

CHAPTER 176
FORMERLY
SENATE BILL NO. 109
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 19 OF TITLE 18 OF THE DELAWARE CODE RELATING TO REGULATION OF SURPLUS LINES INSURANCE.

WHEREAS, with regard to nonadmitted insurance, the 111th United States Congress, has stipulated in Subtitle V, the Nonadmitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, hereafter, the NRRRA, that:

(A) The placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state, and

(B) Any law, regulation, provision, or action of any state that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application; except that any state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer shall not be preempted; and

WHEREAS, in compliance with NRRRA, no state other than the home state of an insured may require any premium tax payment for nonadmitted insurance; and no state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured; and

WHEREAS, the NRRRA intends that the States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home state and that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance; and

WHEREAS, after the expiration of the two-year period beginning on the date of the enactment of the NRRRA, a state may not collect any fees relating to the licensing of an individual or entity as a surplus lines broker in the state unless the state has in effect at such time laws or regulations that provide for participation by the state in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses; and

WHEREAS, a need exists for a system of regulation that will provide for surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers, and that will permit orderly access to surplus lines insurance in this State and encourage admitted insurers to make new and innovative types of insurance available to consumers in this State; and

WHEREAS, protecting the revenue of this State and other reciprocal states may be accomplished by facilitating the payment and collection of premium tax on nonadmitted insurance; and

WHEREAS, the efficiency of the surplus lines market may be improved by eliminating duplicative and inconsistent tax and regulatory requirements among the states, and by promoting and protecting the interests of surplus lines licensees who assist such insureds and nonadmitted insurers, thereby ensuring the continued availability of nonadmitted insurance to consumers; and

WHEREAS, regulatory compliance with respect to nonadmitted insurance placements may be streamlined by providing for exclusive single-state regulatory compliance for nonadmitted insurance of multi-state risks, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including, but not limited to, insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers; and

WHEREAS, coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as surplus lines stamping offices, with respect to nonadmitted insurance will be improved;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 19 of Title 18 of the Delaware Code by creating Subchapter I pertaining to the implementation of the Nonadmitted and Reinsurance Reform Act of 2010; deleting the current language in §§ 1901, 1902, 1903, 1904, and 1905, and substituting therein new language to read as follows:

“Subchapter I. Compliance with Federal Statutes.

§ 1901. Finding and Purpose

(a) It is determined and declared as a matter of legislative finding that it is in the public interest to cooperate on a reciprocal basis with other states in considering procedures which implement the provisions of the NRRA.

(b) It is further determined and declared that the purpose and policy of this Chapter shall be to:

(1) Carry out the requirements of the Nonadmitted and Reinsurance Reform Act of 2010 as such act existed on January 1, 2011;

(2) Provide authority for the Insurance Commissioner to enter into an interstate cooperative agreement, reciprocal agreement, or compact if doing so is in the best interests of this State; and

(3) Regulate the placement of insurance coverage with nonadmitted insurers when this State is the home state of the insured.

§ 1902. Home state regulation of nonadmitted insurance.

(a) The placement of nonadmitted insurance business shall be subject to the statutory and regulatory requirements solely of the insured's home state as defined in this chapter.

(b) This section may not be construed to preempt any law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

§ 1903. Interstate insurance regulatory cooperation

(a) The Commissioner is authorized to enter into an interstate cooperative agreement, reciprocal agreement, or compact, hereafter 'Agreement', for the purpose of carrying out the NRRA and to facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance, to provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, and share information among states relating to nonadmitted insurance premium taxes.

(b) The Commissioner may also enter into other cooperative agreements with surplus lines stamping offices located in this state or other states for the reporting and capturing of related tax information. In addition, the Commissioner may enter into cooperative agreements with processing entities located in this state or other states related to the capturing and processing of insurance premium and tax data.

(c) The Commissioner may participate in a clearinghouse operation established for the purpose of collecting and disbursing to reciprocal states any premium tax funds collected applicable to properties, risks, or exposures located or to be performed outside of this state. The Commissioner may also participate in such clearinghouse for purposes of surplus lines policies applicable to risks located solely within this state.

(d) In order to assist in the performance of the Commissioner's duties, under the NRRA, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions that the Commissioner and the nongovernmental entity may deem to be appropriate, including (i) the collection of fees related to producer licensing and (ii) the collection of the premium tax under § 1925 of this title. The NAIC or other entity with whom the Commissioner contracts may charge a reasonable fee to the insurer, insured, or other appropriate person for the functions performed.

(e) An Agreement entered into under this section prevails over an inconsistent rule of the Commissioner. Except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an Agreement entered into under this section.

(f) The Commissioner may adopt rules as necessary to implement this chapter or the terms of an Agreement entered into under this section. In adopting rules under this chapter, the Commissioner may not adopt a rule that does not specifically implement this chapter or the Agreement.

§ 1903.1. Nonadmitted Reinsurance and Reform Act of 2010 Implementation Revenue Study

(a) The Insurance Commissioner shall establish a NRRA Implementation Revenue Study Committee to study the potential impact that would result from the State's entrance into an Agreement pursuant to section § 1903 of this title in order to prevent the State from losing revenue after July 21, 2011, the effective date of the NRRA. The Committee shall determine if entering into an Agreement would result in retention of out of state surplus lines tax revenue for the State and, if so, which Agreement would result in the most retention of surplus lines tax revenue for the State and the most cost-efficient method of administering the collection and distribution of tax revenues. Notwithstanding subsection (b) of this section, the Committee shall report its findings and recommendations, including any proposed legislation, to the chairs of the respective Senate and House committees, the Senate Pro-Tempore, the Speaker of the House and to the Controller General no later than January 2012.

(b) In the event that an interstate surplus lines tax allocation, reporting and payment system becomes operational and the Insurance Commissioner determines that the State of Delaware is likely to lose significant revenue by delaying the decision to enter into an Agreement pursuant to § 1903 of this title until after completion of the report by the NRRRA Implementation Revenue Study Committee, then the Commissioner may enter into an Agreement after notice and hearing, which shall involve testimony regarding the Commissioner's determination, and the burden the tax allocation, reporting and payment system selected would impose on brokers.

§ 1904. Definitions;

(a) For the purposes of this chapter the following definitions shall apply:

(1) Admitted insurer. The term 'admitted insurer' means an insurer authorized to engage in the business of insurance in this state.

(2) Affiliate. The term 'affiliate' means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) Affiliated group. The term 'affiliated group' means any group of entities that are all affiliated.

(4) Broker. The term 'broker,' as used in this chapter and unless context otherwise requires, means a surplus lines broker duly licensed as such under this chapter.

(5) Clearinghouse. The term 'clearinghouse' means a mechanism or entity established for the receipt and distribution of premium taxes and transaction data related to the sale of nonadmitted insurance.

(6) Control. An entity has 'control' over another entity if:

a. The entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(7) Export. The term 'export' means to place insurance in a nonadmitted insurer under this surplus lines law.

(8) Gross premium. The term 'gross premium' means the amount charged by an insurer for consideration for insurance. Any 'assessment,' or any 'membership,' 'policy,' 'survey,' 'inspection,' 'service' or similar fee or other charge in consideration for an insurance contract is deemed part of the premium.

(9) Home state.

a. In general. Except as provided in subparagraph (b), the term 'home state' means, with respect to an insured

1. The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

2. If 100 percent of the insured risk is located out of the state referred to in subsection (9) a.1. Of this section, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

b. Affiliated groups. If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term 'home state' means the home state, as determined pursuant to subparagraph (a), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(10) Home state insured. The term 'home state insured' means, unless the context indicates otherwise, an insured whose home state is Delaware.

(11) Independently procured insurance. The term 'independently procured insurance' means insurance procured directly by an insured from a nonadmitted insurer.

(12) Multi-state risk. The term 'multi-state risk' means a risk with exposures in more than one state.

(13) Naic. The term 'naic' means the national association of insurance commissioners or any successor entity.

(14) Net premium. The term 'net premium' means, for the purposes of this chapter, gross premium as defined herein, less any returned premiums.

(15) Nonadmitted insurance. The term 'nonadmitted insurance' means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance. For purposes of this chapter, nonadmitted insurance includes independently procured insurance placed directly and surplus lines insurance.

(16) Nonadmitted insurer. The term 'nonadmitted insurer'

- a. Means an insurer not authorized to engage in the business of insurance in this state; but
- b. Does not include a risk retention group, as that term is defined in section 2(a)(4) of the liability risk retention act of 1986 (15u.s.c. 3901(a)(4)).

(17) Premium tax. The term 'premium tax' means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(18) Qualified risk manager. The term 'qualified risk manager' means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

- a. The person employs or retains a qualified risk manager to negotiate insurance coverage.
- b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

c. (i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000; as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000; as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000; as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(19) Reciprocal state. The term 'reciprocal state' means a state that has:

- a. Entered into a nonadmitted insurance compact or agreement; or
- b. Otherwise adopted the allocation schedule and reporting forms prescribed by a multi-state agreement for nonadmitted insurance

(20) Single-state risk. The term 'single-state risk' means a risk with exposure in only one state.

(21) Surplus lines broker. The term 'surplus lines broker' means an individual, firm, or corporation which is licensed in this state to sell, solicit, negotiate, or procure insurance in this state with nonadmitted insurers.

(22) Surplus lines insurance. The term 'surplus lines insurance' means insurance procured by a surplus lines licensee from a surplus lines insurer or other nonadmitted insurer as permitted under the law of the Home State; for purposes of this chapter 'surplus lines insurance' shall also mean excess lines insurance as may be defined by applicable state law.

(23) Surplus lines insurer. The term 'surplus lines insurer' means a nonadmitted insurer eligible under the law of the home state to accept business from a surplus lines licensee; for purposes of this chapter "surplus lines insurer" shall also mean an insurer that is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.

(24) State. The term 'State' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(b) In this chapter, unless otherwise specified, words and expressions used have the same meaning as in the NRRA. § 1905. Exclusions.

(a) Unless the Commissioner rules otherwise pursuant to § 1915, the types of insurance coverage listed in subsection (b) of this section shall not be considered surplus lines insurance and shall be placed with admitted insurers licensed to write those types of insurance.

(b) The provisions of this chapter shall not apply to the following insurances when so placed by licensed producers or surplus lines brokers of this State:

- (1) Life insurance
- (2) Health insurance
- (3) Reinsurance
- (4) Wet marine and transportation insurance;
- (5) Insurance on subjects located, resident or to be performed wholly outside this State or on vehicles or aircraft owned and principally garaged outside this State;
- (6) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations;
- (7) Insurance of aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight or cargo of such aircraft or against liability, other than worker's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.
- (8) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this State.”

Section 2. Amend Chapter 19 of Title 18 of the Delaware Code by creating Subchapter II pertaining to the placement and regulation of surplus lines insurance; reenacting and renumbering former § 1904 and §§ 1906 through 1916; adding new sections; deleting current language and substituting new language as follows:

“Subchapter II. Surplus Lines Insurance.

§ 1911. Placement of Insurance Business.

(a) An insurer shall not engage in the transaction of insurance in this State unless authorized by a certificate of authority in force pursuant to the laws of this State, or exempted by this chapter or otherwise exempted by the insurance laws of this State.

(b) A person shall not engage in a transaction of insurance or in this State directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist the insurer in the transaction of insurance.

(c) A person who represents or aids a nonadmitted insurer in violation of this section shall be subject to the penalties set forth in § 106 of this title. No insurance contract entered into in violation of this section shall preclude the insured from enforcing his or her rights under the contract in accordance with the terms and provisions of the contract of insurance and the laws of this State, to the same degree those rights would have been enforceable had the contract been lawfully procured.

(d) If the nonadmitted insurer fails to pay a claim or loss within the provisions of the insurance contract and the laws of this State, a person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract, shall be liable to the insured for the full amount under the provisions of the insurance contract.

(e) Subsection (b) or (d) of this section shall not apply to an insured who independently procures insurance.

(f) This section shall not apply to a person, properly licensed as a producer in this State who, for a fee and pursuant to a written agreement, is engaged solely to offer to the insured advice, counsel or opinion, or service with respect to the benefits, advantages or disadvantages promised under any proposed or in-force policy of insurance if the person does not, directly or indirectly, participate in the solicitation, negotiation or procurement of insurance on behalf of the insured.

(g) This section shall not apply to a surplus lines broker duly licensed in this State who is acting in material compliance with the insurance laws of this State in the placement of surplus lines insurance as provided in this chapter.

§ 1912. Conditions for export.

(a) If certain insurance coverage cannot be procured from authorized insurers, such coverage, hereinafter designated "surplus lines," may be procured from nonadmitted insurers, subject to the following conditions:

- (1) Each insurer is an eligible surplus lines insurer; and
- (2) Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction; and
- (3) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this State, and the amount of insurance exported shall be only the excess over or other than the amount procurable from authorized insurers; and
- (4) The insurance must not be so exported for the purpose of securing advantages either as to:
 - a. A lower premium rate than would be accepted by an authorized insurer; or

b. Terms of the insurance contract.

(5) All other requirements of this chapter are met.

(b) For purposes of this section, 'type of insurance' means the hazard or combination of hazards covered by a contract of insurance.

(c) Each surplus line broker shall be responsible to ensure that a diligent effort is made among insurers that are admitted to transact and are actually writing the particular type of insurance in this State before procuring the insurance for a home state insured from a nonadmitted insurer.

(1) A diligent search shall only be performed by a surplus lines broker or a producer licensed in this State that holds an active property and casualty insurance producer license.

(2) An insurance producer or surplus lines broker is exempt from the diligent effort requirements of this section if the producer or surplus lines broker is procuring insurance for a risk purchasing group as provided in Chapter 80 of this title.

(d) Except as provided in subsection (c)(2) of this section and § 1914 of this title, the Commissioner shall by regulation establish the degree of effort required to comply with subsections (3) and (4) of this section and the means to certify to the accuracy of the facts supporting the surplus line broker's diligent search effort.

§ 1913. Duty of inquiry by surplus lines broker.

(a) The surplus lines broker shall be responsible for determining whether an applicant for nonadmitted insurance is a Delaware home state insured. A surplus lines broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(b) A broker shall not knowingly place surplus lines insurance with an insurer that is unsound financially or that does not meet the eligibility requirements under Subchapter III of this chapter.

(c) Before placing insurance with a nonadmitted insurer, all surplus lines brokers shall make a thorough inquiry into the financial condition and operating history of such insurer in order that the interests of the citizens of Delaware may be protected.

(d) During the course of placing business with a nonadmitted insurer, either foreign or alien, each surplus lines broker shall be under a continuous duty to apprise himself or herself that such insurer maintains a condition of solvency and general financial health, and that the company processes claims and pays losses expeditiously.

(e) Whenever any reasonable doubt arises as to the capacity, competence, stability or good faith of a nonadmitted insurer with which a surplus lines broker places insurance on behalf of the public of Delaware, the broker is under a further duty to inform the Insurance Commissioner of the basis of such doubt. Any broker in a position of doubt shall immediately cease and desist placing further business with such insurer.

§ 1914. Streamlined Application for Commercial Purchasers.

(a) A surplus lines broker seeking to procure or place nonadmitted insurance in this State for an exempt commercial purchaser whose home state is this State shall not be required to satisfy any requirement to make a diligent effort to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) The exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

(b) For purposes of this section, the term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(1) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(2) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(3) The person meets at least one of the following criteria:

a. The person possesses a net worth in excess of \$20,000,000; as such amount is adjusted pursuant to subsection(c) of this section.

b. The person generates annual revenues in excess of \$50,000,000; as such amount is adjusted pursuant to subsection(c) of this section.

c. The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

d. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000; as such amount is adjusted pursuant to subsection (c) of this section.

e. The person is a municipality with a population in excess of 50,000 persons.

(c) Effective on the fifth January 1 occurring after the date of the enactment of this chapter and each fifth January 1 occurring thereafter, the amounts in subsections (a), (b), and (d) of clause (3) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

§ 1915. Open lines for export.

(a) The Commissioner may by order declare eligible for export for a home state insured, generally and without compliance with the provisions of § 1912 of this title, any class or classes of insurance coverage or risk for which the Commissioner finds, after a hearing of which notice was given to each insurer authorized to transact such class or classes in this State, that there is not a reasonable or adequate market among authorized insurers either as to acceptance of the risk, contract terms, or premium rate. Any such order shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the Commissioner.

(b) The broker shall file as directed by the Commissioner a memorandum as to each such coverage placed by him or her in a nonadmitted insurer for a home state insured, in such form and context as the Commissioner may reasonably require for the identification of the coverage and determination of the tax payable to the state relative thereto.

(c) The broker or a licensed Delaware producer of the authorized insurer may also place with authorized insurers any insurance coverage made eligible for export generally under subsection (a) above, and without regard to rate or form filings which may otherwise be applicable as to the authorized insurer. As to coverage so placed in an authorized insurer, the premium tax thereon shall be reported and paid by the insurer as required generally under Chapter 7 of this title.

§ 1916. Evidence of the insurance; changes; penalty.

(a) Upon placing a surplus lines coverage for a home state insured, the broker shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, the surplus line broker's certificate. Such a certificate shall be executed by the broker and shall show the name and license number of the individual surplus lines broker, the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged, taxes collected from the insured, and the name and address of the insured and insurer. If the risk is assumed by more than 1 insurer, the certificate shall state the name and address and proportion of the entire risk assumed by each such insurer.

(b) No broker shall issue any such certificate or any cover note, or purport to insure or represent that insurance will be or has been granted by any nonadmitted insurer, unless he or she has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(c) If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by an insurer as stated in the broker's original certificate, or in any other material respect as to the insurance evidenced by the certificate, the broker shall promptly issue and deliver to the insured or the original producing agent a substitute for, or endorsement of, the original document, accurately showing the current status of the coverage and the insurers responsible for the coverage.

(d) As soon as reasonably possible after the placement of the insurance, the surplus lines broker shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured or producing agent to replace any evidence of insurance previously issued. Each certificate or policy of insurance shall contain or have attached a complete record of all policy insuring agreements, conditions, exclusions, clauses, endorsements or any other material facts that would regularly be included in the policy.

(e) Any surplus lines broker, who knowingly or negligently issues a false certificate of insurance or who fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as

provided in subsection (c) of this section, shall, upon conviction, be subject to the penalty provided by § 106 of this title or to any greater applicable penalty otherwise provided by law.

§ 1917. Endorsement of contract.

(a) Licensee's Duty to Notify Insured

(1) No contract of insurance placed by a surplus lines broker under this chapter for a home state insured shall be binding upon the insured and no premium charged shall be due and payable until the surplus lines broker shall have notified the insured in writing, in a form acceptable to the Commissioner, a copy of which shall be maintained by the surplus lines broker with the records of the contract and available for possible examination, that:

a. The insurer with which the broker places the insurance is not licensed by this State and is not subject to its supervision; and

b. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

(2) Nothing herein contained shall nullify any agreement by any insurer to provide insurance.

(3) This subsection shall not apply to an insured in this State who independently procures insurance.

(b) Every insurance contract procured and delivered as surplus lines coverage pursuant to this law shall have stamped or printed upon it, initialed by and bearing the name of the individual surplus lines broker who procured it, the following disclosure statement:

‘This insurance contract is issued pursuant to the Delaware Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Delaware Insurance Department. This insurer does not participate in insurance guaranty funds created by state law. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.’

(c) When a contract is issued to an exempt commercial insurer as described in § 1914 of this title, neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured.

(d) Subsection (a)(1)a. and (b) of this section shall not apply when the surplus lines coverage is procured from a domestic surplus lines insurer pursuant to § 1932 of this title.

§ 1918. Surplus line insurance valid.

Insurance contracts procured as surplus lines coverage from nonadmitted insurers in accordance with this law, whether so procured by a surplus lines broker or directly by the insured by means of independent procurement, shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

§ 1919. Liability of insurer.

(a) A payment of premium to a surplus lines broker acting for a person other than himself or herself in procuring, continuing or renewing any policy of insurance procured under this law shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the policy or contract notwithstanding.

(b) As to a surplus lines risk which has been assumed by a nonadmitted insurer pursuant to this surplus lines insurance law, and if the premium thereon has been received by the surplus line broker who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage, and the insurer shall be liable to the insured as to losses covered by such insurance and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the broker is indebted to the insurer with respect to such insurance or for any other cause.

(c) Each nonadmitted insurer assuming a surplus lines risk under this surplus lines insurance law shall be deemed thereby to have subjected itself to the terms of this section.

§ 1920. Surplus line brokers; licensing.

(a) No individual is required to be licensed pursuant to this chapter as a surplus lines broker if the home state of the insured is a state other than Delaware.

(b) The penalty in Chapter 17 of this title for selling, soliciting, negotiating, or procuring surplus lines insurance in this State without a surplus lines license shall be waived if the Insurance Commissioner receives an application for licensure as a

surplus lines broker within forty-five (45) days from the effective date of a multi-state policy for which this State is the insured's home state.

(c) Any individual, while licensed in this State as a resident or nonresident producer, who is deemed by the Commissioner to be competent and trustworthy with respect to the handling of surplus lines may be licensed as a surplus lines broker.

(d) Application for the license shall be made to the Commissioner on forms as designated by the Commissioner.

(e) The license fee shall be as specified in § 701 of this title.

(f) The license and licensee shall be subject to the applicable provisions of Chapter 17 of this title.

(g) For the purposes of implementing the NRRA, the Commissioner shall participate in the National Insurance Producer Database of the NAIC or any other equivalent national database for the licensure and license renewal of surplus lines brokers on and after July 21, 2012.

§ 1921. Suspension, revocation, of broker's license.

(a) Subject to § 1712 of this title, the Commissioner may also suspend or revoke any surplus line broker's license:

(1) If the broker fails to file the annual statement as required by § 1924 of this title, or to remit the tax as required by § 1925 of this title; or

(2) If the broker fails to keep the records, or to allow the Commissioner to examine his or her records as required by this law; or

(3) If the broker places a surplus line coverage in an insurer other than as authorized under Subchapter III of this title; or

(4) For violation of any provision of this chapter; or

(5) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under Chapter 17 of this title.

(b) The procedures provided by Chapter 17 of this title for suspension or revocation of licenses shall apply to suspension or revocation of a surplus lines broker's license.

(c) Upon suspending or revoking the broker's surplus lines license the Commissioner shall also suspend or revoke all other licenses of or as to the same individual under this title.

§ 1922. Broker may compensate agents and other licensed producers.

A licensed surplus lines broker may accept and place surplus lines business for any insurance producer licensed in this State for the kind of insurance involved, and may compensate the producer for the business.

§ 1923. Records of broker.

(a) Each broker shall keep in his or her office a full and true record of each surplus lines coverage procured by him or her for a home state insured, including a copy of each daily report, if any, a copy of each certificate of insurance issued by him or her, and such of the following items as may be applicable:

(1) Verification that the insured is a Delaware home state insured;

(2) Whether or not a policy is a single-state policy or a multi-state policy;

(3) Verification that a commercial insured qualifies under the provisions of § 1914 of this title;

(4) Amount of the insurance;

(5) Gross premium charged;

(6) Return premium paid, if any;

(7) Rate of premium charged upon the several items of property;

(8) Effective date of the contract and the terms thereof;

(9) Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by such insurer if less than the entire risk;

(10) Name and address of the insured;

(11) Brief general description of the property or risk insured and where located or to be performed;

(12) A tax allocation spreadsheet detailing the portion of premium attributable to properties, risks, or exposures located in each state;

(13) Other information as may be required by the Commissioner; and

(14) An affidavit on a form prescribed by the Commissioner as to the diligent effort to place the coverage with admitted insurers as set forth in § 1912 of this title and the results of that effort, except where the transaction is pursuant to § 1905(c)(2) or § 1914 of this title. The affidavit must be open to public inspection. The affidavit must affirm that the insured was expressly advised in writing prior to placement of the insurance that:

a. The surplus lines insurer with whom the insurance was to be placed is not licensed in this State and is not subject to the state's supervision; and

b. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

(b) The broker's record shall be open to examination by the Commissioner at all times within 5 years after issuance of the coverage to which it relates.

(c) After notice and hearing, the Commissioner may promulgate reasonable rules and regulations specifying the manner and type of records to be maintained by surplus lines brokers and the location or locations where those records shall be kept.

§ 1924. Annual statement of broker.

(a) Unless the Commissioner determines that more frequent reporting is necessary, each broker shall on or before the 1st day of March of each year file with the Commissioner a statement verified by the broker of all surplus lines insurance transacted by him or her during the preceding calendar year.

(b) The statement shall be on forms as prescribed by the Commissioner and shall contain an account of the business done by the surplus lines broker placing business for a home state insured, showing:

(1) Gross amount of each kind of insurance transacted;

(2) Total amount of gross premiums charged for business conducted;

(3) Total amount of gross premiums charged for single state risks where 100% of the premium is attributable to risks in Delaware;

(4) Total amount of gross premiums charged for multi-state risks and the percentage of premium allocated to Delaware and each other state;

(5) Aggregate of returned premiums paid to insureds;

(6) Aggregate of net premiums;

(7) The amount of gross premiums of all business procured by him or her covering risks as described in § 705 of this title in the City of Wilmington, in the County of New Castle outside the City of Wilmington, in Kent County and in Sussex County, including allocation of the portion of the gross premiums for coverage types listed in § 705 of this title and allocable to each of the above geographic areas.

(8) Additional information as required by the Commissioner.

(c) For purposes of this section, "business done" or "business transacted" means all surplus lines insurance business conducted by the surplus lines broker for a home state insured. If two or more persons licensed as surplus lines brokers are involved in placing a policy, only the one who is responsible for negotiating, effecting the placement, and remitting the premium to the nonadmitted insurer or its representatives, shall be considered transacting business."

Section 3. Amend Chapter 19 of Title 18 of the Delaware Code pertaining to surplus lines premium tax and the payment of premium tax on independently procured nonadmitted insurance; reenacting and renumbering former § 1918; deleting current language and substituting therein new language as follows:

"§ 1925. Tax on surplus lines.

(a) The Commissioner shall ensure that reasonable measures are developed to recover insurance taxes and other amounts due this State during each year.

(b) Every surplus lines broker shall collect and pay to the State Treasurer through the Commissioner a two (2) percent tax on the gross premiums charged, less any returned premiums and exclusive of sums collected to cover federal and state taxes and examination fees, for insurance placed or procured under his or her surplus lines license in which this state is the home state of the insured.

(c) For the purposes of this section, if a surplus lines policy procured through a surplus lines broker covers properties, risks, or exposures only partially located or to be performed in this state, but this state is the home state of the insured, all premium for the policy shall be considered written on properties, risks, or exposures located or to be performed in this state.

(d) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines producer must be returned to the policyholder directly by the surplus lines producer. The surplus lines producer is prohibited from rebating, for any reason, any part of the tax.

(e) Annually, on or before March 1, unless more frequent reporting and payment is ordered by the Commissioner, each surplus lines broker shall pay the premium tax due according to subsection (b) of this section for the policies written during the preceding calendar year as shown by his or her annual statement filed with the Commissioner pursuant to § 1924 of this title. Payment shall accompany such forms and shall be made in such manner as is prescribed by the Commissioner.

§ 1926. Independently Procured Insurance

(a) Any person whose home state is this State may directly procure or directly renew insurance with a nonadmitted insurer, as defined in § 1904 of this title, without the involvement of a surplus lines licensee, on a risk located or to be performed, in whole or in part, in this State.

(b) Each insured whose home state is this State that independently procures or continues or renews insurance with a nonadmitted insurer on properties, risks, or exposures located or to be performed in whole or in part in this State, other than insurance procured through a surplus lines broker, is subject to the same tax reporting requirements under this chapter as apply to a surplus lines broker.

(c) On or before March 1 each year, the insured that independently procures insurance must file a written report with the Commissioner, upon forms prescribed by the Commissioner, showing the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged, and additional pertinent information reasonably requested by the Commissioner.

(d) At the time of filing the report required in subsection (b) of this section, the insured shall pay to the State Treasurer through the Commissioner a tax at the same rate and in the same manner as surplus lines brokers, as required in § 1925 (e) of this title.

§ 1927. Failure to file statement or remit tax; penalty.

(a) If any broker fails to file his or her annual statement or fails to remit the tax as required in §§ 1924 and 1925 of this title, or if any insured who independently procured insurance fails to file the report and remit the tax provided by § 1926 of this title prior to or on the date the tax is due, and, if in the Commissioner's opinion such failure is without just cause, he or she shall be liable for a fine of \$25 for each day of delinquency commencing with the 1st day after the tax is due.

(b) The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the Commissioner in any court of competent jurisdiction.

(c) Any fine collected by the Commissioner shall be paid to the State Treasurer and credited to the General Fund.

Section 4. Amend Chapter 19 of Title 18 of the Delaware Code by creating Subchapter III pertaining to the eligibility and regulation of nonadmitted insurers; deleting former § 1907 entirely; renumbering and reenacting former § 1919, deleting current language and substituting therein new language as follows:

“Subchapter III. Nonadmitted Insurers.

§ 1931. Minimum financial eligibility standards for surplus line insurers.

(a) The Commissioner may consider a surplus lines insurer to be eligible if the nonadmitted insurer:

(1) If a United States domestic insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

a. (1) The minimum capital and surplus requirements under the law of this State; or

(2) Fifteen million dollars (\$15,000,000).

b. The requirements of subparagraph (a)(1) may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The Commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000); or

(2) The insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC if the insurer is not domiciled in the United States or its territories.

(b) This section shall not be deemed to require the Commissioner to determine the actual financial condition or claims practices of any nonadmitted insurer; and the status of eligibility shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the Commissioner has no credible evidence to the contrary.

§ 1932. Domestic surplus lines insurers.

(a) A Delaware domestic insurer possessing policyholder surplus of at least Fifteen Million Dollars (\$15,000,000.00) may, pursuant to a resolution by its board of directors, and with the written approval of the Insurance Commissioner, be designated as a domestic surplus lines insurer. Such insurers may write surplus lines insurance in any jurisdiction, including this state.

(b) In this state, a Delaware domestic surplus lines insurer may only insure a Delaware risk when such coverage is procured pursuant to this chapter governing surplus lines insurance, and the premium shall be subject to surplus lines premium tax pursuant to § 1917 of this title.

(c) A domestic surplus lines insurer may not issue a policy designed to satisfy the motor vehicle financial responsibility requirements of this state [Title 21, § 2118 (c)], the Workers' Compensation Act [Title 19, § 2372 (a)], or any other law of this state mandating insurance coverage by a licensed insurance company.

(d) A domestic surplus lines insurer must agree to abide by all the requirements of this chapter, and all other requirements of the Delaware Code applicable to Delaware domestic insurers, unless otherwise exempted. The provisions of Chapters 42 and 44 of this title will not apply to a domestic surplus lines insurer.

§ 1933. Withdrawal of Eligibility as a Surplus Lines Insurer.

(a) If at any time the Commissioner has reason to believe that a nonadmitted insurer currently eligible as a surplus lines insurer:

- (1) Is in unsound financial condition or has acted in an untrustworthy manner; or
- (2) No longer meets the requirements for eligibility set forth in § 1931 of this title; or
- (3) Has willfully violated the laws of this State; or
- (4) Does not conduct a proper claims practice;

the Commissioner may declare such insurer no longer an eligible surplus lines insurer, upon notice and hearing.

(b) The Commissioner shall promptly mail notice of any such declaration to the regulatory authority of the domiciliary jurisdiction of the insurer. The Commissioner shall also publish notice of all such declarations electronically.

§ 1934. Legal process against surplus line insurer.

(a) A nonadmitted insurer shall be sued, upon any cause of action arising in this State under any contract issued by it as a surplus line contract pursuant to this law, in the Superior Court of this State.

(b) Service of legal process against the insurer may be made in any such action by service of 2 copies thereof upon the Commissioner and payment of the service of process fee specified in § 701 of this title. The Commissioner shall forthwith mail a copy of the process served to the person designated by the insurer in the policy for the purpose by prepaid registered or certified mail with return receipt requested. If no such person is so designated in the policy, the Commissioner shall in like manner mail a copy of the process to the broker through whom such insurance was procured, or to the insurer at its principal place of business, addressed to the address of the broker or insurer, as the case may be, last of record with the Commissioner. Upon service of process upon the Commissioner and mailing of the same in accordance with this provision, the Court shall be deemed to have jurisdiction in personam of the insurer.

(c) A nonadmitted insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section and designating the person to whom the Commissioner shall mail process as provided in subsection (b) of this section.

§ 1935. Requirements for Eligible Surplus Lines Insurers.

(a) An eligible surplus lines insurer shall furnish at least annually to the Commissioner an annual financial statement in a form acceptable to the Commissioner.

(b) An eligible surplus lines insurer shall pay annual fees pursuant to § 701 of this title.

(c) The requirements for rate and form filing contained in this title shall not apply to surplus lines insurance.

§ 1936. Application and Qualifications for approval.

(a) The Commissioner shall from time to time publish a list of surplus lines insurers deemed by him or her eligible to place business on Delaware risks currently.

(b) No foreign or alien insurer shall become listed as a surplus lines insurer eligible in Delaware unless a completed application as prescribed by the Commissioner is received and the insurer has paid the application fee pursuant to § 701 of this title.”

Section 5. Amend Chapter 19 of Title 18 of the Delaware Code by creating Subchapter IV providing for applicability, alteration, and repeal; penalties; declaring urgency of enactment, replacing former § 1901 entirely; deleting current language and substituting new language as follows:

“Subchapter IV. Miscellaneous

§ 1941. Applicability.

This chapter shall apply to all nonadmitted insurance business in which this State is the home state of the insured as defined in this chapter.

§ 1942. Reserved power of this State to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed.

§ 1943. Short title.

This chapter constitutes and may be cited as the ‘Delaware Nonadmitted Insurance Act.’

§ 1944. Penalties and Violations

(a) Penalties cited in this chapter are not exclusive remedies. In addition to any penalty provided herein, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this chapter may also be assessed penalties under § 2308 or § 2411 of this title.

(b) Whenever the Commissioner believes, from evidence satisfactory to him or her, that a person is violating or about to violate the provisions of this chapter, the Commissioner may cause a complaint to be filed in a Court of competent jurisdiction for restitution and to enjoin and restrain the person from continuing the violation or engaging in or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order of judgment awarding such preliminary or final injunctive relief and restitution as in its judgment is proper.

§ 1945. Urgency.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety, and support of the state government and its existing institutions, and shall go into immediate effect. The facts constituting the necessity are: In order to forestall preemption on June 16, 2011, of state statutes pertaining to surplus line insurance taxation, eligibility, and broker licensure by the Nonadmitted Reinsurance and Reform Act of 2010, a part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, it is necessary that this act take effect immediately.”

Approved August 16, 2011