

Surplus Lines Multi-State Compliance Compact; Amendments to the Insurance Code (Anti-Fraud Plans; Time Requirements for Municipal Pools and Group-Funded Workers Compensation Pools)

HB 2076 makes amendments to certain statutory time requirements specified for municipal pools and group-funded workers compensation pools; extends the sunset provision that allows anti-fraud plans to remain confidential from July 1, 2011, to July 1, 2016; enacts the Surplus Lines Insurance Multi-State Compliance Compact; and makes amendments to the law governing the allocation of surplus lines' premium tax revenue.

Kansas Municipal Group-Funded Pool Act

Specifically, the bill amends provisions in the Kansas Municipal Group-Funded Pool Act to increase two-time limitations among the statutory requirements:

- From 30 to 60 days, the requirement that application for certificate of authority to operate a pool be made to the Insurance Commissioner prior to the proposed inception date of the pool; and
- From 90 to 150 days, the time permitted for the pool's filing of an independent, audited financial statement with the Insurance Commissioner after the end of the pool's fiscal year.

Anti-fraud Plans, Sunset Provision (Open Records Act)

The bill also repeals prior law and enacts new law to extend the sunset provision that allows anti-fraud plans submitted to the Insurance Commissioner to be confidential and not public record, from July 1, 2011, to July 1, 2016.

Group-Funded Workers Compensation Pools

The bill amends a requirement in the law governing group-funded workers compensation pools to increase the time permitted for the pool's filing of an independent, audited financial statement with the Insurance Commissioner from 90 days to 150 days after the end of the pool's fiscal year.

Surplus Lines Insurance Multi-State Compliance Compact

The bill enacts the Surplus Lines Insurance Multi-State Compliance Compact and makes amendments to the law governing the allocation of surplus lines' premium tax revenue. The model compact legislation (known as SLIMPACT-Lite, a National Conference of Insurance Legislators [NCOIL] initiative) is intended to comply with requirements of the Nonadmitted and Reinsurance Reform Act of 2010 [the NRRRA], legislation enacted in Title

V, Subtitle B of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. (Enactment of this Act authorizes Kansas to join the Compact as a Compacting State).

The Compact becomes effective and binding upon legislative enactment of the Compact by two Compacting States. The Commission becomes effective for purposes of adopting rules and creating the clearinghouse when there are a total of ten Compacting and Contracting States or when the Compacting and Contracting States represent greater than 40 percent of the surplus lines insurance premium volume.

Legislatures, under the provisions of Article 14, could withdraw from the Compact by enacting a statute repealing the enacting statute for the Compact.

NRRA requirements, Purposes of the Compact (Preamble, Article 1)

Among the stated purposes of the Compact are:

- To implement the express provisions of the NRRA;
- To protect the premium tax revenues of the Compacting States through facilitating the payment and collection of premium tax on non-admitted insurance; and to protect the interests of the Compacting States by supporting the continued availability of such insurance to consumers; and to provide for allocation of premium tax for non-admitted insurance of multi-state risks among the States in accordance with uniform allocation formulas to be developed, adopted, and implemented by the Commission;
- 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;
- 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; and
- To establish the Surplus Lines Multi-State Compliance Compact Commission.

Definitions (Article 2)

Among the definitions established under the Compact (in compliance with definitions and provisions established under the NRRRA):

- “Home State” means (i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or (ii) if 100 percent of the insured risk is located out of the State [in part (i)], the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.
- “Non-Admitted Insurer” means an insurer that is not authorized or admitted to transact the business of insurance under the law of the Home State.
- “Principal Place of Business” means 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.
- “Surplus Lines Insurance” means insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the Home State; for purposes of the Compact, the term also means excess lines insurance as may be defined by applicable State law.

Organization and Powers

The 16 articles of the Compact address: Purpose; Definitions; Establishment of the Commission and Venue; Authority to Establish Mandatory Rules; Powers of the Commission; Organization of the Commission; Meetings and Acts of the Commission; Rules and Operating Procedures: Rulemaking; Commission Records and Enforcement; Dispute Resolution; Review of Commission Decisions; Finance; Compacting States, Effective Date and Amendment; Withdrawal, Default and Termination; and Binding Effect of Compact and Other Laws.

The Compact would create the Surplus Lines Insurance Multi-State Compliance Compact Commission (Commission) whose powers include the adoption of mandatory rules which establish exclusive Home State authority regarding non-admitted insurance of multi-state risk, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating and enforcing compliance with the provisions of the Compact, its bylaws and rules.

The powers of the Commission are outlined in Article 5, with 23 separate stated powers. The Commission would consist of one member from each of the Compacting States; each member would be entitled to one vote (Article 6). The Commission would be responsible for the payment of reasonable expenses of its establishment and organization. The Commission is permitted to accept contributions, grants, and other forms of funding from State stamping offices, Compacting States and other sources to fund the costs of initial operations. The Commission is required, under the Compact, to collect a fee payable to the insured directly or through a surplus lines licensee on each transaction process through the clearinghouse to cover the cost of operations and activities of the Commission (Article 12).

In addition to the Commission, the organizational structure of the Compact includes:

- An Executive Committee (no more than 15 Compacting State representatives) whose duties will include establishing the organizational structure and appropriate procedures for the Commission to provide for the creation of rules and operating procedures.
- An Operations Committee (no more than 15 representatives) whose duties will include making recommendations to the Executive Committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with state stamping office systems. Representatives serving on the Committee will be individuals who have extensive experience or employment in the surplus lines insurance business.
- Legislative and Advisory Committees. The Legislative Committee would be composed of state legislators and is to monitor the operations of and make recommendations to the Commission. The Commission will be permitted to establish Advisory Committees.

Finally, the Compacting legislation provides that the Insurance Commissioner, or an alternate designated by the Commissioner, would represent Kansas on the Surplus Insurance Multi-State Compliance Compact.

Regulation of Surplus (Excess) Lines in Kansas; Amendments

Among the amendments to prior law, the Insurance Commissioner will be permitted, upon receipt of an application, to issue an excess lines coverage license to any licensed property and casualty agent (Kansas or any other state) and those agents will be allowed to negotiate for insureds whose home state is Kansas. The bill also amends the collection method and allocation of premium taxes for surplus lines insurance in law to conform to the requirements of the NRRRA. The tax rate of 6.0 percent on gross premiums would remain unchanged. The bill further provides that in instances where a state failed to enter

into a compact or reciprocal allocation procedure, the net premium tax collected will be retained by the State (Kansas). Finally, the bill increases from \$1.5 million to \$4.5 million, the capital or surplus requirement (from the annual statement) for inclusion on the white list of eligible surplus lines insurers.

Effective Dates

The Surplus Lines Insurance Multi-State Compliance Compact provisions and the amendments to surplus lines insurance provisions in prior law became effective upon publication in the *Kansas Register*. All other provisions will become effective on and after July 1, 2011.