

1 **Senate Bill No. 435**

2 (By Senator Minard)

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4 [Introduced February 4, 2011; referred to the Committee on
5 Banking and Insurance; and then to the Committee on Finance.]
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10 A BILL to amend and reenact §33-12C-3, §33-12C-5, §33-12C-7 and
11 §33-12C-8 of the Code of West Virginia, 1931, as amended, all
12 relating to surplus lines insurance; defining terms; providing
13 for compliance with the federal Nonadmitted and Reinsurance
14 Reform Act of 2010; authorizing Insurance Commissioner to
15 enter into multistate agreement regarding taxation of surplus
16 lines insurance; establishing a blended taxation rate with
17 respect to policies involving multistate risks; authorizing
18 participation in clearinghouse for allocation of taxes;
19 specifying disbursement and distribution of moneys; and
20 exempting certain large entities from compliance with due
21 diligence requirements.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §33-12C-3, §33-12C-5, §33-12C-7 and §33-12C-8 of the Code
24 of West Virginia, 1931, as amended, be amended and reenacted, all

1 to read as follows:

2 **ARTICLE 12C. SURPLUS LINE - NONADMITTED INSURANCE ACT.**

3 **§33-12C-3. Definitions.**

4 As used in this article:

5 (a) "Admitted insurer" means an insurer licensed to do an
6 insurance business in this state.

7 (b) "Business entity" means a corporation, association,
8 partnership, limited liability company, or other legal entity.

9 (c) "Capital", as used in the financial requirements of
10 section five of this article, means funds paid in for stock or
11 other evidence of ownership.

12 (d) "Commissioner" means the Insurance Commissioner of West
13 Virginia, or the commissioner's deputies or staff, or the
14 commissioner, director or superintendent of insurance in any other
15 state.

16 (e) "Eligible surplus lines insurer" means a nonadmitted
17 insurer with which a surplus lines licensee may place surplus lines
18 insurance pursuant to section five of this article.

19 (f) "Exempt commercial purchaser" means any person purchasing
20 commercial insurance that, at the time of placement, employs or
21 retains a qualified risk manager to negotiate insurance coverage,
22 has paid aggregate nationwide commercial property and casualty
23 insurance premiums in excess of \$100,000 in the immediately
24 preceding twelve months, and meets at least one of the following

1 criteria:

2 (1) Has a net worth in excess of \$20 million;

3 (2) Generates annual revenues in excess of \$50 million;

4 (3) Employs more than five hundred full-time or full-time
5 equivalent employees per individual insured or is a member of an
6 affiliated group employing more than one thousand employees in the
7 aggregate;

8 (4) Is a not-for-profit organization or public entity
9 generating annual budgeted expenditures of at least \$30 million; or

10 (5) Is a municipality with a population in excess of fifty
11 thousand persons: *Provided*, That on January 1, 2015 and every five
12 years thereafter, the amounts in subdivisions (1), (2) and (4) of
13 this subsection shall be adjusted to reflect the percentage change
14 for such five-year period in the Consumer Price Index for All Urban
15 Consumers published by the Bureau of Labor Statistics of the
16 federal Department of Labor.

17 ~~(f)~~ (g) "Export" means to place surplus lines insurance with
18 a nonadmitted insurer.

19 ~~(g)~~ (h) "Foreign decree" means any decree or order in equity
20 of a court located in any United States jurisdiction, including a
21 federal court of the United States, against any person engaging in
22 the transaction of insurance in this state.

23 (i) "Home state" means, with respect to an insured:

24 (1) The state in which an insured maintains its principal

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

3 (2) If one-hundred percent of the insured risk is located out
4 of the state referred to in subdivision one of this subsection, the
5 state to which the greatest percentage of the insured's taxable
6 premium for that insurance contract is allocated.

7 ~~(h)~~ (j) "Individual" means any private or natural person as
8 distinguished from a partnership, corporation, limited liability
9 company or other legal entity.

10 ~~(i)~~ (k) "Insurance" means any of the lines of authority in
11 section ten, article one of this chapter.

12 ~~(j)~~ (l) "Insurance producer" means a person required to be
13 licensed under the laws of this state to sell, solicit or negotiate
14 insurance. Wherever the word "agent" appears in this chapter, it
15 shall mean an individual insurance producer.

16 ~~(k)~~ (m) "Insurer" means any person, corporation, association,
17 partnership, reciprocal exchange, interinsurer, Lloyds insurer,
18 insurance exchange syndicate, fraternal benefit society, and any
19 other legal entity engaged in the business of making contracts of
20 insurance under section two, article one of this chapter.

21 ~~(l)~~ (n) "Kind of insurance" means one of the types of
22 insurance required to be reported in the annual statement which
23 must be filed with the commissioner by admitted insurers.

24 ~~(m)~~ (o) "License" means a document issued by this state's

1 Insurance Commissioner authorizing an individual to act as a
2 surplus lines licensee for the lines of authority specified in the
3 document. The license itself does not create any authority,
4 actual, apparent or inherent, in the holder to represent or commit
5 an insurer.

6 ~~(n)~~ (p) "Nonadmitted insurer" means an insurer not licensed to
7 do an insurance business in this state.

8 (q) "Nonadmitted and Reinsurance Reform Act of 2010" or "NRRA"
9 means those provisions incorporated as Subtitle B of the Dodd-Frank
10 Wall Street Reform and Consumer Protection Act, P.L. 111-517.

11 (r) "Nonadmitted Insurance Multi-State Agreement" or "NIMA"
12 means the model agreement adopted by the National Association of
13 Insurance Commissioners on December 16, 2010, to facilitate the
14 collection, allocation and disbursement of premium taxes
15 attributable to the placement of nonadmitted insurance, provide for
16 uniform methods of allocation and reporting among nonadmitted
17 insurance risk classifications, and share information among states
18 relating to nonadmitted insurance premium taxes; such term includes
19 the agreements' allocation tables and any changes made thereto in
20 response to changes to the laws of signatory states.

21 ~~(o)~~ (s) "Person" means any natural person or other entity,
22 including, but not limited to, individuals, partnerships,
23 associations, trusts or corporations.

24 ~~(p)~~ (t) "Policy" or "contract" means any contract of insurance

1 including, but not limited to, annuities, indemnity, medical or
2 hospital service, workers' compensation, fidelity or suretyship.

3 ~~(q)~~ (u) "Reciprocal Signatory state" means a state that has
4 ~~enacted provisions substantially similar to:~~ entered into NIMA or
5 a similar allocation procedure with this state.

6 ~~(1) Section seven, subdivision (5) of subsection (b) of~~
7 ~~section nine, subsection (j) of section sixteen, and subsection (d)~~
8 ~~of section seventeen of this article; and~~

9 ~~(2) The NAIC model allocation schedule and reporting form.~~

10 ~~(r)~~ (v) "Surplus", as used in the financial requirements of
11 section five of this article, means funds over and above
12 liabilities and capital of the company for the protection of
13 policyholders.

14 ~~(s)~~ (w) "Surplus lines insurance" means any property and
15 casualty insurance in this state on properties, risks or exposures,
16 located or to be performed in this state, permitted to be placed
17 through a surplus lines licensee with a nonadmitted insurer
18 eligible to accept such insurance, pursuant to section seven of
19 this article. Wherever the term "excess line" appears in this
20 chapter, it shall mean surplus lines insurance.

21 ~~(t)~~ (x) "Surplus lines licensee" means an individual licensed
22 under section five of this article to place insurance on
23 properties, risks or exposures located or to be performed in this
24 state with nonadmitted insurers eligible to accept such insurance.

1 Wherever the term "excess line broker" appears in this chapter, it
2 shall mean surplus lines licensee.

3 ~~(u)~~ (y) "Transaction of insurance" -

4 (1) For purposes of this article, any of the following acts in
5 this state effected by mail or otherwise by a nonadmitted insurer
6 or by any person acting with the actual or apparent authority of
7 the insurer, on behalf of the insurer, is deemed to constitute the
8 transaction of an insurance business in or from this state:

9 (A) The making of or proposing to make, as an insurer, an
10 insurance contract;

11 (B) The making of or proposing to make, as guarantor or
12 surety, any contract of guaranty or suretyship as a vocation and
13 not merely incidental to any other legitimate business or activity
14 of the guarantor or surety;

15 (C) The taking or receiving of an application for insurance;

16 (D) The receiving or collection of any premium, commission,
17 membership fees, assessments, dues or other consideration for
18 insurance or any part thereof;

19 (E) The issuance or delivery in this state of contracts of
20 insurance to residents of this state or to persons authorized to do
21 business in this state;

22 (F) The solicitation, negotiation, procurement or effectuation
23 of insurance or renewals thereof;

24 (G) The dissemination of information as to coverage or rates,

1 or forwarding of applications, or delivery of policies or
2 contracts, or inspection of risks, the fixing of rates or
3 investigation or adjustment of claims or losses or the transaction
4 of matters subsequent to effectuation of the contract and arising
5 out of it, or any other manner of representing or assisting a
6 person or insurer in the transaction of risks with respect to
7 properties, risks or exposures located or to be performed in this
8 state;

9 (H) The transaction of any kind of insurance business
10 specifically recognized as transacting an insurance business within
11 the meaning of the statutes relating to insurance;

12 (I) The offering of insurance or the transacting of insurance
13 business; or

14 (J) Offering an agreement or contract which purports to alter,
15 amend or void coverage of an insurance contract.

16 (2) The provisions of this subsection shall not operate to
17 prohibit employees, officers, directors or partners of a commercial
18 insured from acting in the capacity of an insurance manager or
19 buyer in placing insurance on behalf of the employer, provided that
20 the person's compensation is not based on buying insurance.

21 (3) The venue of an act committed by mail is at the point
22 where the matter transmitted by mail is delivered or issued for
23 delivery or takes effect.

24 ~~(v)~~ (z) "Line of insurance" means coverage afforded under the

1 particular policy that is being placed.

2 ~~(w)~~ (aa) "Model allocation schedule and reporting form" means
3 the current version of the NAIC model allocation schedule and
4 reporting form for surplus lines insurers.

5 ~~(x)~~ (bb) "Wet marine and transportation insurance" means:

6 (1) Insurance upon vessels, crafts, hulls and other interests
7 in them or with relation to them;

8 (2) Insurance of marine builder's risks, marine war risks and
9 contracts of marine protection and indemnity insurance;

10 (3) Insurance of freight and disbursements pertaining to a
11 subject of insurance within the scope of this subsection; and

12 (4) Insurance of personal property and interests therein, in
13 the course of exportation from or importation into any country, or
14 in the course of transportation coastwise or on inland waters,
15 including transportation by land, water or air from point of origin
16 to final destination, in connection with any and all risks or
17 perils of navigation, transit or transportation, and while being
18 prepared for and while awaiting shipment, and during any incidental
19 delays, transshipment, or reshipment; provided, however, that
20 insurance of personal property and interests therein shall not be
21 considered wet marine and transportation insurance if the property
22 has:

23 (A) Been transported solely by land; or

24 (B) Reached its final destination as specified in the bill of

1 lading or other shipping document; or

2 (C) The insured no longer has an insurable interest in the
3 property.

4 **§33-12C-5. Surplus lines insurance.**

5 (a) The placement of surplus lines insurance is subject to
6 this section only if this state is the insured's home state.

7 ~~(a)~~ (b) Surplus lines insurance may be placed by a surplus
8 lines licensee if:

9 (1) Each insurer is an eligible surplus lines insurer; and

10 (2) Each insurer is authorized to write the type of insurance
11 in its domiciliary jurisdiction; and

12 (3) The full amount or line of insurance cannot be obtained
13 from insurers who are admitted to do business in this state. The
14 full amount or type of insurance may be procured from eligible
15 surplus lines insurers, provided that a diligent search is made by
16 the individual insurance producer among the insurers who are
17 admitted to transact and are actually writing the particular type
18 of insurance in this state if any are writing it: Provided, That
19 such a search is not required when the licensee is seeking to
20 procure or place nonadmitted insurance for an exempt commercial
21 purchaser if the licensee disclosed to such purchaser that such
22 insurance may or may not be available from the admitted market that
23 may provide greater protection with more regulatory oversight and
24 that such purchaser has subsequently requested in writing that the

1 licensee procure or place such insurance from a nonadmitted
2 insurer; and

3 (4) All other requirements of this article are met.

4 ~~(b)~~ (c) Subject to subdivision (3), subsection ~~(a)~~ (b) of this
5 section, a surplus lines licensee may place any coverage with a
6 nonadmitted insurer eligible to accept the insurance, unless
7 specifically prohibited by the laws of this state.

8 ~~(c)~~ (d) A surplus lines licensee shall not place coverage
9 with a nonadmitted insurer, unless, at the time of placement, the
10 surplus lines licensee has determined that the nonadmitted insurer:

11 (1) Has established satisfactory evidence of good repute and
12 financial integrity; and

13 (2) Qualifies under one of the following paragraphs:

14 (A) Has capital and surplus or its equivalent under the laws
15 of its domiciliary jurisdiction which equals the greater of:

16 (i) (I) The minimum capital and surplus requirements under the
17 law of this state; or

18 (II) \$15 million;

19 (ii) The requirements of subparagraph (i), paragraph (A) of
20 this subdivision may be satisfied by an insurer's possessing less
21 than the minimum capital and surplus upon an affirmative finding of
22 acceptability by the commissioner. The finding shall be based upon
23 such factors as quality of management, capital and surplus of any
24 parent company, company underwriting profit and investment income

1 trends, market availability and company record and reputation
2 within the industry. In no event shall the commissioner make an
3 affirmative finding of acceptability when the nonadmitted insurer's
4 capital and surplus is less than \$4,500,000; or

5 (B) In the case of an insurance exchange created by the laws
6 of a state other than this state:

7 (i) The syndicates of the exchange shall maintain under terms
8 acceptable to the commissioner capital and surplus, or its
9 equivalent under the laws of its domiciliary jurisdiction, of not
10 less than \$75 million in the aggregate; and

11 (ii) The exchange shall maintain under terms acceptable to the
12 commissioner not less than fifty percent of the policyholder
13 surplus of each syndicate in a custodial account accessible to the
14 exchange or its domiciliary commissioner in the event of insolvency
15 or impairment of the individual syndicate; and

16 (iii) In addition, each individual syndicate to be eligible to
17 accept surplus lines insurance placements from this state shall
18 meet either of the following requirements:

19 (I) For insurance exchanges which maintain funds in an amount
20 of not less than \$15 million for the protection of all exchange
21 policyholders, the syndicate shall maintain under terms acceptable
22 to the commissioner minimum capital and surplus, or its equivalent
23 under the laws of the domiciliary jurisdiction, of not less than \$5
24 million; or

1 (II) For insurance exchanges which do not maintain funds in an
2 amount of not less than \$15 million for the protection of all
3 exchange policyholders, the syndicate shall maintain under terms
4 acceptable to the commissioner minimum capital and surplus, or its
5 equivalent under the laws of its domiciliary jurisdiction, of not
6 less than the minimum capital and surplus requirements under the
7 laws of its domiciliary jurisdiction or \$15 million, whichever is
8 greater; or

9 (C) In the case of a Lloyd's plan or other similar group of
10 insurers, which consists of unincorporated individual insurers, or
11 a combination of both unincorporated and incorporated insurers:

12 (i) The plan or group maintains a trust fund that shall
13 consist of a trustee account representing the group's liabilities
14 attributable to business written in the United States; and

15 (ii) In addition, the group shall establish and maintain in
16 trust a surplus in the amount of \$100 million; which shall be
17 available for the benefit of United States surplus lines
18 policyholders of any member of the group.

19 (iii) The incorporated members of the group shall not be
20 engaged in any business other than underwriting as a member of the
21 group and shall be subject to the same level of solvency regulation
22 and control by the group's domiciliary regulator as are the
23 unincorporated members.

24 (iv) The trust funds shall be maintained in an irrevocable

1 trust account in the United States in a qualified financial
2 institution, consisting of cash, securities, letters of credit or
3 investments of substantially the same character and quality as
4 those which are eligible investments for the capital and statutory
5 reserves of admitted insurers to write like kinds of insurance in
6 this state and, in addition, the trust required by subparagraph
7 (ii) of this subdivision shall satisfy the requirements of the
8 standard trust agreement required for listing with the National
9 Association of Insurance Commissioners (NAIC) International
10 Insurers Department or any successor thereto; or

11 (D) In the case of a group of incorporated insurers under
12 common administration, which has continuously transacted an
13 insurance business outside the United States for at least three
14 years immediately prior to this time, and which submits to this
15 state's authority to examine its books and records and bears the
16 expense of the examination:

17 (i) The group shall maintain an aggregate policyholders'
18 surplus of \$10 billion; and

19 (ii) The group shall maintain in trust a surplus in the amount
20 of \$10 billion; which shall be available for the benefit of United
21 States surplus lines policyholders of any member of the group; and

22 (iii) Each insurer shall individually maintain capital and
23 surplus of not less than \$25 million per company.

24 (iv) The trust funds shall satisfy the requirements of the

1 standard trust agreement requirement for listing with the NAIC
2 International Insurers Department or any successor thereto, and
3 shall be maintained in an irrevocable trust account in the United
4 States in a qualified financial institution, and shall consist of
5 cash, securities, letters of credit or investments of substantially
6 the same character and quality as those which are eligible
7 investments for the capital and statutory reserves of admitted
8 insurers to write like kinds of insurance in this state.

9 (v) Additionally, each member of the group shall make
10 available to the commissioner an annual certification of the
11 member's solvency by the member's domiciliary regulator and its
12 independent public accountant; or

13 (E) Except for an exchange or plan complying with paragraph
14 (B), (C) or (D) of this subdivision, an insurer not domiciled in
15 one of the United States or its territories shall satisfy the
16 capital and surplus requirements of paragraph (A), subdivision (2),
17 subsection ~~(c)~~ (d) of this section and shall have in force a trust
18 fund of not less than the greater of:

19 (i) \$5,400,000; or

20 (ii) Thirty percent of the United States surplus lines gross
21 liabilities, excluding aviation, wet marine and transportation
22 insurance liabilities, not to exceed \$60 million, to be determined
23 annually on the basis of accounting practices and procedures
24 substantially equivalent to those promulgated by this state, as of

1 December 31 next preceding the date of determination, where:

2 (I) The liabilities are maintained in an irrevocable trust
3 account in the United States in a qualified financial institution,
4 on behalf of U.S. policyholders consisting of cash, securities,
5 letters of credit or other investments of substantially the same
6 character and quality as those which are eligible investments
7 pursuant to article eight of this chapter for the capital and
8 statutory reserves of admitted insurers to write like kinds of
9 insurance in this state. The trust fund, which shall be included
10 in any calculation of capital and surplus or its equivalent, shall
11 satisfy the requirements of the Standard Trust Agreement required
12 for listing with the NAIC International Insurers Department or any
13 successor thereto; and

14 (II) The insurer may request approval from the commissioner to
15 use the trust fund to pay valid surplus lines claims; *Provided,*
16 *however,* That the balance of the trust fund is never less than the
17 greater of \$5,400,000 or thirty percent of the insurer's current
18 gross U.S. surplus lines liabilities, excluding aviation, wet
19 marine and transportation insurance liabilities; and

20 (III) In calculating the trust fund amount required by this
21 subsection, credit shall be given for surplus lines deposits
22 separately required and maintained for a particular state or U.S.
23 territory, not to exceed the amount of the insurer's loss and loss
24 adjustment reserves in the particular state or territory;

1 (F) An insurer or group of insurers meeting the requirements
 2 to do a surplus lines business in this state at the effective date
 3 of this law shall have two years from the date of enactment to meet
 4 the requirements of paragraph (E) of this subdivision, as follows:

Year Following Enactment	Trust Fund Requirement
1	15% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of \$30 million
2	30% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of \$60 million

10 (G) The commissioner shall have the authority to adjust, in
 11 response to inflation, the trust fund amounts required by paragraph
 12 (E) of this subdivision.

13 (3) In addition to all of the other requirements of this
 14 subsection, an insurer not domiciled in the United States or its
 15 territories shall be listed on the NAIC's quarterly listing of
 16 alien insurers. The commissioner may waive the requirement in this
 17 subdivision or the requirements of subparagraph (ii), paragraph
 18 (E), subdivision (2), subsection ~~(c)~~ (d) of this section may be
 19 satisfied by an insurer's possessing less than the trust fund
 20 amount specified in subparagraph (ii), paragraph (E), subdivision
 21 (2), subsection ~~(c)~~ (d) of this section upon an affirmative finding
 22 of acceptability by the commissioner if the commissioner is
 23 satisfied that the placement of insurance with the insurer is
 24 necessary and will not be detrimental to the public and the

1 policyholder. In determining whether business may be placed with
2 the insurer, the commissioner may consider such factors as:

3 (A) The interests of the public and policyholders;

4 (B) The length of time the insurer has been authorized in its
5 domiciliary jurisdiction and elsewhere;

6 (C) Unavailability of particular coverages from authorized
7 insurers or unauthorized insurers meeting the requirements of this
8 section;

9 (D) The size of the company as measured by its assets, capital
10 and surplus, reserves, premium writings, insurance in force or
11 other appropriate criteria;

12 (E) The kinds of business the company writes, its net exposure
13 and the extent to which the company's business is diversified among
14 several lines of insurance and geographic locations; and

15 (F) The past and projected trend in the size of the company's
16 capital and surplus considering such factors as premium growth,
17 operating history, loss and expense ratios, or other appropriate
18 criteria; and

19 (4) Has caused to be provided to the commissioner a copy of
20 its current annual statement certified by the insurer and an
21 actuarial opinion as to the adequacy of, and methodology used to
22 determine, the insurer's loss reserves. The statement shall be
23 provided at the same time it is provided to the insurer's domicile,
24 but in no event more than eight months after the close of the

1 period reported upon, and shall be certified as a true and correct
2 copy by an accounting or auditing firm licensed in the jurisdiction
3 of the insurer's domicile and certified by a senior officer of the
4 nonadmitted insurer as a true and correct copy of the statement
5 filed with the regulatory authority in the domicile of the
6 nonadmitted insurer. In the case of an insurance exchange
7 qualifying under paragraph (B), subdivision (2) of this subsection,
8 the statement may be an aggregate combined statement of all
9 underwriting syndicates operating during the period reported; and

10 (5) In addition to meeting the requirements in subdivisions
11 (1) to (4) of this subsection an insurer shall be an eligible
12 surplus lines insurer if it appears on the most recent list of
13 eligible surplus lines insurers published by the commissioner from
14 time to time but at least annually. Nothing in this subdivision
15 shall require the commissioner to place or maintain the name of any
16 nonadmitted insurer on the list of eligible surplus lines insurers.

17 (6) Notwithstanding subsection (a) of this section, only that
18 portion of any risk eligible for export for which the full amount
19 of coverage is not procurable from listed eligible surplus lines
20 insurers may be placed with any other nonadmitted insurer which
21 does not appear on the list of eligible surplus lines insurers
22 published by the commissioner pursuant to subdivision (5) of this
23 subsection but nonetheless meets the requirements set forth in
24 subdivisions (1) and (2), subsection ~~(c)~~ (d) of this section and

1 any regulations of the commissioner. The surplus lines licensee
2 seeking to provide coverage through an unlisted nonadmitted insurer
3 shall make a filing specifying the amounts and percentages of each
4 risk to be placed, and naming the nonadmitted insurers with which
5 placement is intended. Within thirty days after placing the
6 coverage, the surplus lines licensee shall also send written notice
7 to the insured that the insurance, or a portion thereof, has been
8 placed with the nonadmitted insurer.

9 ~~(d)~~ (e) Insurance procured under this section shall be valid
10 and enforceable as to all parties.

11 **§33-12C-7. Surplus lines tax.**

12 (a) In addition to the full amount of gross premiums charged
13 by the insurer for the insurance, every person licensed pursuant to
14 section eight of this article shall collect and pay to the
15 commissioner a sum equal to four and fifty-five one-hundredths
16 percent of the gross premiums and gross fees charged, less any
17 return premiums, for surplus lines insurance provided by the
18 licensee pursuant to the license. Where the insurance covers
19 properties, risks or exposures located or to be performed both in
20 and out of this state and this state is the insured's home state,
21 the sum payable shall be computed on that portion of the gross
22 premiums allocated to this state, ~~pursuant to subsection (g) of~~
23 ~~this section,~~ plus an amount equal to the portion of the gross
24 premiums allocated to other states or territories on the basis of

1 the tax rates and fees applicable to properties, risks or exposures
2 located or to be performed outside of this state, and less the
3 amount of gross premiums allocated to this state and returned to
4 the insured due to cancellation of policy: Provided, That the
5 surcharge imposed by section thirty-three, article three of this
6 chapter on surplus lines policies shall no longer be effective with
7 respect to premium attributable to coverage under such policies for
8 periods after June 30, 2011: Provided, however, That twelve per
9 cent of taxes collected under this subsection with respect to
10 premium attributable to coverage under such policies after June 30,
11 2011, shall be disbursed and distributed in accordance with
12 subsection (d), section three, article three of this chapter and
13 eighty-eight per cent in accordance with subsection (h) of this
14 section. The tax on any portion of the premium unearned at
15 termination of insurance having been credited by the state to the
16 licensee shall be returned to the policyholder directly by the
17 surplus lines licensee or through the producing broker, if any.

18 (b) The individual insurance producer may not:

19 (1) Pay directly or indirectly the tax or any portion thereof,
20 either as an inducement to the policyholder to purchase the
21 insurance or for any other reason; or

22 (2) Rebate all or part of the tax or the surplus lines
23 licensee's commission, either as an inducement to the policyholder
24 to purchase the insurance or for any reason.

1 (c) The surplus lines licensee may charge the prospective
2 policyholder a fee for the cost of underwriting, issuing,
3 processing, inspecting, service or auditing the policy for
4 placement with the surplus lines insurer if:

5 (1) The service is required by the surplus lines insurer;

6 (2) The service is actually provided by the individual
7 insurance producer or the cost of the service is actually incurred
8 by the surplus lines licensee; and

9 (3) The provision or cost of the service is reasonable,
10 documented and verifiable.

11 (d) The surplus lines licensee shall make a clear and
12 conspicuous written disclosure to the policyholder of:

13 (1) The total amount of premium for the policy;

14 (2) Any fee charged;

15 (3) The total amount of any fee charged; and

16 (4) The total amount of tax on the premium and fee.

17 (e) The clear and conspicuous written disclosure required by
18 subdivision (4) of this subsection is subject to the record
19 maintenance requirements of section eight of this article.

20 (f) This tax is imposed for the purpose of providing
21 additional revenue for municipal policemen's and firemen's pension
22 and relief funds and additional revenue for volunteer and part-
23 volunteer fire companies and departments. This tax is required to
24 be paid and remitted, on a calendar year basis and in quarterly

1 estimated installments due and payable on or before the twenty-
2 fifth day of the month succeeding the close of the quarter in which
3 they accrued, except for the fourth quarter, in respect of which
4 taxes shall be due and payable and final computation of actual
5 total liability for the prior calendar year shall be made, less
6 credit for the three quarterly estimated payments prior made, and
7 filed with the annual return to be made on or before March 1 of the
8 succeeding year. Provisions of this chapter relating to the levy,
9 imposition and collection of the regular premium tax are applicable
10 to the levy, imposition and collection of this tax to the extent
11 that the provisions are not in conflict with this section.

12 ~~All~~ Except as provided in subsection (f) of this section, all
13 taxes remitted to the commissioner pursuant to this subsection
14 shall be paid by him or her into a special account in the State
15 Treasury, designated Municipal Pensions and Protection Fund, or
16 pursuant to section eighteen-b, article twenty-two, chapter eight
17 of this code, the Municipal Pensions Security Fund, and after
18 appropriation by the Legislature, shall be distributed in
19 accordance with the provisions of subsection (c), section fourteen-
20 d, article three of this chapter. The surplus lines licensee shall
21 return to the policyholder the tax on any unearned portion of the
22 premium returned to the policyholder because of cancellation of
23 policy.

24 ~~(g) If a surplus lines policy procured through a surplus lines~~

1 ~~licensee covers properties, risks or exposures only partially~~
2 ~~located or to be performed in this state, the tax due shall be~~
3 ~~computed on the portions of the premiums which are attributable to~~
4 ~~the properties, risks or exposures located or to be performed in~~
5 ~~this state. In determining the amount of premiums taxable in this~~
6 ~~state, all premiums written, procured or received in this state~~
7 ~~shall be considered written on properties, risks or exposures~~
8 ~~located or to be performed in this state, except premiums which are~~
9 ~~properly allocated or apportioned and reported as taxable premiums~~
10 ~~of a reciprocal state. In no event shall the tax payable to this~~
11 ~~state be less than the tax due pursuant to subsection (h) of this~~
12 ~~section; provided, however, in the event that the amount of tax due~~
13 ~~under this provision is less than \$50 in any jurisdiction, it shall~~
14 ~~be payable in the jurisdiction in which the affidavit required in~~
15 ~~section eleven is filed. The commissioner may, at least annually~~
16 ~~furnish to the commissioner of a reciprocal state, as defined in~~
17 ~~subsection (q), section three of this article, a copy of all~~
18 ~~filings reporting an allocation of taxes as required by this~~
19 ~~subsection.~~

20 ~~(h)~~ (g) In determining the amount of gross premiums taxable in
21 this state for a placement of surplus lines insurance covering
22 properties, risks or exposures only partially located or to be
23 performed in this state, the tax due shall be computed on the
24 portions of the premiums which are attributable to properties,

1 risks or exposures located or to be performed in this state and
2 which relates to the kinds of insurance being placed as determined
3 by reference to ~~the model~~ an appropriate allocation ~~schedule and~~
4 ~~reporting form~~ table.

5 (1) If a policy covers more than one classification:

6 (A) For any portion of the coverage identified by a
7 classification on the allocation schedule, the tax shall be
8 computed by using the allocation schedule for the corresponding
9 portion of the premium;

10 (B) For any portion of the coverage not identified by a
11 classification on the allocation schedule, the tax shall be
12 computed by using an alternative equitable method of allocation for
13 the property or risk;

14 (C) For any portion of the coverage where the premium is
15 indivisible, the tax shall be computed by using the method of
16 allocation which pertains to the classification describing the
17 predominant coverage.

18 (2) If the information provided by the surplus lines licensee
19 is insufficient to substantiate the method of allocation used by
20 the surplus lines licensee, or if the commissioner determines that
21 the licensee's method is incorrect, the commissioner shall
22 determine the equitable and appropriate amount of tax due to this
23 state as follows:

24 (A) By use of the allocation schedule where the risk is

1 appropriately identified in the schedule;

2 (B) Where the allocation schedule does not identify a
3 classification appropriate to the coverage, the commissioner may
4 give significant weight to documented evidence of the underwriting
5 bases and other criteria used by the insurer. The commissioner may
6 also consider other available information to the extent sufficient
7 and relevant, including the percentage of the insured's physical
8 assets in this state, the percentage of the insured's sales in this
9 state, the percentage of income or resources derived from this
10 state, and the amount of premium tax paid to another jurisdiction
11 for the policy.

12 (h) The commissioner is authorized to participate in a
13 clearinghouse established through NIMA or in a similar allocation
14 procedure for the purpose of collecting and disbursing to signatory
15 states any funds collected pursuant to this section that are
16 allocable to properties, risks or exposures located or to be
17 performed outside of this state: Provided, That twelve per cent of
18 any moneys received from a clearinghouse or through a similar
19 allocation procedure shall be disbursed and distributed in
20 accordance with subsection (d), section three, article three of
21 this chapter and eighty-eight per cent of such moneys shall be
22 disbursed and distributed in accordance with subsection (f) of this
23 section: Provided, however, That to the extent other states where
24 portions of the properties, risks or exposures reside have failed

1 to enter into NIMA or a similar allocation procedure with this
2 state, the net premium tax collected shall be retained by this
3 state and shall be disbursed and distributed in the same manner as
4 moneys received through a clearinghouse or similar allocation
5 procedure.

6 (i) Collection of tax.

7 If the tax owed by a surplus lines licensee under this section
8 has been collected and is not paid within the time prescribed, the
9 same shall be recoverable in a suit brought by the commissioner
10 against the surplus lines licensee. The commissioner may charge
11 interest for any unpaid tax, fee, financial assessment or penalty,
12 or portion thereof: *Provided*, That interest may not be charged on
13 interest. Interest shall be calculated using the annual rates
14 which are established by the Tax Commissioner pursuant to section
15 seventeen-a of article ten, chapter eleven of this code and shall
16 accrue daily.

17 **§33-12C-8. Surplus lines licenses.**

18 (a) ~~A~~ No person shall ~~not~~ procure a contract of surplus lines
19 insurance with a nonadmitted insurer for an insured whose home
20 state is West Virginia unless the person possesses a current
21 surplus lines insurance license issued by the commissioner.

22 (b) The commissioner may issue a surplus lines license to a
23 qualified holder of a current property and casualty individual
24 insurance producer's license but only when the individual insurance

1 producer has:

2 (1) Remitted the \$200 annual fee to the commissioner, of which
3 all fees so collected are to be used for the purposes set forth in
4 section thirteen, article three of this chapter;

5 (2) Submitted a completed license application on a form
6 supplied by the commissioner;

7 (3) Passed a qualifying examination approved by the
8 commissioner, except that all holders of a license prior to the
9 effective date of this article shall be deemed to have passed such
10 an examination; and

11 (4) If a resident, established and continues to maintain an
12 office in this state.

13 (c) If the commissioner determines that a surplus lines
14 licensee of another state is competent, trustworthy and meets the
15 licensing requirements of this state, the commissioner may, in his
16 or her discretion, issue a nonresident surplus lines license. A
17 license shall not be issued unless the prospective licensee
18 furnishes the commissioner with the name and address of a resident
19 of this state upon whom notices or orders of the commissioner or
20 process affecting the nonresident surplus lines licensee may be
21 served. The licensee shall promptly notify the commissioner in
22 writing of every change in its designated agent for service of
23 process, and the change shall not become effective until
24 acknowledged by the commissioner.

1 (d) Each surplus lines license shall expire at midnight on May
2 31 next following the date of issuance, and an application for
3 renewal shall be filed before May 1 of each year upon payment of
4 the annual fee and compliance with other provisions of this
5 article. A surplus lines licensee who fails to apply for renewal
6 of the license before May 1 shall pay a penalty of \$100 and be
7 subject to penalties provided by law before the license will be
8 renewed.

(NOTE: The purpose of this bill is to amend the insurance code in accordance with the federal Nonadmitted and Reinsurance Reform Act of 2010 and to authorize the Insurance Commissioner to enter into a multistate agreement with respect to the collection and disbursement of surplus lines taxes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)