

HOUSE BILL No. 2075

By Committee on Insurance

1-24

~~AN ACT concerning the insurance department's criminal anti-fraud division; extending the exception from disclosure of records under the open records act; repealing K.S.A. 2010 Supp. 40-2.118 AN ACT concerning surplus lines insurance; relating to the surplus lines insurance multi-state compliance compact; amending K.S.A. 40-246c and 40-246e and K.S.A. 2010 Supp. 40-246b and repealing the existing sections.~~

Be it enacted by the Legislature of the State of Kansas:

~~Section 1. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.~~

~~(b) An insurer that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed shall provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may require.~~

~~(c) Any other person that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed may provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may request.~~

~~(d) (1) Each insurer shall have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include: fraud investigators, who may be insurer employees or independent contractors; or an antifraud plan submitted to the~~

1 ~~commissioner no later than July 1, 2007. Each insurer that submits an~~
2 ~~antifraud plan shall notify the commissioner of any material change in the~~
3 ~~information contained in the antifraud plan within 30 days after such~~
4 ~~change occurs. Such insurer shall submit to the commissioner in writing~~
5 ~~the amended antifraud plan.~~

6 ~~The requirement for submitting any antifraud plan, or any amendment~~
7 ~~thereof, to the commissioner shall expire on the date specified in~~
8 ~~paragraph (2) of this subsection unless the legislature reviews and reenacts~~
9 ~~the provisions of paragraph (2) pursuant to K.S.A. 45-229 and~~
10 ~~amendments thereto.~~

11 ~~(2) Any antifraud plan, or any amendment thereof, submitted to the~~
12 ~~commissioner for informational purposes only shall be confidential and~~
13 ~~not be a public record and shall not be subject to discovery or subpoena in~~
14 ~~a civil action unless following an in camera review, the court determines~~
15 ~~that the antifraud plan is relevant and otherwise admissible under the rules~~
16 ~~of evidence set forth in article 4, chapter 60 of the Kansas Statutes~~
17 ~~Annotated, and amendments thereto. The provisions of this paragraph shall~~
18 ~~expire on July 1, 2016, unless the legislature reviews and reenacts this~~
19 ~~provision pursuant to K.S.A. 45-229, and amendments thereto, prior to~~
20 ~~July 1, 2016.~~

21 ~~(e) Except as otherwise specifically provided in K.S.A. 21-3718 and~~
22 ~~amendments thereto and K.S.A. 44-5,125 and amendments thereto, a~~
23 ~~fraudulent insurance act shall constitute a severity level 6, nonperson~~
24 ~~felony if the amount involved is \$25,000 or more; a severity level 7,~~
25 ~~nonperson felony if the amount is at least \$5,000 but less than \$25,000; a~~
26 ~~severity level 8, nonperson felony if the amount is at least \$1,000 but less~~
27 ~~than \$5,000; and a class C nonperson misdemeanor if the amount is less~~
28 ~~than \$1,000. Any combination of fraudulent acts as defined in subsection~~
29 ~~(a) which occur in a period of six consecutive months which involves~~
30 ~~\$25,000 or more shall have a presumptive sentence of imprisonment~~
31 ~~regardless of its location on the sentencing grid block.~~

32 ~~(f) In addition to any other penalty, a person who violates this statute~~
33 ~~shall be ordered to make restitution to the insurer or any other person or~~
34 ~~entity for any financial loss sustained as a result of such violation. An~~
35 ~~insurer shall not be required to provide coverage or pay any claim~~
36 ~~involving a fraudulent insurance act.~~

37 ~~(g) This act shall apply to all insurance applications, ratings, claims~~
38 ~~and other benefits made pursuant to any insurance policy.~~

39 ~~Sec. 2. K.S.A. 2010 Supp. 40-2,118 is hereby repealed.~~

40 ~~Sec. 3. This act shall take effect and be in force from and after its~~
41 ~~publication in the statute book.~~

42 *New Section 1. This act may be cited as the Surplus Lines*
43 *Insurance Multi-State Compliance Compact.*

PREAMBLE

1
2 *WHEREAS, with regard to Non-Admitted Insurance policies with*
3 *risk exposures located in multiple states, the 111th United States*
4 *Congress, has stipulated in Title V, Subtitle B the Non-Admitted and*
5 *Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform*
6 *and Consumer Protection Act, hereafter, the NRRA, that:*

7 *(A) The placement of Non-Admitted Insurance shall be subject to the*
8 *statutory and regulatory requirements solely of the insured's Home*
9 *State, and*

10 *(B) Any law, regulation, provision, or action of any State that applies*
11 *or purports to apply to Non-Admitted Insurance sold to, solicited by, or*
12 *negotiated with an insured whose Home State is another State shall be*
13 *preempted with respect to such application; except that any State law,*
14 *rule, or regulation that restricts the placement of workers' compensation*
15 *insurance or excess insurance for self-funded workers' compensation*
16 *plans with a Non-Admitted Insurer shall not be preempted.*

17 *WHEREAS, in compliance with NRRA, no State other than the*
18 *Home State of an insured may require any Premium Tax payment for*
19 *Non-Admitted Insurance; and no State other than an insured's Home*
20 *State may require a Surplus Lines Broker to be licensed in order to sell,*
21 *solicit, or negotiate Non-Admitted Insurance with respect to such*
22 *insured;*

23 *WHEREAS, the NRRA intends that the States may enter into a*
24 *compact or otherwise establish procedures to allocate among the States*
25 *the premium taxes paid to an insured's Home State; and that each State*
26 *adopt nationwide uniform requirements, forms, and procedures, such as*
27 *an interstate compact, that provide for the reporting, payment,*
28 *collection, and allocation of premium taxes for Non-Admitted*
29 *Insurance;*

30 *WHEREAS, after the expiration of the two-year period beginning on*
31 *the date of the enactment of the NRRA, a State may not collect any fees*
32 *relating to licensing of an individual or entity as a Surplus Lines*
33 *Licensee in the State unless the State has in effect at such time laws or*
34 *regulations that provide for participation by the State in the national*
35 *insurance producer database of the NAIC, or any other equivalent*
36 *uniform national database, for the licensure of Surplus Lines Licensees*
37 *and the renewal of such licenses;*

38 *WHEREAS, a need exists for a system of regulation that will provide*
39 *for Surplus Lines Insurance to be placed with reputable and financially*
40 *sound Non-Admitted Insurers, and that will permit orderly access to*
41 *Surplus Lines Insurance in this state and encourage insurers to make*
42 *new and innovative types of insurance available to consumers in this*
43 *state;*

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

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

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

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

24 ***NOW, THEREFORE, in consideration of the foregoing, the State of***
25 ***Kansas and the various other States do hereby solemnly covenant and***
26 ***agree, each with the other as follows:***

27 ***ARTICLE I***

28 ***Purpose***

29 ***The purposes of this Compact are:***

- 30 ***1. To implement the express provisions of the NRR.***
- 31 ***2. To protect the Premium Tax revenues of the Compacting States***
32 ***through facilitating the payment and collection of Premium Tax on***
33 ***Non-Admitted Insurance; and to protect the interests of the Compacting***
34 ***States by supporting the continued availability of such insurance to***
35 ***consumers; and to provide for allocation of Premium Tax for Non-***
36 ***Admitted Insurance of Multi-State Risks among the States in***
37 ***accordance with uniform Allocation Formulas to be developed, adopted,***
38 ***and implemented by the Commission.***
- 39 ***3. To streamline and improve the efficiency of the surplus lines***
40 ***market by eliminating duplicative and inconsistent tax and regulatory***
41 ***requirements among the States; and promote and protect the interest of***
42 ***Surplus Lines Licensees who assist such insureds and Surplus Lines***
43 ***Insurers, thereby ensuring the continued availability of Surplus Lines***

1 *Insurance to consumers.*

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

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

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

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

23 8. *To adopt uniform mandatory Rules with respect to regulatory*
24 *compliance requirements for:*

25 *(i) foreign Insurer Eligibility Requirements;*

26 *(ii) surplus lines Policyholder Notices;*

27 9. *To establish the Surplus Lines Insurance Multi-State Compliance*
28 *Compact Commission.*

29 10. *To coordinate reporting of Clearinghouse Transaction Data on*
30 *Non-Admitted Insurance of Multi-State Risks among Compacting States*
31 *and Contracting States.*

32 11. *To perform these and such other related functions as may be*
33 *consistent with the purposes of the Surplus Lines Insurance Multi-State*
34 *Compliance Compact.*

35 **ARTICLE II**

36 **Definitions**

37 *For purposes of this Compact the following definitions shall apply:*

38 1. *"Admitted Insurer" means an insurer that is licensed, or*
39 *authorized, to transact the business of insurance under the law of the*
40 *Home State; for purposes of this Compact "Admitted Insurer" shall not*
41 *include a domestic surplus lines insurer as may be defined by applicable*
42 *State law.*

43 2. *"Affiliate" means with respect to an insured, any entity that*

1 *controls, is controlled by, or is under common control with the insured.*

2 3. *“Allocation Formula” means the uniform methods promulgated by*
3 *the Commission by which insured risk exposures will be apportioned to*
4 *each State for the purpose of calculating Premium Taxes due.*

5 4. *“Bylaws” means those bylaws established by the Commission for*
6 *its governance, or for directing or controlling the Commission’s actions*
7 *or conduct.*

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

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

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

25 8. *“Commission” means the “Surplus Lines Insurance Multi-State*
26 *Compliance Compact Commission” established by this Compact.*

27 9. *“Commissioner” means the chief insurance regulatory official of a*
28 *State including, but not limited to commissioner, superintendent,*
29 *director or administrator or their designees.*

30 10. *“Contracting State” means any State which has not enacted this*
31 *Compact legislation but has entered into a written contract with the*
32 *Commission to utilize the services of and fully participate in the*
33 *Clearinghouse.*

34 11. *“Control” An entity has “control” over another entity if:*

35 (A) *The entity directly or indirectly or acting through one or more*
36 *other persons own, controls, or has the power to vote 25% or more of*
37 *any class of voting securities of the other entity; or*

38 (B) *the entity controls in any manner the election of a majority of the*
39 *directors or trustees of the other entity.*

40 12. *“Home State”*

41 (A) *IN GENERAL. Except as provided in subparagraph (B), the term*
42 *“Home State” means, with respect to an insured:*

43 (i) *the State in which an insured maintains its principal place of*

1 *business or, in the case of an individual, the individual's principal*
2 *residence; or*

3 *(ii) if 100% of the insured risk is located out of the State referred to*
4 *in subparagraph (A)(i), the State to which the greatest percentage of the*
5 *insured's taxable premium for that insurance contract is allocated.*

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

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

15 **14.** *"Insurer Eligibility Requirements" means the criteria, forms and*
16 *procedures established to qualify as a Surplus Lines Insurer under the*
17 *law of the Home State provided that such criteria, forms and procedures*
18 *are consistent with the express provisions of the NRRRA on and after July*
19 *21, 2011.*

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

23 **16.** *"Multi-State Risk" means a risk with insured exposures in more*
24 *than one State.*

25 **17.** *"Non-Compacting State" means any State which has not adopted*
26 *this Compact.*

27 **18.** *"Non-Admitted Insurance" means Surplus Lines Insurance and*
28 *Independently Procured Insurance.*

29 **19.** *"Non-Admitted Insurer" means an insurer that is not authorized*
30 *or admitted to transact the business of insurance under the law of the*
31 *Home State.*

32 **20.** *"NRRRA" means the Non-Admitted and Reinsurance Reform Act*
33 *which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and*
34 *Consumer Protection Act.*

35 **21.** *"Policyholder Notice" means the disclosure notice or stamp that*
36 *is required to be furnished to the applicant or policyholder in connection*
37 *with a Surplus Lines Insurance placement.*

38 **22.** *"Premium Tax" means with respect to Non-Admitted Insurance,*
39 *any tax, fee, assessment, or other charge imposed by a government entity*
40 *directly or indirectly based on any payment made as consideration for*
41 *such insurance, including premium deposits, assessments, registration*
42 *fees, and any other compensation given in consideration for a contract*
43 *of insurance.*

1 23. *“Principal Place of Business” means with respect to determining*
2 *the Home State of the insured, the state where the insured maintains its*
3 *headquarters and where the insured’s high-level officers direct, control*
4 *and coordinate the business activities of the insured.*

5 24. *“Purchasing Group” means any group formed pursuant to the*
6 *Liability Risk Retention Act which has as one of its purposes the*
7 *purchase of liability insurance on a group basis, purchases such*
8 *insurance only for its group members and only to cover their similar or*
9 *related liability exposure and is composed of members whose businesses*
10 *or activities are similar or related with respect to the liability to which*
11 *members are exposed by virtue of any related, similar or common*
12 *business, trade, product, services, premises or operations and is*
13 *domiciled in any State.*

14 25. *“Rule” means a statement of general or particular applicability*
15 *and future effect promulgated by the Commission designed to*
16 *implement, interpret, or prescribe law or policy or describing the*
17 *organization, procedure or practice requirements of the Commission*
18 *which shall have the force and effect of law in the Compacting States.*

19 26. *“Single-State Risk” means a risk with insured exposures in only*
20 *one State.*

21 27. *“State” means any state, district or territory of the United States*
22 *of America.*

23 28. *“State Transaction Documentation” means the information*
24 *required under the laws of the Home State to be filed by Surplus Lines*
25 *Licenses in order to report Surplus Lines Insurance and verify*
26 *compliance with surplus lines laws, and by insureds in order to report*
27 *Independently Procured Insurance.*

28 29. *“Surplus Lines Insurance” means insurance procured by a*
29 *Surplus Lines Licensee from a Surplus Lines Insurer or other Non-*
30 *Admitted Insurer as permitted under the law of the Home State; for*
31 *purposes of this Compact “Surplus Lines Insurance” shall also mean*
32 *excess lines insurance as may be defined by applicable State law.*

33 30. *“Surplus Lines Insurer” means a Non-Admitted Insurer eligible*
34 *under the law of the Home State to accept business from a Surplus Lines*
35 *Licensee; for purposes of this Compact “Surplus Lines Insurer” shall*
36 *also mean an insurer which is permitted to write Surplus Lines*
37 *Insurance under the laws of the state where such insurer is domiciled.*

38 31. *“Surplus Lines Licensee” means an individual, firm or*
39 *corporation licensed under the law of the Home State to place Surplus*
40 *Lines Insurance.*

41 **ARTICLE III**

42 *Establishment of the Commission and Venue*

43 1. *The Compacting States hereby create and establish a joint public*

1 *agency known as the Surplus Lines Insurance Multi-State Compliance*
2 *Compact Commission.*

3 *2. Pursuant to Article IV, the Commission will have the power to*
4 *adopt mandatory Rules which establish exclusive Home State authority*
5 *regarding Non-Admitted Insurance of Multi State Risks, Allocation*
6 *Formulas, Clearinghouse Transaction Data, a Clearinghouse for receipt*
7 *and distribution of allocated Premium Tax and Clearinghouse*
8 *Transaction Data, and uniform rulemaking procedures and Rules for*
9 *the purpose of financing, administering, operating and enforcing*
10 *compliance with the provisions of this Compact, its Bylaws and Rules.*

11 *3. Pursuant to Article IV, the Commission will have the power to*
12 *adopt mandatory Rules establishing foreign Insurer Eligibility*
13 *Requirements and a concise and objective Policyholder Notice regarding*
14 *the nature of a surplus lines placement.*

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

17 *5. The Commission is solely responsible for its liabilities except as*
18 *otherwise specifically provided in this Compact.*

19 *6. Venue is proper and judicial proceedings by or against the*
20 *Commission shall be brought solely and exclusively in a court of*
21 *competent jurisdiction where the principal office of the Commission is*
22 *located. The Commission may waive venue and jurisdictional defenses to*
23 *the extent it adopts or consents to participate in alternative dispute*
24 *resolution proceedings.*

ARTICLE IV

Authority to Establish Mandatory Rules

26 *The Commission shall adopt mandatory Rules which establish:*

27 *1. Allocation Formulas for each type of Non-Admitted Insurance*
28 *coverage, which Allocation Formulas must be used by each Compacting*
29 *State and Contracting State in acquiring Premium Tax and*
30 *Clearinghouse Transaction Data from Surplus Lines Licensees and*
31 *insureds for reporting to the Clearinghouse created by the Compact*
32 *Commission. Such Allocation Formulas will be established with input*
33 *from Surplus lines Licensees and be based upon readily available data*
34 *with simplicity and uniformity for the Surplus Line Licensee as a*
35 *material consideration.*

36 *2. Uniform Clearinghouse Transaction Data reporting requirements*
37 *for all information reported to the Clearinghouse.*

38 *3. Methods by which Compacting States and Contracting States*
39 *require Surplus Lines Licensees and insureds to pay Premium Tax and*
40 *to report Clearinghouse Transaction Data to the Clearinghouse,*
41 *including but not limited to processing Clearinghouse Transaction Data*
42 *through State stamping and service offices, State insurance departments,*
43

1 *or other State designated agencies or entities.*

2 *4. That Non-Admitted Insurance of Multi-State Risks shall be subject*
3 *to all of the regulatory compliance requirements of the Home State*
4 *exclusively. Home State regulatory compliance requirements applicable*
5 *to Surplus Lines Insurance shall include but not be limited to, (i)*
6 *person(s) required to be licensed to sell, solicit, or negotiate Surplus*
7 *Lines Insurance; (ii) Insurer Eligibility Requirements or other approved*
8 *Non-Admitted Insurer requirements; (iii) Diligent Search; (iv) State*
9 *Transaction Documentation and Clearinghouse Transaction Data*
10 *regarding the payment of Premium Tax as set forth in this Compact and*
11 *Rules to be adopted by the Commission. Home State regulatory*
12 *compliance requirements applicable to Independently Procured*
13 *Insurance placements shall include but not be limited to providing State*
14 *Transaction Documentation and Clearinghouse Transaction Data*
15 *regarding the payment of Premium Tax as set forth in this Compact and*
16 *Rules to be adopted by the Commission.*

17 *5. That each Compacting State and Contracting State may charge its*
18 *own rate of taxation on the premium allocated to such State based on*
19 *the applicable Allocation Formula provided that the state establishes one*
20 *single rate of taxation applicable to all Non-Admitted Insurance*
21 *transactions and no other tax, fee assessment or other charge by any*
22 *governmental or quasi governmental agency be permitted.*
23 *Notwithstanding the foregoing, stamping office fees may be charged as a*
24 *separate, additional cost unless such fees are incorporated into a state's*
25 *single rate of taxation.*

26 *6. That any change in the rate of taxation by any Compacting State*
27 *or Contracting State be restricted to changes made prospectively on not*
28 *less than 90 days advance notice to the Compact Commission.*

29 *7. That each Compacting State and Contracting State shall require*
30 *Premium Tax payments either annually, semi-annually, or quarterly*
31 *utilizing one or more of the following dates only: March 1, June 1,*
32 *September 1, and December 1.*

33 *8. That each Compacting State and Contracting State prohibit any*
34 *other State agency or political subdivision from requiring Surplus Lines*
35 *Licensees to provide Clearinghouse Transaction Data and State*
36 *Transaction Documentation other than to the insurance department or*
37 *tax officials of the Home State or one single designated agent thereof.*

38 *9. The obligation of the Home State by itself, through a designated*
39 *agent, surplus lines stamping or service office, to collect Clearinghouse*
40 *Transaction Data from Surplus Line Licensees and from insureds for*
41 *Independently Procured Insurance, where applicable, for reporting to*
42 *the Clearinghouse.*

43 *10. A method for the Clearinghouse to periodically report to*

1 *Compacting States, Contracting States, Surplus Lines Licensees and*
2 *insureds who independently procure insurance, all Premium Taxes owed*
3 *to each of the Compacting States and Contracting States, the dates upon*
4 *which payment of such Premium Taxes are due and a method to pay*
5 *them through the Clearinghouse.*

6 *11. That each Surplus Line Licensee is required to be licensed only in*
7 *the Home State of each insured for whom Surplus Lines Insurance has*
8 *been procured.*

9 *12. That a policy considered to be Surplus Lines Insurance in the*
10 *insured's Home State shall be considered Surplus Lines Insurance in all*
11 *Compacting States and Contracting States, and taxed as a Surplus Lines*
12 *transaction in all states to which a portion of the risk is allocated. Each*
13 *Compacting State and Contracting State shall require each Surplus*
14 *Lines Licensee to pay to every other Compacting State and Contracting*
15 *State Premium Taxes on each Multi-State Risk through the*
16 *Clearinghouse at such tax rate charged on surplus lines transactions in*
17 *such other Compacting States and Contracting States on the portion of*
18 *the risk in each such Compacting State and Contracting State as*
19 *determined by the applicable uniform Allocation Formula adopted by*
20 *the Commission. A policy considered to be Independently Procured*
21 *Insurance in the insured's Home State shall be considered*
22 *Independently Procured Insurance in all Compacting States and*
23 *Contracting States. Each Compacting State and Contracting State shall*
24 *require the insured to pay every other Compacting State and Contracting*
25 *State the Independently Procured Insurance Premium Tax on each*
26 *Multi-State Risk through the Clearinghouse pursuant to the uniform*
27 *Allocation Formula adopted by the Commission.*

28 *13. Uniform foreign Insurer Eligibility Requirements as authorized*
29 *by the NRRRA.*

30 *14. A uniform Policyholder Notice.*

31 *15. Uniform treatment of Purchasing Group Surplus Lines*
32 *Insurance placements.*

33 **ARTICLE V**

34 ***Powers of the Commission***

35 *The Commission shall have the following powers:*

36 *1. To promulgate Rules and operating procedures, pursuant to Article*
37 *VIII of this Compact, which shall have the force and effect of law and*
38 *shall be binding in the Compacting States to the extent and in the*
39 *manner provided in this Compact;*

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

43 *3. To issue subpoenas requiring the attendance and testimony of*

1 *witnesses and the production of evidence, provided however, the*
2 *Commission is not empowered to demand or subpoena records or data*
3 *from Non-Admitted Insurers;*

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

10 *5. To purchase and maintain insurance and bonds;*

11 *6. To borrow, accept or contract for services of personnel, including,*
12 *but not limited to, employees of a Compacting State or stamping office,*
13 *pursuant to an open, transparent, objective competitive process and*
14 *procedure adopted by the Commission;*

15 *7. To hire employees, professionals or specialists, and elect or appoint*
16 *officers, and to fix their compensation, define their duties and give them*
17 *appropriate authority to carry out the purposes of the Compact, and*
18 *determine their qualifications, pursuant to an open, transparent,*
19 *objective competitive process and procedure adopted by the Commission;*
20 *and to establish the Commission's personnel policies and programs*
21 *relating to conflicts of interest, rates of compensation and qualifications*
22 *of personnel, and other related personnel matters;*

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

27 *9. To lease, purchase, accept appropriate gifts or donations of, or*
28 *otherwise to own, hold, improve or use, any property, real, personal or*
29 *mixed; provided that at all times the Commission shall avoid any*
30 *appearance of impropriety and/or conflict of interest;*

31 *10. To sell convey, mortgage, pledge, lease, exchange, abandon or*
32 *otherwise dispose of any property real, personal or mixed;*

33 *11. To provide for tax audit Rules and procedures for the Compacting*
34 *States with respect to the allocation of Premium Taxes including:*

35 *a. Minimum audit standards, including sampling methods,*

36 *b. Review of internal controls,*

37 *c. Cooperation and sharing of audit responsibilities between*
38 *Compacting States,*

39 *d. Handling of refunds or credits due to overpayments or improper*
40 *allocation of Premium Taxes,*

41 *e. Taxpayer records to be reviewed including a minimum retention*
42 *period,*

43 *f. Authority of Compacting States to review, challenge, or re-audit*

1 *taxpayer records.*

2 *12. To enforce compliance by Compacting States and Contracting*
3 *States with Rules, and Bylaws pursuant to the authority set forth in*
4 *Article XIV;*

5 *13. To provide for dispute resolution among Compacting States and*
6 *Contracting States;*

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

11 *15. To make available advice and training to those personnel in State*
12 *stamping offices, State insurance departments or other State*
13 *departments for record keeping, tax compliance, and tax allocations;*
14 *and to be a resource for State insurance departments and other State*
15 *departments;*

16 *16. To establish a budget and make expenditures;*

17 *17. To borrow money;*

18 *18. To appoint and oversee committees, including advisory*
19 *committees comprised of Members, State insurance regulators, State*
20 *legislators or their representatives, insurance industry and consumer*
21 *representatives, and such other interested persons as may be designated*
22 *in this Compact and the Bylaws;*

23 *19. To establish an Executive Committee of not less than seven (7)*
24 *nor more than fifteen (15) representatives, which shall include officers*
25 *elected by the Commission and such other representatives as provided*
26 *for herein and determined by the Bylaws. Representatives of the*
27 *Executive Committee shall serve a one year term. Representatives of the*
28 *Executive Committee shall be entitled to one vote each. The Executive*
29 *Committee shall have the power to act on behalf of the Commission,*
30 *with the exception of rulemaking, during periods when the Commission*
31 *is not in session. The Executive Committee shall oversee the day to day*
32 *activities of the administration of the Compact, including the activities of*
33 *the Operations Committee created under this Article and compliance*
34 *and enforcement of the provisions of the Compact, its Bylaws, and*
35 *Rules, and such other duties as provided herein and as deemed*
36 *necessary.*

37 *20. To establish an Operations Committee of not less than seven (7)*
38 *and not more than fifteen (15) representatives to provide analysis,*
39 *advice, determinations and recommendations regarding technology,*
40 *software, and systems integration to be acquired by the Commission and*
41 *to provide analysis, advice, determinations and recommendations*
42 *regarding the establishment of mandatory Rules to be adopted to be by*
43 *the Commission.*

1 21. To enter into contracts with Contracting States so that
2 Contracting States can utilize the services of and fully participate in the
3 Clearinghouse subject to the terms and conditions set forth in such
4 contracts;

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

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

9 **ARTICLE VI**

10 **Organization of the Commission**

11 **1. Membership, Voting and Bylaws**

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

22 **b. Each Member shall be entitled to one (1) vote and shall otherwise**
23 **have an opportunity to participate in the governance of the Commission**
24 **in accordance with the Bylaws.**

25 **c. The Commission shall, by a majority vote of the Members,**
26 **prescribe Bylaws to govern its conduct as may be necessary or**
27 **appropriate to carry out the purposes and exercise the powers of the**
28 **Compact including, but not limited to:**

29 **i. Establishing the fiscal year of the Commission;**

30 **ii. Providing reasonable procedures for holding meetings of the**
31 **Commission the Executive Committee and the Operations Committee;**

32 **iii. Providing reasonable standards and procedures: (i) for the**
33 **establishment and meetings of committees, and (ii) governing any**
34 **general or specific delegation of any authority or function of the**
35 **Commission;**

36 **iv. Providing reasonable procedures for calling and conducting**
37 **meetings of the Commission that consist of a majority of Commission**
38 **Members, ensuring reasonable advance notice of each such meeting and**
39 **providing for the right of citizens to attend each such meeting with**
40 **enumerated exceptions designed to protect the public's interest, the**
41 **privacy of individuals, and insurers' and Surplus Lines Licensees'**
42 **proprietary information, including trade secrets. The Commission may**
43 **meet in camera only after a majority of the entire membership votes to**

1 *close a meeting in toto or in part. As soon as practicable, the*
2 *Commission must make public: (i) a copy of the vote to close the meeting*
3 *revealing the vote of each Member with no proxy votes allowed, and (ii)*
4 *votes taken during such meeting;*

5 *v. Establishing the titles, duties and authority and reasonable*
6 *procedures for the election of the officers of the Commission;*

7 *vi. Providing reasonable standards and procedures for the*
8 *establishment of the personnel policies and programs of the*
9 *Commission. Notwithstanding any civil service or other similar 18 laws*
10 *of any Compacting State, the Bylaws shall exclusively govern the*
11 *personnel policies and programs of the Commission;*

12 *vii. Promulgating a code of ethics to address permissible and*
13 *prohibited activities of Commission Members and employees;*

14 *viii. Providing a mechanism for winding up the operations of the*
15 *Commission and the equitable disposition of any surplus funds that may*
16 *exist after the termination of the Compact after the payment and/or*
17 *reserving of all of its debts and obligations;*

18 *d. The Commission shall publish its Bylaws in a convenient form and*
19 *file a copy thereof and a copy of any amendment thereto, with the*
20 *appropriate agency or officer in each of the Compacting States.*

21 *2. Executive Committee, Personnel and Chairperson*

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

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

32 *i. Managing the affairs of the Commission in a manner consistent*
33 *with the Bylaws and purposes of the Commission;*

34 *ii. Establishing and overseeing an organizational structure within,*
35 *and appropriate procedures for the Commission to provide for the*
36 *creation of Rules and operating procedures.*

37 *iii. Overseeing the offices of the Commission; and*

38 *iv. Planning, implementing, and coordinating communications and*
39 *activities with other State, federal and local government organizations in*
40 *order to advance the goals of the Commission.*

41 *c. The Commission shall annually elect officers from the Executive*
42 *Committee, with each having such authority and duties, as may be*
43 *specified in the Bylaws.*

1 *d. The Executive Committee may, subject to the approval of the*
2 *Commission, appoint or retain an executive director for such period,*
3 *upon such terms and conditions and for such compensation as the*
4 *Commission may deem appropriate. The executive director shall serve as*
5 *secretary to the Commission, but shall not be a Member of the*
6 *Commission. The executive director shall hire and supervise such other*
7 *persons as may be authorized by the Commission.*

8 **3. Operations Committee**

9 *a. An Operations Committee shall be established. All actions of the*
10 *Operations Committee are subject to the review and oversight of the*
11 *Commission and the Executive Committee and must be approved by the*
12 *Commission. The Executive Committee will accept the determinations*
13 *and recommendations of the Operations Committee unless good cause is*
14 *shown why such determinations and recommendations should not be*
15 *approved. Any disputes as to whether good cause exists to reject any*
16 *determination or recommendation of the Operations Committee shall be*
17 *resolved by the majority vote of the Commission.*

18 *The Operations Committee shall have no more than fifteen (15)*
19 *representatives or one for each State if there are less than fifteen (15)*
20 *Compacting States, who shall serve for a term and shall be established*
21 *as set forth in the Bylaws.*

22 *The Operations Committee shall have responsibility for:*

23 *i. Evaluating technology requirements for the Clearinghouse,*
24 *assessing existing systems used by state regulatory agencies and state*
25 *stamping offices to maximize the efficiency and successful integration of*
26 *the Clearinghouse technology systems with state and state stamping*
27 *office technology platforms and to minimize costs to the states, state*
28 *stamping offices and the Clearinghouse.*

29 *ii. Making recommendations to the Executive Committee based on its*
30 *analysis and determination of the Clearinghouse technology*
31 *requirements and compatibility with existing state and state stamping*
32 *office systems.*

33 *iii. Evaluating the most suitable proposals for adoption as mandatory*
34 *Rules, assessing such proposals for ease of integration by states, and*
35 *likelihood of successful implementation and to report to the Executive*
36 *Committee its determinations and recommendations.*

37 *iv. Such other duties and responsibilities as are delegated to it by the*
38 *Bylaws, the Executive Committee or the Commission.*

39 *b. All representatives of the Operations Committee shall be*
40 *individuals who have extensive experience and/or employment in the*
41 *Surplus Lines Insurance business including but not limited to executives*
42 *and attorneys employed by Surplus Line Insurers, Surplus Line*
43 *Licenses, Law Firms, State Insurance Departments and or State*

1 *stamping offices. Operations Committee representatives from*
2 *Compacting States which utilize the services of a state stamping office*
3 *must appoint the Chief Operating Officer or a senior manager of the*
4 *state stamping office to the Operations Committee.*

5 *4. Legislative and Advisory Committees*

6 *a. A legislative committee comprised of State legislators or their*
7 *designees shall be established to monitor the operations of and make*
8 *recommendations to, the Commission, including the Executive*
9 *Committee; provided that the manner of selection and term of any*
10 *legislative committee member shall be as set forth in the Bylaws. Prior to*
11 *the adoption by the Commission of any Uniform Standard, revision to*
12 *the Bylaws, annual budget or other significant matter as may be*
13 *provided in the Bylaws, the Executive Committee shall consult with and*
14 *report to the legislative committee.*

15 *b. The Commission may establish additional advisory committees as*
16 *its Bylaws may provide for the carrying out of its functions.*

17 *5. Corporate Records of the Commission*

18 *The Commission shall maintain its corporate books and records in*
19 *accordance with the Bylaws.*

20 *6. Qualified Immunity, Defense and Indemnification*

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

33 *b. The Commission shall defend any Member, officer, executive*
34 *director, employee or representative of the Commission, the Executive*
35 *Committee or any other Committee of the Commission in any civil*
36 *action seeking to impose liability arising out of any actual or alleged act,*
37 *error or omission that occurred within the scope of Commission*
38 *employment, duties or responsibilities, or that the person against whom*
39 *the claim is made had a reasonable basis for believing occurred within*
40 *the scope of Commission employment, duties or responsibilities;*
41 *provided that nothing herein shall be construed to prohibit that person*
42 *from retaining his or her own counsel; and provided further, that the*
43 *actual or alleged act error or omission did not result from that person's*

1 *intentional or willful or wanton misconduct.*

2 *c. The Commission shall indemnify and hold harmless any Member,*
3 *officer, executive director, employee or representative of the*
4 *Commission, Executive Committee or any other Committee of the*
5 *Commission for the amount of any settlement or judgment obtained*
6 *against that person arising out of any actual or alleged act, error or*
7 *omission that occurred within the scope of Commission employment,*
8 *duties or responsibilities, or that such person had a reasonable basis for*
9 *believing occurred within the scope of Commission employment, duties*
10 *or responsibilities, provided that the actual or alleged act, error or*
11 *omission did not result from the intentional or willful or wanton*
12 *misconduct of that person.*

13 **ARTICLE VII**

14 ***Meetings and Acts of the Commission***

15 *1. The Commission shall meet and take such actions as are consistent*
16 *with the provisions of this Compact and the Bylaws.*

17 *2. Each Member of the Commission shall have the right and power to*
18 *cast a vote to which that Compacting State is entitled and to participate*
19 *in the business and affairs of the Commission. A Member shall vote in*
20 *person or by such other means as provided in the Bylaws. The Bylaws*
21 *may provide for Members' participation in meetings by telephone or*
22 *other means of communication.*

23 *3. The Commission shall meet at least once during each calendar*
24 *year. Additional meetings shall be held as set forth in the Bylaws.*

25 *4. Public notice shall be given of all meetings and all meetings shall*
26 *be open to the public, except as set forth in the Rules or otherwise*
27 *provided in the Compact.*

28 *5. The Commission shall promulgate Rules concerning its meetings*
29 *consistent with the principles contained in the "Government in the*
30 *Sunshine Act," 5 U.S.C., § 552b, as may be amended.*

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

34 *a. Relate solely to the Commission's internal personnel practices and*
35 *procedures;*

36 *b. Disclose matters specifically exempted from disclosure by federal*
37 *and State statute;*

38 *c. Disclose trade secrets or commercial or financial information*
39 *which is privileged or confidential;*

40 *d. Involve accusing a person of a crime, or formally censuring a*
41 *person;*

42 *e. Disclose information of a personal nature where disclosure would*
43 *constitute a clearly unwarranted invasion of personal privacy;*

1 *f. Disclose investigative records compiled for law enforcement*
2 *purposes;*

3 *g. Specifically relate to the Commission’s issuance of a subpoena, or*
4 *its participation in a civil action or other legal proceeding.*

5 *7. For a meeting, or portion of a meeting, closed pursuant to this*
6 *provision, the Commission’s legal counsel or designee shall certify that*
7 *the meeting may be closed and shall reference each relevant exemptive*
8 *provision. The Commission shall keep minutes which shall fully and*
9 *clearly describe all matters discussed in a meeting and shall provide a*
10 *full and accurate summary of actions taken, and the reasons therefore,*
11 *including a description of the views expressed and the record of a roll*
12 *call vote. All documents considered in connection with an action shall be*
13 *identified in such minutes. All minutes and documents of a closed*
14 *meeting shall remain under seal, subject to release by a majority vote of*
15 *the Commission.*

16 **ARTICLE VIII**

17 **Rules and Operating Procedures: Rulemaking**

18 **Functions of the Commission**

19 **Rulemaking functions of the Commission:**

20 *1. Rulemaking Authority.—The Commission shall promulgate*
21 *reasonable Rules in order to effectively and efficiently achieve the*
22 *purposes of this Compact. Notwithstanding the foregoing, in the event*
23 *the Commission exercises its rulemaking authority in a manner that is*
24 *beyond the scope of the purposes of this Act, or the powers granted*
25 *hereunder, then such an action by the Commission shall be invalid and*
26 *have no force or effect.*

27 *2. Rulemaking Procedure.—Rules shall be made pursuant to a*
28 *rulemaking process that substantially conforms to the “Model State*
29 *Administrative Procedure Act,” of 1981 Act, Uniform Laws Annotated,*
30 *Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations*
31 *of the Commission.*

32 *3. Effective Date — All Rules and amendments, thereto, shall become*
33 *effective as of the date specified in each Rule, operating procedure or*
34 *amendment.*

35 *4. Not later than thirty (30) days after a Rule is promulgated, any*
36 *person may file a petition for judicial review of the Rule; provided that*
37 *the filing of such a petition shall not stay or otherwise prevent the Rule*
38 *from becoming effective unless the court finds that the Petitioner has a*
39 *substantial likelihood of success. The court shall give deference to the*
40 *actions of the Commission consistent with applicable law and shall not*
41 *find the Rule to be unlawful if the Rule represents a reasonable exercise*
42 *of the Commission’s authority.*

43 **ARTICLE IX**

1 **Commission Records and Enforcement**

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

17 **2. Except as to privileged records, data and information, the laws of**
18 **any Compacting State pertaining to confidentiality or nondisclosure**
19 **shall not relieve any Compacting State Member of the duty to disclose**
20 **any relevant records, data or information to the Commission; provided**
21 **that disclosure to the Commission shall not be deemed to waive or**
22 **otherwise affect any confidentiality requirement, and further provided**
23 **that, except as otherwise expressly provided in this Act, the Commission**
24 **shall not be subject to the Compacting State's laws pertaining to**
25 **confidentiality and nondisclosure with respect to records, data and**
26 **information in its possession. Confidential information of the**
27 **Commission shall remain confidential after such information is**
28 **provided to any Member, and the Commission shall maintain the**
29 **confidentiality of any information provided by a member that is**
30 **confidential under that Member's State Law.**

31 **3. The Commission shall monitor Compacting States for compliance**
32 **with duly adopted Bylaws and Rules. The Commission shall notify any**
33 **non-complying Compacting State in writing of its noncompliance with**
34 **Commission Bylaws or Rules. If a non-complying Compacting State**
35 **fails to remedy its noncompliance within the time specified in the notice**
36 **of noncompliance, the Compacting State shall be deemed to be in default**
37 **as set forth in Article XIV.**

38 **ARTICLE X**

39 **Dispute Resolution**

40 **1. Before a Member may bring an action in a court of competent**
41 **jurisdiction for violation of any provision, standard or requirement of**
42 **the Compact, the Commission shall attempt, upon the request of a**
43 **Member, to resolve any disputes or other issues that are subject to this**

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

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

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

12 **ARTICLE XI**

13 ***Review of Commission Decisions***

14 ***Regarding Commission decisions:***

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

18 *2. Not later than thirty (30) days after the Commission has given*
19 *notice of any Rule or Allocation Formula, any third party filer or*
20 *Compacting State may appeal the determination to a review panel*
21 *appointed by the Commission. The Commission shall promulgate Rules*
22 *to establish procedures for appointing such review panels and provide*
23 *for notice and hearing. An allegation that the Commission, in making*
24 *compliance or tax determinations acted arbitrarily, capriciously, or in a*
25 *manner that is an abuse of discretion or otherwise not in accordance*
26 *with the law, is subject to judicial review in accordance with Article III,*
27 *Section 6.*

28 *3. The Commission shall have authority to monitor, review and*
29 *reconsider Commission decisions upon a finding that the determinations*
30 *or allocations do not meet the relevant Rule. Where appropriate, the*
31 *Commission may withdraw or modify its determination or allocation*
32 *after proper notice and hearing, subject to the appeal process in Section*
33 *2 above.*

34 **ARTICLE XII**

35 ***Finance***

36 *1. The Commission shall pay or provide for the payment of the*
37 *reasonable expenses of its establishment and organization. To fund the*
38 *cost of its initial operations the Commission may accept contributions,*
39 *grants, and other forms of funding from the State stamping offices,*
40 *Compacting States and other sources.*

41 *2. The Commission shall collect a fee payable by the insured directly*
42 *or through a Surplus Lines Licensee on each transaction processed*
43 *through the Compact Clearinghouse, to cover the cost of the operations*

1 *and activities of the Commission and its staff in a total amount sufficient*
2 *to cover the Commission's annual budget.*

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

6 *4. The Commission shall be regarded as performing essential*
7 *governmental functions in exercising such powers and functions and in*
8 *carrying out the provisions of this Compact and of any law relating*
9 *thereto, and shall not be required to pay any taxes or assessments of any*
10 *character, levied by any State or political subdivision thereof, upon any*
11 *of the property used by it for such purposes, or any income or revenue*
12 *therefrom, including any profit from a sale or exchange.*

13 *5. The Commission shall keep complete and accurate accounts of all*
14 *its internal receipts, including grants and donations, and disbursements*
15 *for all funds under its control. The internal financial accounts of the*
16 *Commission shall be subject to the accounting procedures established*
17 *under its Bylaws. The financial accounts and reports including the*
18 *system of internal controls and procedures of the Commission shall be*
19 *audited annually by an independent certified public accountant. Upon*
20 *the determination of the Commission, but not less frequently than every*
21 *three (3) years, the review of the independent auditor shall include a*
22 *management and performance audit of the Commission. The*
23 *Commission shall make an annual report to the Governor and*
24 *legislature of the Compacting States, which shall include a report of the*
25 *independent audit. The Commission's internal accounts shall not be*
26 *confidential and such materials may be shared with the Commissioner,*
27 *the controller, or the stamping office of any Compacting State upon*
28 *request provided, however, that any work papers related to any internal*
29 *or independent audit and any information regarding the privacy of*
30 *individuals, and licensees' and insurers' proprietary information,*
31 *including trade secrets, shall remain confidential.*

32 *6. No Compacting State shall have any claim to or ownership of any*
33 *property held by or vested in the Commission or to any Commission*
34 *funds held pursuant to the provisions of this Compact.*

35 *7. The Commission shall not make any political contributions to*
36 *candidates for elected office, elected officials, political parties nor*
37 *political action committees. The Commission shall not engage in*
38 *lobbying except with respect to changes to this Compact.*

39 **ARTICLE XIII**

40 ***Compacting States, Effective Date and Amendment***

41 *1. Any State is eligible to become a Compacting State.*

42 *2. The Compact shall become effective and binding upon legislative*
43 *enactment of the Compact into law by two (2) Compacting States,*

1 *provided the Commission shall become effective for purposes of*
 2 *adopting Rules, and creating the Clearinghouse when there are a total*
 3 *of ten (10) Compacting States and Contracting States or, alternatively,*
 4 *when there are Compacting States and Contracting States representing*
 5 *greater than forty percent (40%) of the Surplus Lines Insurance*
 6 *premium volume based on records of the percentage of Surplus Lines*
 7 *Insurance premium set forth in Appendix A hereto. Thereafter, it shall*
 8 *become effective and binding as to any other Compacting State upon*
 9 *enactment of the Compact into law by that State. Notwithstanding the*
 10 *foregoing, the Clearinghouse operations and the duty to report*
 11 *Clearinghouse Transaction Data shall begin on the first January 1st or*
 12 *July 1st following the first anniversary of the Commission effective date.*
 13 *For States which join the Compact subsequent to the effective date, a*
 14 *start date for reporting Clearinghouse Transaction Data shall be set by*
 15 *the Commission provided Surplus Lines Licensees and all other*
 16 *interested parties receive not less than 90 days advance notice.*

17 *3. Amendments to the Compact may be proposed by the Commission*
 18 *for enactment by the Compacting States. No amendment shall become*
 19 *effective and binding upon the Commission and the Compacting States*
 20 *unless and until all Compacting States enact the amendment into law.*

21 **ARTICLE XIV**

22 ***Withdrawal, Default and Termination***

23 ***1. Withdrawal***

24 *a. Once effective, the Compact shall continue in force and remain*
 25 *binding upon each and every Compacting State, provided that a*
 26 *Compacting State may withdraw from the Compact ("Withdrawing*
 27 *State") by enacting a statute specifically repealing the statute which*
 28 *enacted the Compact into law.*

29 *b. The effective date of withdrawal is the effective date of the*
 30 *repealing statute. However, the withdrawal shall not apply to any tax or*
 31 *compliance determinations approved on the date the repealing statute*
 32 *becomes effective, except by mutual agreement of the Commission and*
 33 *the Withdrawing State unless the approval is rescinded by the*
 34 *Commission.*

35 *c. The Member of the Withdrawing State shall immediately notify the*
 36 *Executive Committee of the Commission in writing upon the*
 37 *introduction of legislation repealing this Compact in the Withdrawing*
 38 *State.*

39 *d. The Commission shall notify the other Compacting States of the*
 40 *introduction of such legislation within ten (10) days after its receipt of*
 41 *notice thereof.*

42 *e. The Withdrawing State is responsible for all obligations, duties and*
 43 *liabilities incurred through the effective date of withdrawal, including*

1 *any obligations, the performance of which extend beyond the effective*
2 *date of withdrawal. To the extent those obligations may have been*
3 *released or relinquished by mutual agreement of the Commission and*
4 *the Withdrawing State, the Commission's determinations prior to the*
5 *effective date of withdrawal shall continue to be effective and be given*
6 *full force and effect in the Withdrawing State, unless formally rescinded*
7 *by the Commission.*

8 *f. Reinstatement following withdrawal of any Compacting State shall*
9 *occur upon the effective date of the Withdrawing State reenacting the*
10 *Compact.*

11 **2. Default**

12 *a. If the Commission determines that any Compacting State has at*
13 *anytime defaulted ("Defaulting State") in the performance of any of its*
14 *obligations or responsibilities under this Compact, the Bylaws or duly*
15 *promulgated Rules then after notice and hearing as set forth in the*
16 *Bylaws, all rights, privileges and benefits conferred by this Compact on*
17 *the Defaulting State shall be suspended from the effective date of default*
18 *as fixed by the Commission. The grounds for default include, but are*
19 *not limited to, failure of a Compacting State to perform its obligations or*
20 *responsibilities, and any other grounds designated in Commission*
21 *Rules. The Commission shall immediately notify the Defaulting State in*
22 *writing of the Defaulting State's suspension pending a cure of the*
23 *default. The Commission shall stipulate the conditions and the time*
24 *period within which the Defaulting State must cure its default. If the*
25 *Defaulting State fails to cure the default within the time period specified*
26 *by the Commission, the Defaulting State shall be terminated from the*
27 *Compact and all rights, privileges and benefits conferred by this*
28 *Compact shall be terminated from the effective date of termination.*

29 *b. Decisions of the Commission that are issued on the effective date*
30 *of termination shall remain in force in the Defaulting State in the same*
31 *manner as if the Defaulting State had withdrawn voluntarily pursuant to*
32 *Section 1 of this Article.*

33 *c. Reinstatement following termination of any Compacting State*
34 *requires a reenactment of the Compact.*

35 **3. Dissolution of Compact**

36 *a. The Compact dissolves effective upon the date of the withdrawal or*
37 *default of the Compacting State which reduces membership in the*
38 *Compact to one Compacting State.*

39 *b. Upon the dissolution of this Compact, the Compact becomes null*
40 *and void and shall have no further force or effect, and the business and*
41 *affairs of the Commission shall be wound up and any surplus funds*
42 *shall be distributed in accordance with the Rules and Bylaws.*

43 **ARTICLE XV**

Severability and Construction

1
2 *1. The provisions of this Compact shall be severable and if any*
3 *phrase, clause, sentence or provision is deemed unenforceable, the*
4 *remaining provisions of the Compact shall be enforceable.*

5 *2. The provisions of this Compact shall be liberally construed to*
6 *effectuate its purposes.*

7 *3. Throughout this Compact the use of the singular shall include the*
8 *plural and vice-versa.*

9 *4. The headings and captions of articles, sections and sub-sections*
10 *used in this Compact are for convenience only and shall be ignored in*
11 *construing the substantive provisions of this Compact.*

12 *ARTICLE XVI*

13 *Binding Effect of Compact and Other Laws*

14 *1. Other Laws*

15 *a. Nothing herein prevents the enforcement of any other law of a*
16 *Compacting State except as provided in Paragraph b. of this section.*

17 *b. Decisions of the Commission, and any Rules, and any other*
18 *requirements of the Commission shall constitute the exclusive Rule, or*
19 *determination applicable to the Compacting States. Any law or*
20 *regulation regarding Non-Admitted Insurance of Multi-State Risks that*
21 *is contrary to Rules of the Commission, is preempted with respect to the*
22 *following:*

23 *(i) Clearinghouse Transaction Data reporting requirements;*

24 *(ii) Allocation Formula;*

25 *(iii) Clearinghouse Transaction Data collection requirements;*

26 *(iv) Premium Tax payment time frames and Rules concerning*
27 *dissemination of data among the Compacting States for Non- Admitted*
28 *Insurance of Multi-State Risks and Single-State Risks;*

29 *(v) Exclusive compliance with surplus lines law of the Home State of*
30 *the insured; and*

31 *(vi) Rules for reporting to a Clearinghouse for receipt and*
32 *distribution of Clearinghouse Transaction Data related to Non-Admitted*
33 *Insurance of Multi-State Risks;*

34 *(vii) Uniform foreign Insurers Eligibility Requirements;*

35 *(viii) Uniform Policyholder Notice; and*

36 *(ix) Uniform treatment of Purchasing Groups procuring Non-*
37 *Admitted Insurance.*

38 *c. Except as stated in paragraph b, any Rule, Uniform Standard or*
39 *other requirement of the Commission shall constitute the exclusive*
40 *provision that a Commissioner may apply to compliance or tax*
41 *determinations. Notwithstanding the foregoing, no action taken by the*
42 *commission shall abrogate or restrict: (i) the access of any person to*
43 *State courts; (ii) the availability of alternative dispute resolution under*

1 *Article X of this Compact (iii) remedies available under State law related*
 2 *to breach of contract, tort, or other laws not specifically directed to*
 3 *compliance or tax determinations; (iv) State law relating to the*
 4 *construction of insurance contracts; or (v) the authority of the attorney*
 5 *general of the State, including but not limited to maintaining any actions*
 6 *or proceedings, as authorized by law.*

7 **2. Binding Effect of this Compact**

8 *a. All lawful actions of the Commission, including all Rules*
 9 *promulgated by the Commission, are binding upon the Compacting*
 10 *States, except as provided herein.*

11 *b. All agreements between the Commission and the Compacting*
 12 *States are binding in accordance with their terms.*

13 *c. Upon the request of a party to a conflict over the meaning or*
 14 *interpretation of Commission actions, and upon a majority vote of the*
 15 *Compacting States, the Commission may issue advisory opinions*
 16 *regarding the meaning or interpretation in dispute. This provision may*
 17 *be implemented by Rule at the discretion of the Commission.*

18 *d. In the event any provision of this Compact exceeds the*
 19 *constitutional limits imposed on the legislature of any Compacting State,*
 20 *the obligations, duties, powers or jurisdiction sought to be conferred by*
 21 *that provision upon the Commission shall be ineffective as to that State*
 22 *and those obligations, duties, powers or jurisdiction shall remain in the*
 23 *Compacting State and shall be exercised by the agency thereof to which*
 24 *those obligations, duties, powers or jurisdiction are delegated by law in*
 25 *effect at the time this Compact becomes effective.*

Surplus Line Insurance Premiums by State	Premiums based on taxes paid	Appendix A Share of Total Premiums
State		
Alabama	445,746,000	1.47%
Alaska	89,453,519	0.29%
Arizona	663,703,267	2.18%
Arkansas	201,859,750	0.66%
California	5,622,450,467	18.49%
Colorado	543,781,333	1.79%
Connecticut	329,358,800	1.08%
Delaware	92,835,950	0.31%
Florida	2,660,908,760	8.75%
Georgia	895,643,150	2.95%
Hawaii	232,951,489	0.77%
Idaho	74,202,255	0.24%
Illinois	1,016,504,629	3.34%
Indiana	412,265,320	1.36%
Iowa	135,130,933	0.44%

1	<i>Kansas</i>	<i>160,279,300</i>	<i>0.53%</i>
2	<i>Kentucky</i>	<i>167,996,133</i>	<i>0.55%</i>
3	<i>Louisiana</i>	<i>853,173,280</i>	<i>2.81%</i>
4	<i>Maine</i>	<i>60,111,200</i>	<i>0.20%</i>
5	<i>Maryland</i>	<i>434,887,600</i>	<i>1.43%</i>
6	<i>Massachusetts</i>	<i>708,640,225</i>	<i>2.33%</i>
7	<i>Michigan</i>	<i>703,357,040</i>	<i>2.31%</i>
8	<i>Minnesota</i>	<i>393,128,400</i>	<i>1.29%</i>
9	<i>Mississippi</i>	<i>263,313,175</i>	<i>0.87%</i>
10	<i>Missouri</i>	<i>404,489,860</i>	<i>1.33%</i>
11	<i>Montana</i>	<i>64,692,873</i>	<i>0.21%</i>
12	<i>Nebraska</i>	<i>92,141,167</i>	<i>0.30%</i>
13	<i>Nevada</i>	<i>354,271,514</i>	<i>1.17%</i>
14	<i>New Hampshire</i>	<i>102,946,250</i>	<i>0.34%</i>
15	<i>New Jersey</i>	<i>1,087,994,033</i>	<i>3.58%</i>
16	<i>New Mexico</i>	<i>67,608,458</i>	<i>0.22%</i>
17	<i>New York</i>	<i>2,768,618,083</i>	<i>9.11%</i>
18	<i>North Carolina</i>	<i>514,965,060</i>	<i>1.69%</i>
19	<i>North Dakota</i>	<i>36,223,943</i>	<i>0.12%</i>
20	<i>Ohio</i>	<i>342,000,000</i>	<i>1.12%</i>
21	<i>Oklahoma</i>	<i>319,526,400</i>	<i>1.05%</i>
22	<i>Oregon</i>	<i>312,702,150</i>	<i>1.03%</i>
23	<i>Pennsylvania</i>	<i>780,666,667</i>	<i>2.57%</i>
24	<i>Rhode Island</i>	<i>71,794,067</i>	<i>0.24%</i>
25	<i>South Carolina</i>	<i>412,489,825</i>	<i>1.36%</i>
26	<i>South Dakota</i>	<i>38,702,120</i>	<i>0.13%</i>
27	<i>Tennessee</i>	<i>451,775,240</i>	<i>1.49%</i>
28	<i>Texas</i>	<i>3,059,170,454</i>	<i>10.06%</i>
29	<i>Utah</i>	<i>142,593,412</i>	<i>0.47%</i>
30	<i>Vermont</i>	<i>41,919,433</i>	<i>0.14%</i>
31	<i>Virginia</i>	<i>611,530,667</i>	<i>2.01%</i>
32	<i>Washington</i>	<i>739,932,050</i>	<i>2.43%</i>
33	<i>West Virginia</i>	<i>130,476,250</i>	<i>0.43%</i>
34	<i>Wisconsin</i>	<i>248,758,333</i>	<i>0.82%</i>
35	<i>Wyoming</i>	<i>40,526,967</i>	<i>0.13%</i>
36	<i>Total</i>	<i>30,400,197,251</i>	<i>100.00%</i>

37 *This Data is 2005 Calendar Year Data excerpted from a study dated*
 38 *February 27, 2007 by Mackin & Company.*

39 *New Sec. 2. The commissioner of insurance shall represent this*
 40 *state on the surplus lines insurance multi-state compliance compact.*

41 *New Sec. 3. The member representing this state on the surplus lines*
 42 *insurance multi-state compliance compact may be represented thereon*
 43 *by an alternate designated by the commissioner of insurance. Any such*

1 *alternate shall be an assistant commissioner or a division director of the*
 2 *insurance department.*

3 *Sec. 4. K.S.A. 2010 Supp. 40-246b is hereby amended to read as*
 4 *follows: 40-246b. The [(a)] Upon receipt of a proper application, the*

5 *commissioner of insurance may issue to any duly licensed resident agent*
 6 *of this state, who has been licensed as a fire or casualty, or both, resident*
 7 *agent in this or any other state or combination thereof, for three*
 8 *consecutive years immediately prior to application for the type of license*
 9 *herein prescribed, upon proper application, an excess coverage license to*

10 *negotiate an excess lines coverage license to any licensed property and*
 11 *casualty agent of this state or any other state. Any agent so licensed may*
 12 *negotiate for insureds whose home state is this state, the types of*

13 *contracts of fire insurance enumerated in K.S.A. 40-901, and amendments*
 14 *thereto, and the type of casualty insurance contracts enumerated in K.S.A.*
 15 *40-1102, and amendments thereto, or reinsurance, or to place risks, or to*
 16 *effect insurance or reinsurance for persons or corporations other than such*
 17 *agent, with insurers not authorized to do business in this state. An agent, as*

18 *defined in K.S.A. 40-241e 2010 Supp. 40-4902, and amendments thereto,*
 19 *may place the kind or kinds of business specified in this act for which such*
 20 *agent is licensed pursuant to K.S.A. 40-240 and 40-241 2010 Supp. 40-*
 21 *4903 and subsection (d) of 40-4906, and amendments thereto, with an*

22 *insurer not authorized to do business in this state by placing such business*
 23 *with a person licensed pursuant to the provisions of this act and may share*
 24 *in the applicable commissions on such business. Before any such license*
 25 *shall be issued, the applicant shall submit proper application on a form*
 26 *prescribed by the commissioner, which application shall be accompanied*
 27 *by a fee of \$50. Such license shall be renewable each year on May 1, upon*
 28 *the payment of a \$50 fee. Excess lines agents licensed by the department*
 29 *on the effective date of this act shall be exempt from the experience*
 30 *requirement.*

31 *(b) The agent so licensed shall on or before March 1 of each year, file*
 32 *with the insurance department of this state, a sworn affidavit or statement*
 33 *to the effect that, after diligent effort, such agent has been unable to secure*
 34 *the amount of insurance required to protect the property, person, or firm*
 35 *described in such agent's affidavit or statement from loss or damage in*
 36 *regularly admitted companies during the preceding year. Mere rate*
 37 *differential shall not be grounds for placing a particular risk in a*
 38 *nonadmitted carrier when an admitted carrier would accept such risk at a*
 39 *different rate. The licensed excess coverage agent must, prior to placing*
 40 *insurance with an insurer not authorized to do business in this state, obtain*
 41 *the written consent of the prospective named insured and provide such*
 42 *insured the following information in a form promulgated by the*
 43 *commissioner:*

1 (a) (1) A statement that the coverage will be obtained from an insurer
2 not authorized to do business in this state;

3 (b) (2) a statement that the insurer's name appears on the list of
4 companies maintained by the commissioner pursuant to K.S.A. 40-246e,
5 and amendments thereto;

6 (c) (3) a notice that the insurer's financial condition, policy forms,
7 rates and trade practices are not subject to the review or jurisdiction of the
8 commissioner;

9 (d) (4) a statement that the protection of the guaranty associations is
10 not afforded to policyholders of the insurer; and

11 (e) (5) a statement or notice with respect to any other information
12 deemed necessary by the commissioner pertinent to insuring with an
13 insurer not authorized to do business in this state.

14 (c) In the event the insured desires that coverage be bound with an
15 insurer not admitted to this state and it is not possible to obtain the written
16 consent of the insured prior to binding the coverage, the excess lines agent
17 may bind the coverage after advising the insured of the information set out
18 above and shall obtain written confirmation that the insured desires that
19 coverage be placed with an insurer not admitted to this state within 30
20 days after binding coverage.

21 (d) When business comes to a licensed excess lines agent *in which*
22 *this state is the home state* for placement with an insurer not authorized to
23 do business in this state from an agent not licensed as an excess lines
24 agent, it shall be the responsibility of the licensed excess lines agent to
25 ascertain that the insured has been provided the preceding information and
26 has consented to being insured with an insurer not authorized to do
27 business in this state. Each excess lines agent shall keep a separate record
28 book in such agent's office showing the transactions of fire and casualty
29 insurance and reinsurance placed in companies not authorized to do
30 business in this state, the amount of gross premiums charged thereon, the
31 insurer ~~in which~~ *with which the policy was* placed, the date, term and
32 number of the policy, the location and nature of the risk, the name of the
33 ~~assured~~ *insured* and such other information as the commissioner may
34 require and such record shall be available at all times for inspection by the
35 commissioner of insurance or the commissioner's authorized
36 representatives. The commissioner may revoke or suspend any license
37 issued pursuant to the provisions of this act in the same manner and for the
38 same reasons prescribed by K.S.A. ~~40-242~~ *2010 Supp. 40-4909*, and
39 amendments thereto.

40 Any policy issued under the provisions of this statute shall have
41 stamped or endorsed in a prominent manner thereon, the following: This
42 policy is issued by an insurer not authorized to do business in Kansas and,
43 as such, the form, financial condition and rates are not subject to review by

1 the commissioner of insurance and the insured is not protected by any
2 guaranty fund.

3 If business is placed with a nonadmitted company that is subsequently
4 determined to be insolvent, the excess lines agent placing such business
5 with such company is relieved of any responsibility to the insured as it
6 relates to such insolvency, if the excess lines agent has satisfactorily
7 complied with all requirements of this section pertaining to notification of
8 the insured, has properly obtained the written consent of the insured and
9 has used due diligence in selecting the insurer. It shall be presumed that
10 due diligence was used in selecting the insurer if such insurer was on the
11 list compiled pursuant to K.S.A. 40-246e, and amendments thereto, at the
12 time coverage first became effective.

13 Sec. 5. K.S.A. 40-246c is hereby amended to read as follows: 40-
14 246c. ~~Each licensed agent shall file with the commissioner on or before~~
15 ~~March 1 of each year a statement on a form prescribed by the~~
16 ~~commissioner, accounting for the gross premiums upon all policies written~~
17 ~~on risks situated in this state up to January 1 in each year for the year next~~
18 ~~preceding and the licensee shall transmit to the commissioner, with such~~
19 ~~affidavit or statement, a sum equal to 6% of the gross premiums upon all~~
20 ~~policies procured by such agent on risks situated in this state written under~~
21 ~~the provisions of this act. Any individual placing a policy with an insurer~~
22 ~~not authorized to do business in this state on a risk domiciled in a state~~
23 ~~other than this state, but also covering a risk or location in Kansas, shall~~
24 ~~file with the commissioner a statement in the form prescribed by the~~
25 ~~commissioner, describing the risk and shall pay to the commissioner a sum~~
26 ~~equal to 6% of the portion of the premium applicable to the risk located in~~
27 ~~Kansas within 120 days after writing the risk.~~

28 *(a) On March 1 of each year, each licensed agent shall collect and*
29 *pay to the commissioner a sum based on the total gross premiums*
30 *charged, less any return premiums, for surplus lines insurance provided*
31 *by the licensee pursuant to the license. Where the insurance covers*
32 *properties, risks or exposures located or to be performed both in and out*
33 *of this state, the sum payable shall be computed based on:*

34 *(1) An amount equal to 6% of that portion of the gross premiums*
35 *allocated to this state; plus*

36 *(2) an amount equal to the portion of the premiums allocated to*
37 *other states or territories on the basis of the tax rates and fees applicable*
38 *to properties, risks or exposures located or to be performed outside of*
39 *this state; less*

40 *(3) the amount of gross premiums allocated to this state and*
41 *returned to the insured.*

42 *(b) The tax on any portion of the premium unearned at termination*
43 *of insurance, if any, having been credited by the state to the licensee*

1 *shall be returned to the policyholder directly by the surplus lines licensee*
 2 *or through the producing broker. The surplus lines licensee is prohibited*
 3 *from rebating any part of the tax for any reason. To the extent that other*
 4 *states where portions of the properties, risks or exposures reside have*
 5 *failed to enter into a compact or reciprocal allocation procedure with*
 6 *this state, the net premium tax collected shall be retained by this state.*

7 (c) The individual responsible for filing the statement shall be the
 8 agent who signs the policy or the agent of record with the company. The
 9 commissioner of insurance shall collect double the amount of tax herein
 10 provided from any licensee or other responsible individual as herein
 11 described who shall fail, refuse or neglect to transmit the required affidavit
 12 or statement or shall fail to pay the tax imposed by this section, to the
 13 commissioner within the period specified.

14 Sec. 6. K.S.A. 40-246e is hereby amended to read as follows: 40-
 15 246e. The commissioner shall maintain a list of insurers not authorized to
 16 do business in this state for review by any interested person. Only those
 17 insurers who have filed a certified copy of their most recent annual
 18 statement with the commissioner in the form prescribed by K.S.A. 40-225,
 19 and amendments thereto, or, if domiciled outside the United States, have
 20 filed their most recent annual statement with the national association of
 21 insurance commissioners may appear on the list. No excess lines agent
 22 shall place insurance on a Kansas domiciled risk with an insurer whose
 23 name does not appear on this list. No company shall appear on the list
 24 whose capital or surplus as shown on the annual statement does not equal
 25 or exceed ~~\$1,500,000~~ **\$4,500,000**. Individual unincorporated insurers not
 26 listed by the national association of insurance commissioners may appear
 27 on the list if they are authorized to transact an insurance business in at
 28 least one state of the United States, possess assets which are held in trust
 29 for the benefit of American policyholders in the sum of not less than
 30 \$50,000,000 and pay the filing fee required by this section. Insurance
 31 exchanges who issue contracts on behalf of their members and pay the
 32 filing fee required by this section may appear on the list if their individual
 33 members have a capital or surplus equal to or in excess of \$1,500,000 and
 34 the aggregate capital or surplus of all members of the exchange is at least
 35 \$15,000,000. A nonrefundable filing fee of \$200 shall be required of any
 36 insurer submitting its annual statement for review by the commissioner for
 37 inclusion on such list. The commissioner shall remove an insurer's name
 38 from the listing only when: (a) The insurer requests such removal; or (b)
 39 the insurer fails to file its latest annual statement and required filing fee
 40 prior to May 1 of each year as required by this section; or (c) the
 41 commissioner is notified by the insurance supervisory authority of any
 42 state of the United States that such insurer has had its authority to transact
 43 business restricted; or has been declared insolvent or placed in

1 receivership, conservatorship, rehabilitation or any similar status wherein
2 the business of the insurer is formally supervised by an insurance
3 supervisory authority; or (d) the commissioner is notified by the N.A.I.C.
4 that any insurer domiciled outside the United States has been declared
5 insolvent or placed in receivership, conservatorship, rehabilitation or any
6 similar status wherein the business of the insurer is formally supervised by
7 an insurance supervisory authority pursuant to an order by any court of
8 competent jurisdiction; or (e) the insurer has failed to effectuate reasonably
9 prompt, fair and equitable payment of just losses and claims in this state;
10 or (f) the insurer encourages, promotes or rewards an agent to violate the
11 provisions of K.S.A. 40-246b, and amendments thereto. There shall be no
12 liability on the part of and no cause of action of any nature shall arise
13 against the commissioner, the commissioner's employees, or the state of
14 Kansas as a result of any insurer's name appearing or not appearing on the
15 list required by this section if such list is constructed and maintained in
16 good faith and without malice.

17 Sec. 7. K.S.A. 40-246c and 40-246e and K.S.A. 2010 Supp. 40-246b
18 are hereby repealed.

19 Sec. 8. This act shall take effect and be in force from and after its
20 publication in the Kansas register.
21