require surplus lines
9 brokers and insureds who have independently procured
10 insurance to file tax allocation reports annually detailing
11 the portion of the nonadmitted insurance policy premiums
12 attributable to properties, risks or exposures located in
13 each state.

14 D. A penalty of ten percent of the amount of tax
15 originally due, plus one percent of such tax amount for each
16 month or fraction thereof of delinquency after the first
17 thirty days of delinquency, shall be paid by the surplus
18 lines broker for failure to pay the tax in full within sixty
19 days after expiration of the calendar quarter as provided in
20 Subsection A of this section; except that the superintendent
21 may waive or remit the penalty if the superintendent finds
22 that the failure or delay in payment arose from excusable
23 mistake or excusable inadvertence."

24 SECTION 10. A new section of Chapter 59A, Article 14
25 NMSA 1978 is enacted to read:

1 "NATIONAL DATABASE--PARTICIPATION REQUIRED.--No later
2 than July 21, 2012, the superintendent shall participate in
3 the national insurance producer database of the association,
4 or any other equivalent uniform national database, for the
5 licensure of surplus lines brokers and the renewal of the
6 licenses."

7 SECTION 11. APPLICABILITY OF ACT.--The provisions of
8 Sections 3 through 10 of this act are applicable to insurance
9 policies issued on or after July 21, 2011. _____

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