By: Eiland H.B. No. 1535

A BILL TO BE ENTITLED

1	AN ACT	
2	relating to the participation of this state in the Surp	olus Lines
3	Insurance Multi-State Compliance Compact.	
4	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEX	AS:
5	ARTICLE 1. TEXT OF MULTI-STATE COMPACT	
6	SECTION 1.01. Subtitle I, Title 6, Insurance	Code, is
7	amended by adding Chapter 981A to read as follows:	
8	CHAPTER 981A. SURPLUS LINES INSURANCE MULTI-STATE COM	PLIANCE
9	COMPACT	
10	Sec. 981A.001. DEFINITIONS. In this chapter:	
11	(1) "Commission" means the Surplus Lines	Insurance
12	Multi-State Compliance Compact Commission.	
13	(2) "Compact" means the Surplus Lines	Insurance
14	Multi-State Compliance Compact.	
15	Sec. 981A.002. EXECUTION AND TEXT OF COMPACT.	This state
16	enacts the Surplus Lines Insurance Multi-State Complian	ce Compact
17	and enters into the compact with all other eligible state	es legally
18	joining in the compact in substantially the following form:	
19	SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT	
20) PREAMBLE	
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12	Article XV	Severability and Construction
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14		PREAMBLE

- 15 WHEREAS, with regard to Non-Admitted Insurance policies with risk
- 16 exposures located in multiple states, the 111th United States
- 17 Congress, has stipulated in Title V, Subtitle B the Non-Admitted
- 18 and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street
- 19 Reform and Consumer Protection Act, hereafter, the NRRA, that:
- 20 (A) The placement of Non-Admitted Insurance shall be subject to
- 21 the statutory and regulatory requirements solely of the insured's
- 22 Home State, and
- 23 (B) Any law, regulation, provision, or action of any State that
- 24 applies or purports to apply to Non-Admitted Insurance sold to,
- 25 solicited by, or negotiated with an insured whose Home State is
- 26 another State shall be preempted with respect to such application;
- 27 except that any State law, rule, or regulation that restricts the

- 1 placement of workers' compensation insurance or excess insurance
- 2 for self-funded workers' compensation plans with a Non-Admitted
- 3 Insurer shall not be preempted.
- 4 WHEREAS, in compliance with NRRA, no State other than the Home State
- 5 of an insured may require any Premium Tax payment for Non-Admitted
- 6 Insurance; and no State other than an insured's Home State may
- 7 require a Surplus Lines Broker to be licensed in order to sell,
- 8 solicit, or negotiate Non-Admitted Insurance with respect to such
- 9 insured;
- 10 WHEREAS, the NRRA intends that the States may enter into a compact
- 11 or otherwise establish procedures to allocate among the States the
- 12 premium taxes paid to an insured's Home State; and that each State
- 13 adopt nationwide uniform requirements, forms, and procedures, such
- 14 as an interstate compact, that provide for the reporting, payment,
- 15 collection, and allocation of premium taxes for Non-Admitted
- 16 Insurance;
- 17 WHEREAS, after the expiration of the two-year period beginning on
- 18 the date of the enactment of the NRRA, a State may not collect any
- 19 fees relating to licensing of an individual or entity as a Surplus
- 20 Lines Licensee in the State unless the State has in effect at such
- 21 time laws or regulations that provide for participation by the
- 22 State in the national insurance producer database of the NAIC, or
- 23 any other equivalent uniform national database, for the licensure
- 24 of Surplus Lines Licensees and the renewal of such licenses;
- 25 WHEREAS, a need exists for a system of regulation that will provide
- 26 for Surplus Lines Insurance to be placed with reputable and
- 27 financially sound Non-Admitted Insurers, and that will permit

- 1 orderly access to Surplus Lines Insurance in this state and
- 2 encourage insurers to make new and innovative types of insurance
- 3 available to consumers in this state;
- 4 WHEREAS, protecting the revenue of this state and other Compacting
- 5 States may be accomplished by facilitating the payment and
- 6 collection of Premium Tax on Non-Admitted Insurance and providing
- 7 for allocation of Premium Tax for Non-Admitted Insurance of
- 8 Multi-State Risks among the States in accordance with Uniform
- 9 Allocation Formulas;
- 10 WHEREAS, the efficiency of the surplus lines market may be improved
- 11 by eliminating duplicative and inconsistent tax and regulatory
- 12 requirements among the States, and by promoting and protecting the
- 13 interests of Surplus Lines Licensees who assist such insureds and
- 14 Non-Admitted Insurers, thereby ensuring the continued availability
- 15 of Non-Admitted Insurance to consumers;
- 16 WHEREAS, regulatory compliance with respect to Non-Admitted
- 17 Insurance placements may be streamlined by providing for exclusive
- 18 single-state regulatory compliance for Non-Admitted Insurance of
- 19 Multi-State Risks, thereby providing certainty regarding such
- 20 compliance to all persons who have an interest in such
- 21 transactions, including but not limited to insureds, regulators,
- 22 Surplus Lines Licensees, other insurance producers, and Surplus
- 23 Lines Insurers;
- 24 WHEREAS, coordination of regulatory resources and expertise
- 25 between State insurance departments and other State agencies, as
- 26 well as State surplus lines stamping offices, with respect to
- 27 Non-Admitted Insurance will be improved;

- 1 NOW, THEREFORE, in consideration of the foregoing, the State of
- 2 Texas and the various other States do hereby solemnly covenant and
- 3 agree, each with the other as follows:
- 4 ARTICLE I
- 5 Purpose
- 6 The purposes of this Compact are:
- 7 1. To implement the express provisions of the NRRA.

implemented by the Commission.

- To protect the Premium Tax revenues of the Compacting States 8 2. 9 through facilitating the payment and collection of Premium Tax on Non-Admitted Insurance; and to protect the interests 10 of the Compacting States by supporting the continued 11 availability of such insurance to consumers; and to provide 12 for allocation of Premium Tax for Non-Admitted Insurance of 13 14 Multi-State Risks among the States in accordance with uniform 15 Allocation Formulas to be developed, adopted,
- To streamline and improve the efficiency of the surplus lines
 market by eliminating duplicative and inconsistent tax and
 regulatory requirements among the States; and promote and
 protect the interest of Surplus Lines Licensees who assist
 such insureds and Surplus Lines Insurers, thereby ensuring
 the continued availability of Surplus Lines Insurance to
 consumers.

- 4. 1 То streamline regulatory compliance with respect to 2 Non-Admitted Insurance placements by providing for exclusive 3 single-state regulatory compliance for Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to 4 be adopted by the Commission, thereby providing certainty 5 regarding such compliance to all persons who have an interest 6 7 in such transactions, including but not limited to insureds, 8 regulators, Surplus Lines Licensees, other insurance 9 producers, and Surplus Lines Insurers.
- To establish a Clearinghouse for receipt and dissemination of
 Premium Tax and Clearinghouse Transaction Data related to
 Non-Admitted Insurance of Multi-State Risks, in accordance
 with Rules to be adopted by the Commission.
- 14 6. To improve coordination of regulatory resources and
 15 expertise between State insurance departments and other
 16 State agencies, as well as State surplus lines stamping
 17 offices, with respect to Non-Admitted Insurance.
- To adopt uniform Rules to provide for Premium Tax payment, reporting, allocation, data collection and dissemination for Non-Admitted Insurance of Multi-State Risks and Single-State Risks, in accordance with Rules to be adopted by the Commission, thereby promoting the overall efficiency of the Non-Admitted Insurance market.
- 24 8. To adopt uniform mandatory Rules with respect to regulatory compliance requirements for:
- 26 (i) foreign Insurer Eligibility Requirements;
- 27 (ii) surplus lines Policyholder Notices;

- 1 9. To establish the Surplus Lines Insurance Multi-State
- 2 Compliance Compact Commission.
- 3 10. To coordinate reporting of Clearinghouse Transaction Data on
- 4 Non-Admitted Insurance of Multi-State Risks among Compacting
- 5 States and Contracting States.
- 6 11. To perform these and such other related functions as may be
- 7 consistent with the purposes of the Surplus Lines Insurance
- 8 Multi-State Compliance Compact.
- 9 ARTICLE II
- 10 Definitions
- 11 For purposes of this Compact the following definitions shall apply:
- 12 1. "Admitted Insurer" means an insurer that is licensed, or
- authorized, to transact the business of insurance under the
- law of the Home State; for purposes of this Compact "Admitted
- 15 Insurer" shall not include a domestic surplus lines insurer
- as may be defined by applicable State law.
- 17 2. "Affiliate" means with respect to an insured, any entity that
- controls, is controlled by, or is under common control with
- 19 the insured.
- 20 3. "Allocation Formula" means the uniform methods promulgated
- by the Commission by which insured risk exposures will be
- 22 apportioned to each State for the purpose of calculating
- 23 Premium Taxes due.
- 24 4. "Bylaws" means those bylaws established by the Commission for
- its governance, or for directing or controlling the
- 26 Commission's actions or conduct.

5. "Clearinghouse" means the Commission's operations involving 1 2 the acceptance, processing, and dissemination, among the 3 Compacting States, Contracting States, Surplus Licensees, insureds and other persons, of Premium Tax and 4 5 Clearinghouse Transaction Data for Non-Admitted Insurance of 6 Multi-State Risks, in accordance with this Compact and Rules

to be adopted by the Commission.

- "Clearinghouse Transaction Data" means the information 8 6. 9 regarding Non-Admitted Insurance of Multi-State Risks required to be reported, accepted, collected, processed, and 10 disseminated by Surplus Lines Licensees for Surplus Lines 11 Insurance and insureds for Independently Procured Insurance 12 under this Compact and Rules to be adopted by the Commission. 13 14 Clearinghouse Transaction Data includes information related 15 Single-State Risks if a state elects to have the 16 Clearinghouse collect taxes on Single-State Risks for such 17 state.
- 18 7. "Compacting State" means any State which has enacted this
 19 Compact legislation and which has not withdrawn pursuant to
 20 Article XIV, Section 1, or been terminated pursuant to
 21 Article XIV, Section 2.
- 22 8. "Commission" means the "Surplus Lines Insurance Multi-State
 23 Compliance Compact Commission" established by this Compact.
- 9. "Commissioner" means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator or their designees.

- 1 10. "Contracting State" means any State which has not enacted this Compact legislation but has entered into a written contract with the Commission to utilize the services of and fully participate in the Clearinghouse.
- 5 11. "Control" An entity has "control" over another entity if:
- 6 (A) the entity directly or indirectly or acting through 1
 7 or more other persons own, controls, or has the power
 8 to vote 25 percent or more of any class of voting
 9 securities of the other entity; or
- 10 (B) the entity controls in any manner the election of a
 11 majority of the directors or trustees of the other
 12 entity.
- 13 12. "Home State"
- 14 (A) In general. Except as provided in subparagraph (B), the 15 term "Home State" means, with respect to an insured:
- 16 (i) the State in which an insured maintains its
 17 principal place of business or, in the case of an
 18 individual, the individual's principal
 19 residence; or
- 20 (ii) if 100 percent of the insured risk is located out
 21 of the State referred to in subparagraph (A)(i),
 22 the State to which the greatest percentage of the
 23 insured's taxable premium for that insurance
 24 contract is allocated.

- 1 (B) Affiliated Groups. If more than one insured from an
 2 affiliated group are named insureds on a single
 3 Non-Admitted Insurance contract, the term "Home State"
 4 means the Home State, as determined pursuant to
 5 subparagraph (A), of the member of the affiliated group
 6 that has the largest percentage of premium attributed
 7 to it under such insurance contract.
- 8 13. "Independently Procured Insurance" means insurance procured
 9 by an insured directly from a Surplus Lines Insurer or other
 10 Non-Admitted Insurer as permitted by the laws of the Home
 11 State.
- "Insurer Eligibility Requirements" means the criteria, forms
 and procedures established to qualify as a Surplus Lines
 Insurer under the law of the Home State provided that such
 criteria, forms and procedures are consistent with the
 express provisions of the NRRA on and after July 21, 2011.
- 17 15. "Member" means the person or persons chosen by a Compacting
 18 State as its representative or representatives to the
 19 Commission provided that each Compacting State shall be
 20 limited to one vote.
- 21 16. "Multi-State Risk" means a risk with insured exposures in more than one State.
- 23 17. "Non-Compacting State" means any State which has not adopted 24 this Compact.
- 25 18. "Non-Admitted Insurance" means Surplus Lines Insurance and
 26 Independently Procured Insurance.

- 1 19. "Non-Admitted Insurer" means an insurer that is not
- 2 authorized or admitted to transact the business of insurance
- 3 under the law of the Home State.
- 4 20. "NRRA" means the Non-Admitted and Reinsurance Reform Act
- 5 which is Title V, Subtitle B of the Dodd-Frank Wall Street
- 6 Reform and Consumer Protection Act.
- 7 21. "Policyholder Notice" means the disclosure notice or stamp
- 8 that is required to be furnished to the applicant or
- 9 policyholder in connection with a Surplus Lines Insurance
- 10 placement.
- 11 22. "Premium Tax" means with respect to Non-Admitted Insurance,
- any tax, fee, assessment, or other charge imposed by a
- government entity directly or indirectly based on any payment
- made as consideration for such insurance, including premium
- deposits, assessments, registration fees, and any other
- 16 compensation given in consideration for a contract of
- insurance.
- 18 23. "Principal Place of Business" means with respect to
- determining the Home State of the insured, the state where
- the insured maintains its headquarters and where the
- insured's high-level officers direct, control and coordinate
- the business activities of the insured.

- 1 24. "Purchasing Group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes 2 3 the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only 4 to cover their similar or related liability exposure and is 5 composed of members whose businesses or activities are 6 similar or related with respect to the liability to which 7 8 members are exposed by virtue of any related, similar or 9 common business, trade, product, services, premises 10 operations and is domiciled in any State.
- 25. "Rule" 11 means a statement of general or particular effect 12 applicability and future promulgated by Commission designed to implement, interpret, or prescribe 13 14 law or policy or describing the organization, procedure or 15 practice requirements of the Commission which shall have the 16 force and effect of law in the Compacting States.
- 17 26. "Single-State Risk" means a risk with insured exposures in only one State.
- 19 27. "State" means any state, district or territory of the United 20 States of America.
- 21 28. "State Transaction Documentation" means the information
 22 required under the laws of the Home State to be filed by
 23 Surplus Lines Licensees in order to report Surplus Lines
 24 Insurance and verify compliance with surplus lines laws, and
 25 by insureds in order to report Independently Procured
 26 Insurance.

- 1 29. "Surplus Lines Insurance" means insurance procured by a
 2 Surplus Lines Licensee from a Surplus Lines Insurer or other
 3 Non-Admitted Insurer as permitted under the law of the Home
 4 State; for purposes of this Compact "Surplus Lines Insurance"
 5 shall also mean excess lines insurance as may be defined by
 6 applicable State law.
- 7 30. "Surplus Lines Insurer" means a Non-Admitted Insurer
 8 eligible under the law of the Home State to accept business
 9 from a Surplus Lines Licensee; for purposes of this Compact
 10 "Surplus Lines Insurer" shall also mean an insurer which is
 11 permitted to write Surplus Lines Insurance under the laws of
 12 the state where such insurer is domiciled.
- 13 31. "Surplus Lines Licensee" means an individual, firm or
 14 corporation licensed under the law of the Home State to place
 15 Surplus Lines Insurance.

16 ARTICLE III

- 17 Establishment of the Commission and Venue
- 18 1. The Compacting States hereby create and establish a joint
 19 public agency known as the "Surplus Lines Insurance
 20 Multi-State Compliance Compact Commission."

- Pursuant to Article IV, the Commission will have the power to 2. 1 2 adopt mandatory Rules which establish exclusive Home State 3 authority regarding Non-Admitted Insurance of Multi State Risks, Allocation Formulas, Clearinghouse Transaction Data, 4 a Clearinghouse for receipt and distribution of allocated 5 Premium Tax and Clearinghouse Transaction Data, and uniform 6 rulemaking procedures and Rules for the purpose of financing, 7 8 administering, operating and enforcing compliance with the 9 provisions of this Compact, its Bylaws and Rules.
- 10 3. Pursuant to Article IV, the Commission will have the power to
 11 adopt mandatory Rules establishing foreign Insurer
 12 Eligibility Requirements and a concise and objective
 13 Policyholder Notice regarding the nature of a surplus lines
 14 placement.
- 15 4. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.
- 17 5. The Commission is solely responsible for its liabilities 18 except as otherwise specifically provided in this Compact.
- Venue is proper and judicial proceedings by or against the 19 Commission shall be brought solely and exclusively in a court 20 21 of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and 2.2 23 jurisdictional defenses to the extent it adopts or consents 24 participate in alternative dispute resolution proceedings. 25
- 26 ARTICLE IV
- 27 Authority to Establish Mandatory Rules

- 1 The Commission shall adopt mandatory Rules which establish:
- Allocation Formulas for each type of Non-Admitted Insurance 2 1. coverage, which Allocation Formulas must be used by each 3 4 Compacting State and Contracting State in acquiring Premium Tax and Clearinghouse Transaction Data from Surplus Lines 5 6 Licensees and insureds for reporting to the Clearinghouse created by the Compact Commission. Such Allocation Formulas 7 8 will be established with input from Surplus lines Licensees 9 and be based upon readily available data with simplicity and
- 10 uniformity for the Surplus Line Licensee as a material

consideration.

Clearinghouse.

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- 12 2. Uniform Clearinghouse Transaction Data reporting 13 requirements for all information reported to the
- 15 3. Methods by which Compacting States and Contracting States
 16 require Surplus Lines Licensees and insureds to pay Premium
 17 Tax and to report Clearinghouse Transaction Data to the
 18 Clearinghouse, including but not limited to processing
 19 Clearinghouse Transaction Data through State stamping and
 20 service offices, State insurance departments, or other State
 21 designated agencies or entities.

4. That Non-Admitted Insurance of Multi-State Risks shall be 1 subject to all of the regulatory compliance requirements of 2 Home State regulatory Home State exclusively. 3 4 compliance requirements applicable to Surplus Insurance shall include but not be limited to, (i) person(s) 5 6 required to be licensed to sell, solicit, or negotiate (ii) 7 Surplus Lines Insurance; Insurer Eligibility 8 Requirements or other approved Non-Admitted Insurer requirements; (iii) Diligent Search; (iv) State Transaction 9 Documentation and Clearinghouse Transaction Data regarding 10 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 14 15 providing State Transaction Documentation and Clearinghouse 16 Transaction Data regarding the payment of Premium Tax as set forth in this Compact and Rules to be adopted by the 17 Commission. 18

- 5. 1 That each Compacting State and Contracting State may charge 2 its own rate of taxation on the premium allocated to such 3 State based on the applicable Allocation Formula provided that the state establishes one single rate of taxation 4 applicable to all Non-Admitted Insurance transactions and no 5 other tax, fee assessment or other charge by any governmental 6 7 or quasi governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a 8 9 separate, additional cost unless such fees are incorporated into a state's single rate of taxation. 10
- 11 6. That any change in the rate of taxation by any Compacting
 12 State or Contracting State be restricted to changes made
 13 prospectively on not less than 90 days advance notice to the
 14 Compact Commission.
- 15 7. That each Compacting State and Contracting State shall require Premium Tax payments either annually, semi-annually, or quarterly utilizing one or more of the following dates only: March 1, June 1, September 1, and December 1.
- That each Compacting State and Contracting State prohibit any other State agency or political subdivision from requiring Surplus Lines Licensees to provide Clearinghouse Transaction Data and State Transaction Documentation other than to the insurance department or tax officials of the Home State or one single designated agent thereof.

1 9. The obligation of the Home State by itself, through a
2 designated agent, surplus lines stamping or service office,
3 to collect Clearinghouse Transaction Data from Surplus Line
4 Licensees and from insureds for Independently Procured
5 Insurance, where applicable, for reporting to the

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Clearinghouse.

- 10. 7 A method for the Clearinghouse to periodically report to 8 Compacting States, Contracting States, Surplus 9 Licensees and insureds who independently procure insurance, all Premium Taxes owed to each of the Compacting States and 10 Contracting States, the dates upon which payment of such 11 Premium Taxes are due and a method to pay them through the 12 Clearinghouse. 13
- 14 11. That each Surplus Line Licensee is required to be licensed
 15 only in the Home State of each insured for whom Surplus Lines
 16 Insurance has been procured.

- That a policy considered to be Surplus Lines Insurance in the 1 12. 2 insured's Home State shall be considered Surplus Lines 3 Insurance in all Compacting States and Contracting States, and taxed as a Surplus Lines transaction in all states to 4 which a portion of the risk is allocated. Each Compacting 5 State and Contracting State shall require each Surplus Lines 6 7 Licensee to pay to every other Compacting State 8 Contracting State Premium Taxes on each Multi-State Risk 9 through the Clearinghouse at such tax rate charged on surplus lines transactions in such other Compacting States and 10 Contracting States on the portion of the risk in each such 11 Compacting State and Contracting State as determined by the 12 applicable uniform Allocation Formula adopted by 13 Commission. A policy considered to be Independently Procured 14 15 Insurance in the insured's Home State shall be considered 16 Independently Procured Insurance in all Compacting States 17 Contracting States. Each Compacting State Contracting State shall require the insured to pay every 18 19 other Compacting State and Contracting State Independently Procured Insurance Premium Tax 20 on each Multi-State Risk through the Clearinghouse pursuant to the 21 uniform Allocation Formula adopted by the Commission. 2.2
- 23 13. Uniform foreign Insurer Eligibility Requirements as authorized by the NRRA.
- 25 14. A uniform Policyholder Notice.
- 26 15. Uniform treatment of Purchasing Group Surplus Lines
 27 Insurance placements.

1 ARTICLE V

2 Powers of the Commission

- 3 The Commission shall have the following powers:
- 4 1. To promulgate Rules and operating procedures, pursuant to
- 5 Article VIII of this Compact, which shall have the force and
- 6 effect of law and shall be binding in the Compacting States to
- 7 the extent and in the manner provided in this Compact;
- 8 2. To bring and prosecute legal proceedings or actions in the
- 9 name of the Commission, provided that the standing of any
- 10 State insurance department to sue or be sued under applicable
- 11 law shall not be affected;
- 12 3. To issue subpoenas requiring the attendance and testimony of
- witnesses and the production of evidence, provided however,
- the Commission is not empowered to demand or subpoena records
- or data from Non-Admitted Insurers;
- 16 4. To establish and maintain offices including the creation of a
- 17 Clearinghouse for the receipt of Premium Tax and
- 18 Clearinghouse Transaction Data regarding Non-Admitted
- 19 Insurance of Multi-State Risks, Single-State Risks for
- states which elect to require Surplus Lines Licensees to pay
- 21 Premium Tax on Single State Risks through the Clearinghouse
- 22 and tax reporting forms;
- 23 5. To purchase and maintain insurance and bonds;

- 1 6. To borrow, accept or contract for services of personnel,
- 2 including, but not limited to, employees of a Compacting
- 3 State or stamping office, pursuant to an open, transparent,
- 4 objective competitive process and procedure adopted by the
- 5 Commission;
- 6 7. To hire employees, professionals or specialists, and elect or
- 7 appoint officers, and to fix their compensation, define their
- 8 duties and give them appropriate authority to carry out the
- 9 purposes of the Compact, and determine their qualifications,
- 10 pursuant to an open, transparent, objective competitive
- process and procedure adopted by the Commission; and to
- establish the Commission's personnel policies and programs
- relating to conflicts of interest, rates of compensation and
- qualifications of personnel, and other related personnel
- 15 matters;
- 16 8. To accept any and all appropriate donations and grants of
- money, equipment, supplies, materials and services, and to
- receive, utilize and dispose of the same; provided that at
- 19 all times the Commission shall avoid any appearance of
- impropriety and/or conflict of interest;
- 21 9. To lease, purchase, accept appropriate gifts or donations of,
- or otherwise to own, hold, improve or use, any property,
- real, personal or mixed; provided that at all times the
- Commission shall avoid any appearance of impropriety and/or
- 25 conflict of interest;
- 26 10. To sell convey, mortgage, pledge, lease, exchange, abandon or
- otherwise dispose of any property real, personal or mixed;

- 1 11. To provide for tax audit Rules and procedures for the
- 2 Compacting States with respect to the allocation of Premium
- 3 Taxes including:
- 4 a. Minimum audit standards, including sampling methods,
- 5 b. Review of internal controls,
- 6 c. Cooperation and sharing of audit responsibilities 7 between Compacting States,
- 8 d. Handling of refunds or credits due to overpayments or improper allocation of Premium Taxes,
- 10 e. Taxpayer records to be reviewed including a minimum

 11 retention period,
- f. Authority of Compacting States to review, challenge, or re-audit taxpayer records.
- 14 12. To enforce compliance by Compacting States and Contracting
 15 States with Rules, and Bylaws pursuant to the authority set
- 16 forth in Article XIV;

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- 17 13. To provide for dispute resolution among Compacting States and Contracting States;
- 19 14. To advise Compacting States and Contracting States on
- 21 Lines Licensees, agents or brokers domiciled or doing

tax-related issues relating to insurers, insureds, Surplus

- business in Non-Compacting States, consistent with the
- 23 purposes of this Compact;

- 1 15. To make available advice and training to those personnel in
- 2 State stamping offices, State insurance departments or other
- 3 State departments for record keeping, tax compliance, and
- 4 tax allocations; and to be a resource for State insurance
- 5 departments and other State departments;
- 6 16. To establish a budget and make expenditures;
- 7 17. To borrow money;
- 8 18. To appoint and oversee committees, including advisory
- 9 committees comprised of Members, State insurance regulators,
- 10 State legislators or their representatives, insurance
- industry and consumer representatives, and such other
- interested persons as may be designated in this Compact and
- the Bylaws;

- To establish an Executive Committee of not less than seven 1 19. (7) nor more than fifteen (15) representatives, which shall 2 include officers elected by the Commission and such other 3 representatives as provided for herein and determined by the 4 Representatives of the Executive Committee shall 5 Bylaws. serve a one year term. Representatives of the Executive 6 Committee shall be entitled to one vote each. The Executive 7 Committee shall have the power to act on behalf of the 8 9 Commission, with the exception of rulemaking, during periods when the Commission is not in session. 10 The Executive Committee shall oversee the day to day activities of the 11 administration of the Compact, including the activities of 12 the Operations Committee created under this Article and 13 compliance and enforcement of the provisions of the Compact, 14 15 its Bylaws, and Rules, and such other duties as provided 16 herein and as deemed necessary.
- To establish an Operations Committee of not less than seven 17 20. 18 (7) and not more than fifteen (15) representatives to provide advice, determinations and recommendations 19 analysis, regarding technology, software, and systems integration to 20 be acquired by the Commission and to provide analysis, 21 advice, determinations and recommendations regarding the 22 establishment of mandatory Rules to be adopted to be by the 23 24 Commission.

- 1 21. To enter into contracts with Contracting States so that
- 2 Contracting States can utilize the services of and fully
- 3 participate in the Clearinghouse subject to the terms and
- 4 conditions set forth in such 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
- 8 consistent with the State regulation of the business of
- 9 insurance.
- 10 ARTICLE VI
- Organization of the Commission
- 12 1. Membership, Voting and Bylaws
- a. Each Compacting State shall have and be limited to one
- 14 Member. Each State shall determine the qualifications
- and the method by which it selects a Member and set
- forth the selection process in the enabling provision
- of the legislation which enacts this Compact. In the
- absence of such a provision the Member shall be
- appointed by the governor of such Compacting State.
- 20 Any Member may be removed or suspended from office as
- 21 provided by the law of the State from which he or she
- shall be appointed. Any vacancy occurring in the
- Commission shall be filled in accordance with the laws
- of the Compacting State wherein the vacancy exists.

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

- c. The Commission shall, by a majority vote of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact including, but not limited to:
 - i. Establishing the fiscal year of the Commission;
 - ii. Providing reasonable procedures for holding meetings of the Commission the Executive Committee and the Operations Committee;
 - iii. Providing reasonable standards and procedures:(i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

iv.	Providing reasonable procedures for calling and
	conducting meetings of the Commission that
	consist of a majority of Commission Members,
	ensuring reasonable advance notice of each such
	meeting and providing for the right of citizens
	to attend each such meeting with enumerated
	exceptions designed to protect the public's
	interest, the privacy of individuals, and
	insurers' and Surplus Lines Licensees'
	proprietary information, including trade
	secrets. The Commission may meet in camera only
	after a majority of the entire membership votes
	to close a meeting in toto or in part. As soon as
	practicable, the Commission must make public:
	(i) a copy of the vote to close the meeting
	revealing the vote of each Member with no proxy
	votes allowed, and (ii) votes taken during such
	meeting;

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

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

- vii. Promulgating a code of ethics to address
 permissible and prohibited activities of
 Commission Members and employees;
- viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;
- ix. The Commission shall publish its Bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.
- 22 2. Executive Committee, Personnel and Chairperson
- 23 a. An Executive Committee of the Commission ("Executive Committee") shall be established. All actions, of the Executive Committee, including compliance and enforcement are subject to the review and ratification of the Commission as provided in the Bylaws.

The Executive Committee shall have no more than fifteen (15)
representatives, or one for each State if there are less than
fifteen (15) Compacting States, who shall serve for a term
and be established in accordance with the Bylaws.

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- b. The Executive Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:
 - i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;
 - ii. Establishing and overseeing an organizational structure within, and appropriate procedures for the Commission to provide for the creation of Rules and operating procedures.
 - iii. Overseeing the offices of the Commission; and
 - iv. Planning, implementing, and coordinating communications and activities with other State, federal and local government organizations in order to advance the goals of the Commission.
- c. The Executive Committee shall annually elect a Chairperson from the Executive Committee, having such authority and duties, as may be specified in the Bylaws.

- d. The Executive Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other persons as may be authorized by the Commission.
 - e. All representatives of the Executive Committee shall be individuals who have extensive experience and or employment in the Surplus Lines Insurance business including but not limited to executives and attorneys employed by Surplus Line Insurers, Surplus Lines Licensees, Law Firms, state Insurance Departments and or State Stamping Offices.
- 17 3. Operations Committee

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

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

The Operations Committee shall have responsibility for:

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

- ii. Making recommendations to the Executive Committee based on its analysis and determination of the Clearinghouse technology requirements and compatibility with existing state and state stamping office systems.
- iii. Evaluating the most suitable proposals for adoption as mandatory Rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the Executive Committee its determinations and recommendations.
- iv. Such other duties and responsibilities as are delegated to it by the Bylaws, the Executive Committee or the Commission.

1 b. All representatives of the Operations Committee shall individuals who have extensive experience and/or 2 bе employment in the Surplus Lines Insurance business 3 including but not limited to executives and attorneys 4 employed by Surplus Line Insurers, Surplus Line 5 Licensees, Law Firms, State Insurance Departments and 6 or State stamping offices. Operations Committee 7 8 representatives from Compacting States which utilize 9 the services of a state stamping office must appoint the Chief Operating Officer or a senior manager of the 10 state stamping office to the Operations Committee. 11

12 4. Legislative and Advisory Committees

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- A legislative committee comprised of State legislators a. or their designees shall be established to monitor the operations of and make recommendations to, Commission, including the Executive Committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Executive Committee shall consult with and report to the legislative committee.
- 24 b. The Commission may establish additional advisory 25 committees as its Bylaws may provide for the carrying 26 out of its functions.
- 27 5. Corporate Records of the Commission

- The Commission shall maintain its corporate books and records in accordance with the Bylaws.
- 3 6. Qualified Immunity, Defense and Indemnification

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

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

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The Commission shall indemnify and hold harmless any 1 С. Member, officer, executive director, employee 2 3 representative of the Commission, Executive Committee or any other Committee of the Commission for the amount 4 of any settlement or judgment obtained against that 5 person arising out of any actual or alleged act, error 6 omission that occurred within the 7 8 Commission employment, duties or responsibilities, or 9 that such person had a reasonable basis for believing 10 occurred within the scope of Commission employment, duties or responsibilities, provided that the actual 11 or alleged act, error or omission did not result from 12 the intentional or willful or wanton misconduct of that 13 14 person.

ARTICLE VII

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Meetings and Acts of the Commission

- 17 1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.
- 20 2. Each Member of the Commission shall have the right and power
 21 to cast a vote to which that Compacting State is entitled and
 22 to participate in the business and affairs of the Commission.
 23 A Member shall vote in person or by such other means as
 24 provided in the Bylaws. The Bylaws may provide for Members'
 25 participation in meetings by telephone or other means of
 26 communication.

- 1 3. The Commission shall meet at least once during each calendar
- 2 year. Additional meetings shall be held as set forth in the
- 3 Bylaws.
- 4 4. Public notice shall be given of all meetings and all meetings
- 5 shall be open to the public, except as set forth in the Rules
- or otherwise provided in the Compact.
- 7 5. The Commission shall promulgate Rules concerning its
- 8 meetings consistent with the principles contained in the
- 9 "Government in the Sunshine Act," 5 U.S.C., Section 552(b),
- 10 as may be amended.
- 11 6. The Commission and its committees may close a meeting, or
- portion thereof, where it determines by majority vote that an
- open meeting would be likely to:
- 14 a. Relate solely to the Commission's internal
- personnel practices and procedures;
- 16 b. Disclose matters specifically exempted from
- 17 disclosure by federal and State statute;
- 18 c. Disclose trade secrets or commercial or
- 19 financial information which is privileged or
- 20 confidential;
- 21 d. Involve accusing a person of a crime, or formally
- 22 censuring a person;
- e. Disclose information of a personal nature where
- 24 disclosure would constitute a clearly
- 25 unwarranted invasion of personal privacy;
- f. Disclose investigative records compiled for law
- 27 enforcement purposes;

1	g.	Specifically relate to the Commission's issuance
2		of a subpoena, or its participation in a civil
3		action or other legal proceeding.

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

17 ARTICLE VIII

18 Rules and Operating Procedures: Rulemaking

19 Functions of the Commission

20 Rulemaking functions of the Commission:

- 1 1. Rulemaking Authority. -- The Commission shall promulgate 2 reasonable Rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the 3 foregoing, in the event the Commission exercises 4 rulemaking authority in a manner that is beyond the scope of 5 the purposes of this Act, or the powers granted hereunder, 6 7 then such an action by the Commission shall be invalid and 8 have no force or effect.
- 9 2. Rulemaking Procedure. -- Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Commission.
- 14 3. Effective Date All Rules and amendments, thereto, shall become effective as of the date specified in each Rule, operating procedure or amendment.
- 17 Not later than thirty (30) days after a Rule is promulgated, any person may file a petition for judicial review of the 18 Rule; provided that the filing of such a petition shall not 19 stay or otherwise prevent the Rule from becoming effective 20 unless the court finds that the Petitioner has a substantial 21 likelihood of success. The court shall give deference to the 22 23 actions of the Commission consistent with applicable law and 24 shall not find the Rule to be unlawful if the Rule represents a reasonable exercise of the Commission's authority. 25
- 26 ARTICLE IX
- 27 Commission Records and Enforcement

1. shall 1 The Commission promulgate Rules establishing conditions and procedures for public inspection and copying 2 information and official records, except 3 its information and records involving the privacy individuals, insurers, insureds or Surplus Lines Licensee 5 trade secrets. State Transaction Documentation 6 and collected 7 Clearinghouse Transaction Data the by 8 Clearinghouse shall be used for only those purposes expressed in or reasonably implied under the provisions of this Compact 9 and the Commission shall afford this data the broadest 10 protections as permitted by any applicable 11 law for proprietary information, trade secrets or personal data. 12 Commission may promulgate additional Rules under which it may 13 make available to federal and State agencies, including law 14 15 enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with 16 17 such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions. 18

- 2. Except as to privileged records, data and information, the 1 2 laws of any Compacting State pertaining to confidentiality or 3 nondisclosure shall not relieve any Compacting State Member of the duty to disclose any relevant records, data or 4 information to the Commission; provided that disclosure to 5 the Commission shall not be deemed to waive or otherwise 6 affect any confidentiality requirement, and further provided 7 8 that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's 9 laws pertaining to confidentiality and nondisclosure with 10 respect to records, data and information in its possession. 11 Confidential information of the Commission shall remain 12 confidential after such information is provided to 13 14 and the Commission shall maintain 15 confidentiality of any information provided by a member that is confidential under that Member's State Law. 16
- 17 3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws and Rules. The Commission 18 shall notify any non-complying Compacting State in writing of 19 its noncompliance with Commission Bylaws or Rules. If a 20 21 non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of 22 noncompliance, the Compacting State shall be deemed to be in 23 24 default as set forth in Article XIV.

25 ARTICLE X

26 Dispute Resolution

- 1 1. Before a Member may bring an action in a court of competent 2 jurisdiction for violation of any provision, standard or requirement of the Compact, the Commission shall attempt, 3 upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise 5 between two or more Compacting States, Contracting States or 6 7 Non-Compacting States, and the Commission shall promulgate a 8 Rule providing alternative dispute resolution procedures for 9 such disputes.
- The Commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or Surplus Lines Licensees concerning a tax calculation or allocation or related issues which are the subject of this Compact.
- 15 3. Any alternative dispute resolution procedures shall be utilized in circumstances where a dispute arises as to which State constitutes the Home State.
- 18 ARTICLE XI
- 19 Review of Commission Decisions
- 20 Regarding Commission decisions:
- 21 1. Except as necessary for promulgating Rules to fulfill the 22 purposes of this Compact, the Commission shall not have 23 authority to otherwise regulate insurance in the Compacting
- 24 States.

- Not later than thirty (30) days after the Commission has 1 2. given notice of any Rule, or Allocation Formula any third 2 3 party filer or Compacting State may appeal the determination to a review panel appointed by the Commission. The Commission promulgate Rules to establish procedures 5 shall appointing such review panels and provide for notice and 6 hearing. An allegation that the Commission, 7 in making 8 compliance or tax determinations acted 9 capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to 10 judicial review in accordance with Article III, Section 6. 11
- The Commission shall have authority to monitor, review and reconsider Commission decisions upon a finding that the determinations or allocations do not meet the relevant Rule.

 Where appropriate, the Commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in Section 2 above.

18 ARTICLE XII

19 Finance

The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization.

To fund the cost of its initial operations the Commission may accept contributions, grants, and other forms of funding from the State stamping offices, Compacting States and other sources.

- The Commission shall collect a fee payable by the insured directly or through a Surplus Lines Licensee on each transaction processed through the Compact Clearinghouse, to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.
- 7 3. The Commission's budget for a fiscal year shall not be
 8 approved until it has been subject to notice and comment as
 9 set forth in Article VIII of this Compact.
- The Commission shall be regarded as performing essential 10 4. governmental functions in exercising such powers 11 functions and in carrying out the provisions of this Compact 12 and of any law relating thereto, and shall not be required to 13 pay any taxes or assessments of any character, levied by any 14 15 State or political subdivision thereof, upon any of the 16 property used by it for such purposes, or any income or 17 revenue therefrom, including any profit from a sale or exchange. 18

- 5. The Commission shall keep complete and accurate accounts of 1 2 all its internal receipts, including grants and donations, and disbursements for all funds under its control. 3 internal financial accounts of the Commission shall be 4 subject to the accounting procedures established under its 5 Bylaws. The financial accounts and reports including the 6 system of internal controls and procedures of the Commission 7 8 shall be audited annually by an independent certified public 9 accountant. Upon the determination of the Commission, but not less frequently than every three (3) years, the review of the 10 independent auditor shall include 11 а management and performance audit of the Commission. The Commission shall 12 make an annual report to the Governor and legislature of the 13 Compacting States, which shall include a report of the 14 15 independent audit. The Commission's internal accounts shall 16 not be confidential and such materials may be shared with the 17 Commissioner, the controller, or the stamping office of any Compacting State upon request provided, however, that any 18 work papers related to any internal or independent audit and 19 20 any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including 21 22 trade secrets, shall remain confidential.
- 23 6. No Compacting State shall have any claim to or ownership of
 24 any property held by or vested in the Commission or to any
 25 Commission funds held pursuant to the provisions of this
 26 Compact.

- The Commission shall not make any political contributions to candidates for elected office, elected officials, political parties nor political action committees. The Commission shall not engage in lobbying except with respect to changes to this Compact.
- 6 ARTICLE XIII
- 7 Compacting States, Effective Date and Amendment
- 8 1. Any State is eligible to become a Compacting State.

- 2. effective 1 The Compact shall become and binding upon legislative enactment of the Compact into law by two (2) 2 Compacting States, provided the Commission shall become 3 effective for purposes of adopting Rules, and creating the 4 Clearinghouse when there are a total of ten (10) Compacting 5 States and Contracting States or, alternatively, when there 6 are Compacting States and Contracting States representing 7 8 greater than forty percent (40%) of the Surplus Lines 9 Insurance premium volume based on records of the percentage of Surplus Lines Insurance premium set forth in Appendix A 10 hereto. Thereafter, it shall become effective and binding as 11 to any other Compacting State upon enactment of the Compact 12 into law by that State. Notwithstanding the foregoing, the 13 14 Clearinghouse operations and the duty 15 Clearinghouse Transaction Data shall begin on the first 16 January 1st or July 1st following the first anniversary of 17 the Commission effective date. For States which join the Compact subsequent to the effective date, a start date for 18 19 reporting Clearinghouse Transaction Data shall be set by the Commission provided Surplus Lines Licensees and all other 20 21 interested parties receive not less than 90 days advance 22 notice.
- 23 3. Amendments to the Compact may be proposed by the Commission 24 for enactment by the Compacting States. No amendment shall 25 become effective and binding upon the Commission and the 26 Compacting States unless and until all Compacting States 27 enact the amendment into law.

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Withdrawal, Default and Termination

3 1. Withdrawal

- a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State, provided that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.
- b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Commission.
- 17 c. The Member of the Withdrawing State shall immediately
 18 notify the Executive Committee of the Commission in
 19 writing upon the introduction of legislation repealing
 20 this Compact in the Withdrawing State.
- d. The Commission shall notify the other Compacting
 States of the introduction of such legislation within
 ten (10) days after its receipt of notice thereof.

- Withdrawing State responsible for 1 е. The is all obligations, duties and liabilities incurred through 2 the effective date of withdrawal, including any 3 4 obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those 5 6 obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing 7 State, the Commission's determinations prior to the 8 effective date of withdrawal shall continue to be 9 effective and be given full force and effect in the 10 11 Withdrawing State, unless formally rescinded by the Commission. 12
- f. Reinstatement following withdrawal of any Compacting

 State shall occur upon the effective date of the

 Withdrawing State reenacting the Compact.
- 16 2. Default

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

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- b. Decisions of the Commission that are issued on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this Article.
- 6 c. Reinstatement following termination of any Compacting
 7 State requires a reenactment of the Compact.
- 8 3. Dissolution of Compact
- 9 a. The Compact dissolves effective upon the date of the
 10 withdrawal or default of the Compacting State which
 11 reduces membership in the Compact to one Compacting
 12 State.
- b. Upon the dissolution of this Compact, the Compact
 becomes null and void and shall have no further force
 or effect, and the business and affairs of the
 Commission shall be wound up and any surplus funds
 shall be distributed in accordance with the Rules and
 Bylaws.
- 19 ARTICLE XV
- 20 Severability and Construction
- 21 1. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.
- 25 2. The provisions of this Compact shall be liberally construed
 26 to effectuate its purposes.

- 1 3. Throughout this Compact the use of the singular shall include
- the plural and vice-versa.
- 3 4. The headings and captions of articles, sections and
- 4 sub-sections used in this Compact are for convenience only
- 5 and shall be ignored in construing the substantive provisions
- 6 of this Compact.
- 7 ARTICLE XVI
- 8 Binding Effect of Compact and Other Laws
- 9 1. Other laws
- 10 a. Nothing herein prevents the enforcement of any other
- 11 law of a Compacting State except as provided in
- 12 Paragraph b. of this section.
- b. Decisions of the Commission, and any Rules, and any
- other requirements of the Commission shall constitute
- the exclusive Rule, or determination applicable to the
- 16 Compacting States. Any law or regulation regarding
- Non-Admitted Insurance of Multi-State Risks that is
- contrary to Rules of the Commission, is preempted with
- 19 respect to the following:
- 20 (i) Clearinghouse Transaction Data reporting
- 21 requirements;
- 22 (ii) Allocation Formula;
- 23 (iii) Clearinghouse Transaction Data collection
- 24 requirements;

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1 (iv)	Premium Tax payment time frames and Rules
2		concerning dissemination of data among the
3		Compacting States for Non-Admitted Insurance
4		of Multi-State Risks and Single-State Risks;
5 (v)	exclusive compliance with surplus lines law of
6		the Home State of the insured; and
7 (vi)	Rules for reporting to a Clearinghouse for
8		receipt and distribution of Clearinghouse
9		Transaction Data related to Non-Admitted
10		Insurance of Multi-State Risks.
11 (vii)	Uniform foreign Insurers Eligibility
12		Requirements.
13 (viii)	Uniform Policyholder Notice.
14 (ix)	Uniform treatment of Purchasing Groups
15		procuring Non-Admitted Insurance.

Except as stated in paragraph b, any Rule, Uniform 1 C. Standard or other requirement of the Commission shall 2 constitute the exclusive provision that a Commissioner 3 may apply to compliance or tax determinations. 4 5 Notwithstanding the foregoing, no action taken by the 6 Commission shall abrogate or restrict: (i) the access of any person to State courts; (ii) the availability of 7 8 alternative dispute resolution under Article X of this Compact (iii) remedies available under State 9 related to breach of contract, tort, or other laws not 10 specifically directed to compliance 11 or tax determinations; (iv) State law relating 12 to the construction of insurance contracts; or (V)13 the authority of the attorney general of the State, 14 15 including but not limited to maintaining any actions or 16 proceedings, as authorized by law.

17 2. Binding Effect of this Compact

- a. All lawful actions of the Commission, including all
 Rules promulgated by the Commission, are binding upon
 the Compacting States, except as provided herein.
- 21 b. All agreements between the Commission and the
 22 Compacting States are binding in accordance with their
 23 terms.

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

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- 8 d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of 9 any Compacting State, the obligations, duties, powers 10 or jurisdiction sought to be conferred by that 11 provision upon the Commission shall be ineffective as 12 to that State and those obligations duties, powers or 13 14 jurisdiction shall remain in the Compacting State and 15 shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are 16 delegated by law in effect at the time this Compact 17 becomes effective. 18
- Sec. 981A.003. EFFECT ON TEXAS LAWS. If the laws of this
 state conflict with the compact, the compact controls, except that
 if a conflict exists between the compact and the Texas
 Constitution, as determined by the courts of this state, the Texas
 Constitution controls.
- Sec. 981A.004. RULES. (a) The commissioner may adopt rules
 to implement this chapter or satisfy requirements under the
 compact. In adopting rules under this section, the commissioner
 shall ensure that, to the extent of any conflict between this

- 1 chapter and Chapters 981 and 982, this chapter controls.
- 2 (b) The commissioner may adopt any rule necessary to
- 3 <u>implement state responsibility in compliance with rules adopted by</u>
- 4 the commission under Article VIII of the compact if the rule adopted
- 5 by the commission requires a state to adopt the rules or requires
- 6 action by a state to ensure protection of the citizens of the state.
- 7 Sec. 981A.005. MEMBER. The governor shall appoint a member
- 8 $\underline{\text{to represent this state on the commission as provided by Article VI}$
- 9 of the compact. The member shall serve for a two-year term. The
- 10 governor may redesignate the same member to serve consecutive
- 11 terms.
- 12 ARTICLE 2. CONFORMING CHANGES TO INSURANCE CODE
- SECTION 2.01. Section 981.009, Insurance Code, is amended
- 14 to read as follows:
- Sec. 981.009. RULES. (a) The commissioner may adopt rules
- 16 to implement this chapter or satisfy requirements under federal law
- 17 or regulations.
- 18 (b) In adopting rules under this section, the commissioner
- 19 shall ensure that, to the extent of any conflict between this
- 20 chapter and Chapter 981A, Chapter 981A controls. If the Surplus
- 21 Lines Insurance Multi-State Compliance Compact, executed by this
- 22 state under Section 981A.002, does not become effective in
- 23 <u>accordance with Article XIII of that compact, this subsection has</u>
- 24 <u>no effect.</u>
- 25 SECTION 2.02. Subchapter A, Chapter 981, Insurance Code, is
- 26 amended by adding Section 981.010 to read as follows:
- Sec. 981.010. CONFLICT WITH OTHER LAW. To the extent of any

- H.B. No. 1535
- 1 conflict between this chapter and Chapter 981A, Chapter 981A
- 2 controls. If the Surplus Lines Insurance Multi-State Compliance
- 3 Compact, executed by this state under Section 981A.002, does not
- 4 become effective in accordance with Article XIII of that compact,
- 5 this section has no effect.
- 6 SECTION 2.03. Subchapter A, Chapter 982, Insurance Code, is
- 7 amended by adding Section 982.005 to read as follows:
- 8 Sec. 982.005. CONFLICT WITH OTHER LAW. To the extent of any
- 9 conflict between this chapter and Chapter 981A, Chapter 981A
- 10 controls. If the Surplus Lines Insurance Multi-State Compliance
- 11 Compact, executed by this state under Section 981A.002, does not
- 12 become effective in accordance with Article XIII of that compact,
- 13 this section has no effect.
- 14 ARTICLE 3. EFFECTIVE DATE
- 15 SECTION 3.01. This Act takes effect September 1, 2011.