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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2003



# **ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 2715**

(By Delegates H. White, Hrutkay and R. M. Thompson)



Passed March 7, 2003

In Effect Ninety Days from Passage

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FOR

**H. B. 2715**

(BY DELEGATES H. WHITE, HRUTKAY AND R. M. THOMPSON)

[Passed March 7, 2003; in effect ninety days from passage]

AN ACT to amend and reenact article twelve-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nonadmitted insurers and the regulation of surplus lines insurance; defining terms for implementation of the NAIC nonadmitted insurers model act; establishing consistency among states; providing specific provisions from the model; liberalizing reciprocity for licensing nonresident surplus lines licensees; providing grounds upon which the commission may deny a nonadmitted insurer access to the state; providing for the regulation of surplus lines; enforcement; violations; penalties; service of process; and eliminating certain conflicting excess line related provisions.

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

That article twelve-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 12C. SURPLUS LINE.**

**§33-12C-1. Short title.**

1 This article shall be known and may be cited as “The  
2 Nonadmitted Insurance Act”.

**§33-12C-2. Purpose - necessity for regulation.**

1 This article shall be liberally construed and applied to  
2 promote its underlying purposes which include:

3 (a) Protecting persons seeking insurance in this state;

4 (b) Permitting surplus lines insurance to be placed with  
5 reputable and financially sound nonadmitted insurers and  
6 exported from this state pursuant to this article;

7 (c) Establishing a system of regulation which will permit  
8 orderly access to surplus lines insurance in this state and  
9 encourage admitted insurers to provide new and innovative  
10 types of insurance available to consumers in this state;

11 (d) Providing a system through which persons may pur-  
12 chase insurance other than surplus lines insurance, from  
13 nonadmitted insurers pursuant to this article;

14 (e) Protecting revenues of this state; and

15 (f) Providing a system pursuant to this article which  
16 subjects nonadmitted insurance activities in this state to the  
17 jurisdiction of the insurance commissioner and state and federal  
18 courts in suits by or on behalf of the state.

**§33-12C-3. Definitions.**

1 As used in this article:

2 (a) “Admitted insurer” means an insurer licensed to do an  
3 insurance business in this state.

4 (b) “Business entity” means a corporation, association,  
5 partnership, limited liability company, or other legal entity.

6 (c) “Capital,” as used in the financial requirements of  
7 section five of this article, means funds paid in for stock or  
8 other evidence of ownership.

9 (d) “Commissioner” means the insurance commissioner of  
10 West Virginia, or the commissioner’s deputies or staff, or the  
11 Commissioner, Director or Superintendent of Insurance in any  
12 other state.

13 (e) “Eligible surplus lines insurer” means a nonadmitted  
14 insurer with which a surplus lines licensee may place surplus  
15 lines insurance pursuant to section five of this article.

16 (f) “Export” means to place surplus lines insurance with a  
17 nonadmitted insurer.

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

22 (h) “Individual” means any private or natural person as  
23 distinguished from a partnership, corporation, limited liability  
24 company or other legal entity.

25 (i) “Insurance” means any of the lines of authority in  
26 section ten, article one of this chapter.

27 (j) "Insurance producer" means a person required to be  
28 licensed under the laws of this state to sell, solicit or negotiate  
29 insurance. Wherever the word "agent" appears in this chapter,  
30 it shall mean an individual insurance producer.

31 (k) "Insurer" means any person, corporation, association,  
32 partnership, reciprocal exchange, interinsurer, Lloyds insurer,  
33 insurance exchange syndicate, fraternal benefit society, and any  
34 other legal entity engaged in the business of making contracts  
35 of insurance under section two, article one of this chapter.

36 (l) "Kind of insurance" means one of the types of insurance  
37 required to be reported in the annual statement which must be  
38 filed with the commissioner by admitted insurers.

39 (m) "License" means a document issued by this state's  
40 insurance commissioner authorizing a individual to act as a  
41 surplus lines licensee for the lines of authority specified in the  
42 document. The license itself does not create any authority,  
43 actual, apparent or inherent, in the holder to represent or  
44 commit an insurer.

45 (n) "Nonadmitted insurer" means an insurer not licensed to  
46 do an insurance business in this state.

47 (o) "Person" means any natural person or other entity,  
48 including, but not limited to, individuals, partnerships, associa-  
49 tions, trusts or corporations.

50 (p) "Policy" or "contract" means any contract of insurance,  
51 including but not limited to annuities, indemnity, medical or  
52 hospital service, workers' compensation, fidelity or suretyship.

53 (q) "Reciprocal state" means a state that has enacted  
54 provisions substantially similar to:

55 (1) Section seven, subdivision (5) of subsection (b) of  
56 section nine, subsection (j) of section sixteen, and subsection  
57 (d) of section seventeen of this article; and

58 (2) The NAIC model allocation schedule and reporting  
59 form.

60 (r) “Surplus,” as used in the financial requirements of  
61 section five of this article, means funds over and above liabili-  
62 ties and capital of the company for the protection of policyhold-  
63 ers.

64 (s) “Surplus lines insurance” means any property and  
65 casualty insurance in this state on properties, risks or exposures,  
66 located or to be performed in this state, permitted to be placed  
67 through a surplus lines licensee with a nonadmitted insurer  
68 eligible to accept such insurance, pursuant to section seven of  
69 this article. Wherever the term “excess line” appears in this  
70 chapter, it shall mean surplus lines insurance.

71 (t) “Surplus lines licensee” means an individual licensed  
72 under section five of this article to place insurance on proper-  
73 ties, risks or exposures located or to be performed in this state  
74 with nonadmitted insurers eligible to accept such insurance.  
75 Wherever the term “excess line broker” appears in this chapter,  
76 it shall mean surplus lines licensee.

77 (u) “Transaction of insurance”

78 (1) For purposes of this article, any of the following acts in  
79 this state effected by mail or otherwise by a nonadmitted  
80 insurer or by any person acting with the actual or apparent  
81 authority of the insurer, on behalf of the insurer, is deemed to  
82 constitute the transaction of an insurance business in or from  
83 this state:

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

86 (B) The making of or proposing to make, as guarantor or  
87 surety, any contract of guaranty or suretyship as a vocation and  
88 not merely incidental to any other legitimate business or  
89 activity of the guarantor or surety;

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

91 (D) The receiving or collection of any premium, commis-  
92 sion, membership fees, assessments, dues or other consideration  
93 for insurance or any part thereof;

94 (E) The issuance or delivery in this state of contracts of  
95 insurance to residents of this state or to persons authorized to do  
96 business in this state;

97 (F) The solicitation, negotiation, procurement or effectua-  
98 tion of insurance or renewals thereof;

99 (G) The dissemination of information as to coverage or  
100 rates, or forwarding of applications, or delivery of policies or  
101 contracts, or inspection of risks, the fixing of rates or investiga-  
102 tion or adjustment of claims or losses or the transaction of  
103 matters subsequent to effectuation of the contract and arising  
104 out of it, or any other manner of representing or assisting a  
105 person or insurer in the transaction of risks with respect to  
106 properties, risks or exposures located or to be performed in this  
107 state;

108 (H) The transaction of any kind of insurance business  
109 specifically recognized as transacting an insurance business  
110 within the meaning of the statutes relating to insurance;

111 (I) The offering of insurance or the transacting of insurance  
112 business; or

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

115 (2) The provisions of this subsection shall not operate to  
116 prohibit employees, officers, directors or partners of a commer-  
117 cial insured from acting in the capacity of an insurance manager  
118 or buyer in placing insurance on behalf of the employer,  
119 provided that the person's compensation is not based on buying  
120 insurance.

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

124 (v) "Line of insurance" means coverage afforded under the  
125 particular policy that is being placed.

126 (w) "Model allocation schedule and reporting form" means  
127 the current version of the NAIC model allocation schedule and  
128 reporting form for surplus lines insurers.

129 (x) "Wet marine and transportation insurance" means:

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

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

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

136 (4) Insurance of personal property and interests therein, in  
137 the course of exportation from or importation into any country,  
138 or in the course of transportation coastwise or on inland waters,  
139 including transportation by land, water or air from point of  
140 origin to final destination, in connection with any and all risks

141 or perils of navigation, transit or transportation, and while being  
142 prepared for and while awaiting shipment, and during any  
143 incidental delays, transshipment, or reshipment; provided,  
144 however, that insurance of personal property and interests  
145 therein shall not be considered wet marine and transportation  
146 insurance if the property has:

147 (A) Been transported solely by land; or

148 (B) Reached its final destination as specified in the bill of  
149 lading or other shipping document; or

150 (C) The insured no longer has an insurable interest in the  
151 property.

**§33-12C-4. Placement of insurance business.**

1 (a) An insurer shall not engage in the transaction of  
2 insurance unless authorized by a license in force pursuant to the  
3 laws of this state, or exempted by this article or otherwise  
4 exempted by the insurance laws of this state.

5 (b) A person shall not engage in a transaction of insurance  
6 or shall in this state directly or indirectly act as agent for, or  
7 otherwise represent or aid on behalf of another, a nonadmitted  
8 insurer in the solicitation, negotiation, procurement or effectua-  
9 tion of insurance, or renewals thereof, or forwarding of applica-  
10 tions, or delivery of policies or contracts or inspection of risks,  
11 or fixing of rates, or investigation or adjustment of claims or  
12 losses, or collection or forwarding of premiums, or in any other  
13 manner represent or assist the insurer in the transaction of  
14 insurance.

15 (c) A person who represents or aids a nonadmitted insurer  
16 in violation of this section shall be subject to the penalties set  
17 forth in section eighteen of this article. No insurance contract  
18 entered into in violation of this section shall preclude the

19 insured from enforcing his rights under the contract in accor-  
20 dance with the terms and provisions of the contract of insurance  
21 and the laws of this state, to the same degree those rights would  
22 have been enforceable had the contract been lawfully procured.

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

29 (e) This section shall not apply to a person, properly  
30 licensed as an agent in this state who, for a fee and pursuant to  
31 a written agreement, is engaged solely to offer to the insured  
32 advice, counsel or opinion, or service with respect to the  
33 benefits, advantages or disadvantages promised under any  
34 proposed or in-force policy of insurance if the person does not,  
35 directly or indirectly, participate in the solicitation, negotiation  
36 or procurement of insurance on behalf of the insured;

37 (f) The insurance must be procured only through an  
38 individual licensed surplus lines licensee;

39 (g) This section shall not apply to a person acting in  
40 material compliance with the insurance laws of this state in the  
41 placement of the types of insurance identified in subdivisions  
42 (1), (2), (3) and (4) below:

43 (1) Surplus lines insurance as provided in section five of  
44 this article. For the purposes of this subsection, a licensee shall  
45 be deemed to be in material compliance with the insurance laws  
46 of this state, unless the licensee committed a violation of  
47 section five of this article that proximately caused loss to the  
48 insured;

49       (2) Transactions for which a license to do business is not  
50 required of an insurer under the insurance laws of this state;

51       (3) Reinsurance provided that, unless the commissioner  
52 waives the requirements of this subsection:

53       (A) The assuming insurer is authorized to do an insurance  
54 or reinsurance business by its domiciliary jurisdiction and is  
55 authorized to write the type of reinsurance in its domiciliary  
56 jurisdiction; and

57       (B) The assuming insurer satisfies all legal requirements for  
58 such reinsurance in the state of domicile of the ceding insurer;

59       (4) The property and operation of railroads or aircraft  
60 engaged in interstate or foreign commerce, wet marine and  
61 transportation insurance;

62       (5) Transactions subsequent to issuance of a policy not  
63 covering properties, risks or exposures located, or to be  
64 performed in this state at the time of issuance, and lawfully  
65 solicited, written or delivered outside this state.

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

1       (a) Surplus lines insurance may be placed by a surplus lines  
2 licensee if:

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

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

6       (3) The full amount or line of insurance cannot be obtained  
7 from insurers who are admitted to do business in this state. The  
8 full amount or type of insurance may be procured from eligible  
9 surplus lines insurers, provided that a diligent search is made by  
10 the individual insurance producer among the insurers who are

11 admitted to transact and are actually writing the particular type  
12 of insurance in this state if any are writing it; and

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

14 (b) Subject to subdivision (3), subsection (a) of this section,  
15 a surplus lines licensee may place any coverage with a  
16 nonadmitted insurer eligible to accept the insurance, unless  
17 specifically prohibited by the laws of this state.

18 (c) A surplus lines licensee shall not place coverage with a  
19 nonadmitted insurer, unless, at the time of placement, the  
20 surplus lines licensee has determined that the nonadmitted  
21 insurer:

22 (1) Has established satisfactory evidence of good repute  
23 and financial integrity; and

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

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

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

29 (II) Fifteen million dollars;

30 (ii) The requirements of subparagraph (i), paragraph (A) of  
31 this subdivision may be satisfied by an insurer's possessing less  
32 than the minimum capital and surplus upon an affirmative  
33 finding of acceptability by the commissioner. The finding shall  
34 be based upon such factors as quality of management, capital  
35 and surplus of any parent company, company underwriting  
36 profit and investment income trends, market availability and  
37 company record and reputation within the industry. In no event  
38 shall the commissioner make an affirmative finding of accept-

39 ability when the nonadmitted insurer's capital and surplus is  
40 less than four million five hundred thousand dollars; or

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

43 (i) The syndicates of the exchange shall maintain under  
44 terms acceptable to the commissioner capital and surplus, or its  
45 equivalent under the laws of its domiciliary jurisdiction, of not  
46 less than seventy-five million dollars in the aggregate; and

47 (ii) The exchange shall maintain under terms acceptable to  
48 the commissioner not less than fifty percent of the policyholder  
49 surplus of each syndicate in a custodial account accessible to  
50 the exchange or its domiciliary commissioner in the event of  
51 insolvency or impairment of the individual syndicate; and

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

55 (I) For insurance exchanges which maintain funds in an  
56 amount of not less than fifteen million dollars for the protection  
57 of all exchange policyholders, the syndicate shall maintain  
58 under terms acceptable to the commissioner minimum capital  
59 and surplus, or its equivalent under the laws of the domiciliary  
60 jurisdiction, of not less than five million dollars; or

61 (II) For insurance exchanges which do not maintain funds  
62 in an amount of not less than fifteen million dollars for the  
63 protection of all exchange policyholders, the syndicate shall  
64 maintain under terms acceptable to the commissioner minimum  
65 capital and surplus, or its equivalent under the laws of its  
66 domiciliary jurisdiction, of not less than the minimum capital  
67 and surplus requirements under the laws of its domiciliary  
68 jurisdiction or fifteen million dollars, whichever is greater; or

69 (C) In the case of a Lloyd's plan or other similar group of  
70 insurers, which consists of unincorporated individual insurers,  
71 or a combination of both unincorporated and incorporated  
72 insurers:

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

76 (ii) In addition, the group shall establish and maintain in  
77 trust a surplus in the amount of one hundred million dollars;  
78 which shall be available for the benefit of United States surplus  
79 lines policyholders of any member of the group.

80 (iii) The incorporated members of the group shall not be  
81 engaged in any business other than underwriting as a member  
82 of the group and shall be subject to the same level of solvency  
83 regulation and control by the group's domiciliary regulator as  
84 are the unincorporated members.

85 (iv) The trust funds shall be maintained in an irrevocable  
86 trust account in the United States in a qualified financial  
87 institution, consisting of cash, securities, letters of credit or  
88 investments of substantially the same character and quality as  
89 those which are eligible investments for the capital and statu-  
90 tory reserves of admitted insurers to write like kinds of insur-  
91 ance in this state and, in addition, the trust required by subpara-  
92 graph (ii) of this subdivision shall satisfy the requirements of  
93 the standard trust agreement required for listing with the  
94 national association of insurance commissioners (NAIC)  
95 International Insurers Department or any successor thereto; or

96 (D) In the case of a group of incorporated insurers under  
97 common administration, which has continuously transacted an  
98 insurance business outside the United States for at least three  
99 years immediately prior to this time, and which submits to this

100 state's authority to examine its books and records and bears the  
101 expense of the examination:

102 (i) The group shall maintain an aggregate policyholders'  
103 surplus of ten billion dollars; and

104 (ii) The group shall maintain in trust a surplus in the  
105 amount of ten billion dollars; which shall be available for the  
106 benefit of United States surplus lines policyholders of any  
107 member of the group; and

108 (iii) Each insurer shall individually maintain capital and  
109 surplus of not less than twenty-five million dollars per com-  
110 pany.

111 (iv) The trust funds shall satisfy the requirements of the  
112 standard trust agreement requirement for listing with the NAIC  
113 International Insurers Department or any successor thereto, and  
114 shall be maintained in an irrevocable trust account in the United  
115 States in a qualified financial institution, and shall consist of  
116 cash, securities, letters of credit or investments of substantially  
117 the same character and quality as those which are eligible  
118 investments for the capital and statutory reserves of admitted  
119 insurers to write like kinds of insurance in this state.

120 (v) Additionally, each member of the group shall make  
121 available to the commissioner an annual certification of the  
122 member's solvency by the member's domiciliary regulator and  
123 its independent public accountant; or

124 (E) Except for an exchange or plan complying with  
125 paragraph (B), (C) or (D) of this subdivision, an insurer not  
126 domiciled in one of the United States or its territories shall  
127 satisfy the capital and surplus requirements of paragraph (A),  
128 subdivision (2), subsection (c) of this section and shall have in  
129 force a trust fund of not less than the greater of:

130 (i) Five million four hundred thousand dollars; or

131 (ii) Thirty percent of the United States surplus lines gross  
132 liabilities, excluding aviation, wet marine and transportation  
133 insurance liabilities, not to exceed sixty million dollars, to be  
134 determined annually on the basis of accounting practices and  
135 procedures substantially equivalent to those promulgated by  
136 this state, as of the thirty-first day of December next preceding  
137 the date of determination, where:

138 (I) The liabilities are maintained in an irrevocable trust  
139 account in the United States in a qualified financial institution,  
140 on behalf of U.S. policyholders consisting of cash, securities,  
141 letters of credit or other investments of substantially the same  
142 character and quality as those which are eligible investments  
143 pursuant to article eight of this chapter for the capital and  
144 statutory reserves of admitted insurers to write like kinds of  
145 insurance in this state. The trust fund, which shall be included  
146 in any calculation of capital and surplus or its equivalent, shall  
147 satisfy the requirements of the Standard Trust Agreement  
148 required for listing with the NAIC International Insurers  
149 Department or any successor thereto; and

150 (II) The insurer may request approval from the commis-  
151 sioner to use the trust fund to pay valid surplus lines claims;  
152 provided, however, that the balance of the trust fund is never  
153 less than the greater of five million four hundred thousand  
154 dollars or thirty percent of the insurer's current gross U.S.  
155 surplus lines liabilities, excluding aviation, wet marine and  
156 transportation insurance liabilities; and

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

162 (F) An insurer or group of insurers meeting the require-  
 163 ments to do a surplus lines business in this state at the effective  
 164 date of this law shall have two years from the date of enactment  
 165 to meet the requirements of paragraph (E) of this subdivision,  
 166 as follows:

167	Year	Trust Fund Requirement
168	Following	
169	Enactment	
170	1	15% of U.S. surplus lines liabilities, exclud- ing aviation, wet marine and transportation insurance, with a maximum of \$30,000,000
171		
172		
173	2	30% of U.S. surplus lines liabilities, exclud- ing aviation, wet marine and transportation insurance, with a maximum of \$60,000,000.
174		
175		

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

179 (3) In addition to all of the other requirements of this  
 180 subsection, an insurer not domiciled in the United States or its  
 181 territories shall be listed on the NAIC's quarterly listing of alien  
 182 insurers. The commissioner may waive the requirement in this  
 183 subdivision or the requirements of subparagraph (ii), paragraph  
 184 (E), subdivision (2), subsection (c) of this section may be  
 185 satisfied by an insurer's possessing less than the trust fund  
 186 amount specified in subparagraph (ii), paragraph (E), subdivi-  
 187 sion (2), subsection (c) of this section upon an affirmative  
 188 finding of acceptability by the commissioner if the commis-  
 189 sioner is satisfied that the placement of insurance with the  
 190 insurer is necessary and will not be detrimental to the public  
 191 and the policyholder. In determining whether business may be

192 placed with the insurer, the commissioner may consider such  
193 factors as:

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

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

197 (C) Unavailability of particular coverages from authorized  
198 insurers or unauthorized insurers meeting the requirements of  
199 this section;

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

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

207 (F) The past and projected trend in the size of the com-  
208 pany's capital and surplus considering such factors as premium  
209 growth, operating history, loss and expense ratios, or other  
210 appropriate criteria; and

211 (4) Has caused to be provided to the commissioner a copy  
212 of its current annual statement certified by the insurer and an  
213 actuarial opinion as to the adequacy of, and methodology used  
214 to determine, the insurer's loss reserves. The statement shall be  
215 provided at the same time it is provided to the insurer's  
216 domicile, but in no event more than eight months after the close  
217 of the period reported upon, and shall be certified as a true and  
218 correct copy by an accounting or auditing firm licensed in the  
219 jurisdiction of the insurer's domicile and certified by a senior  
220 officer of the nonadmitted insurer as a true and correct copy of  
221 the statement filed with the regulatory authority in the domicile

222 of the nonadmitted insurer. In the case of an insurance ex-  
223 change qualifying under paragraph (B), subdivision (2) of this  
224 subsection, the statement may be an aggregate combined  
225 statement of all underwriting syndicates operating during the  
226 period reported; and

227 (5) In addition to meeting the requirements in subdivisions  
228 (1) to (4) of this subsection an insurer shall be an eligible  
229 surplus lines insurer if it appears on the most recent list of  
230 eligible surplus lines insurers published by the commissioner  
231 from time to time but at least annually. Nothing in this subdivi-  
232 sion shall require the commissioner to place or maintain the  
233 name of any nonadmitted insurer on the list of eligible surplus  
234 lines insurers.

235 (6) Notwithstanding subsection (a) of this section, only that  
236 portion of any risk eligible for export for which the full amount  
237 of coverage is not procurable from listed eligible surplus lines  
238 insurers may be placed with any other nonadmitted insurer  
239 which does not appear on the list of eligible surplus lines  
240 insurers published by the commissioner pursuant to subdivision  
241 (5) of this subsection but nonetheless meets the requirements  
242 set forth in subdivisions (1) and (2), subsection (c) of this  
243 section and any regulations of the commissioner. The surplus  
244 lines licensee seeking to provide coverage through an unlisted  
245 nonadmitted insurer shall make a filing specifying the amounts  
246 and percentages of each risk to be placed, and naming the  
247 nonadmitted insurers with which placement is intended. Within  
248 thirty days after placing the coverage, the surplus lines licensee  
249 shall also send written notice to the insured that the insurance,  
250 or a portion thereof, has been placed with the nonadmitted  
251 insurer.

252 (d) Insurance procured under this section shall be valid and  
253 enforceable as to all parties.

**§33-12C-6. Withdrawal of eligibility as a surplus lines insurer.**

1 (a) The commissioner may declare a surplus lines insurer  
2 ineligible if the commissioner has reason to believe that:

3 (1) Is in unsound financial condition or has acted in an  
4 untrustworthy manner;

5 (2) No longer meets standards set forth in subsection (c) of  
6 this section;

7 (3) Has willfully violated the laws of this state; or

8 (4) Does not conduct a proper claims practice;

9 (b) The commissioner shall promptly mail notice of all such  
10 declarations to each surplus lines licensee.

**§33-12C-7. Surplus lines tax.**

1 (a) In addition to the full amount of gross premiums  
2 charged by the insurer for the insurance, every person licensed  
3 pursuant to section eight of this article shall collect and pay to  
4 the commissioner a sum equal to four percent of the gross  
5 premiums and gross fees charged, less any return premiums, for  
6 surplus lines insurance provided by the licensee pursuant to the  
7 license. Where the insurance covers properties, risks or expo-  
8 sures located or to be performed both in and out of this state,  
9 the sum payable shall be computed on that portion of the gross  
10 premiums allocated to this state pursuant to subsection (g) of  
11 this section less the amount of gross premiums allocated to this  
12 state and returned to the insured due to cancellation of policy.  
13 The tax on any portion of the premium unearned at termination  
14 of insurance having been credited by the state to the licensee  
15 shall be returned to the policyholder directly by the surplus  
16 lines licensee or through the producing broker, if any.

17 (b) The individual insurance producer may not:

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

21 (2) Rebate all or part of the tax or the surplus lines li-  
22 censee's commission, either as an inducement to the policy-  
23 holder to purchase the insurance or for any reason.

24 (c) The surplus lines licensee may charge the prospective  
25 policyholder a fee for the cost of underwriting, issuing, process-  
26 ing, inspecting, service or auditing the policy for placement  
27 with the surplus line insurer if:

28 (1) The service is required by the surplus line insurer;

29 (2) The service is actually provided by the individual  
30 insurance producer or the cost of the service is actually incurred  
31 by the surplus lines licensee; and

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

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

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

37 (2) Any fee charged;

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

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

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

43 (f) This tax is imposed for the purpose of providing  
44 additional revenue for municipal policemen's and firemen's  
45 pension and relief funds and additional revenue for volunteer  
46 and part volunteer fire companies and departments. This tax is  
47 required to be paid and remitted, on a calendar year basis and  
48 in quarterly estimated installments due and payable on or before  
49 the twenty fifth day of the month succeeding the close of the  
50 quarter in which they accrued, except for the fourth quarter, in  
51 respect of which taxes shall be due and payable and final  
52 computation of actual total liability for the prior calendar year  
53 shall be made, less credit for the three quarterly estimated  
54 payments prior made, and filed with the annual return to be  
55 made on or before the first day of March of the succeeding  
56 year. Provisions of this chapter relating to the levy, imposition  
57 and collection of the regular premium tax are applicable to the  
58 levy, imposition and collection of this tax to the extent that the  
59 provisions are not in conflict with this section.

60 All taxes remitted to the commissioner pursuant to this  
61 subsection shall be paid by him or her into a special account in  
62 the state treasury, designated "municipal pensions and protec-  
63 tion fund," and after appropriation by the Legislature, shall be  
64 distributed in accordance with the provisions of subsection (c),  
65 section fourteen-d, article three of this chapter. The surplus  
66 lines licensee shall return to the policyholder the tax on any  
67 unearned portion of the premium returned to the policyholder  
68 because of cancellation of policy.

69 (g) If a surplus lines policy procured through a surplus lines  
70 licensee covers properties, risks or exposures only partially  
71 located or to be performed in this state, the tax due shall be  
72 computed on the portions of the premiums which are attribut-  
73 able to the properties, risks or exposures located or to be  
74 performed in this state. In determining the amount of premiums  
75 taxable in this state, all premiums written, procured or received  
76 in this state shall be considered written on properties, risks or

77 exposures located or to be performed in this state, except  
78 premiums which are properly allocated or apportioned and  
79 reported as taxable premiums of a reciprocal state. In no event  
80 shall the tax payable to this state be less than the tax due  
81 pursuant to subsection (h) of this section; provided, however, in  
82 the event that the amount of tax due under this provision is less  
83 than fifty dollars in any jurisdiction, it shall be payable in the  
84 jurisdiction in which the affidavit required in section eleven is  
85 filed. The commissioner may, at least annually furnish to the  
86 commissioner of a reciprocal state, as defined in subsection (q),  
87 section three of this article, a copy of all filings reporting an  
88 allocation of taxes as required by this subsection.

89 (h) In determining the amount of gross premiums taxable  
90 in this state for a placement of surplus lines insurance covering  
91 properties, risks or exposures only partially located or to be  
92 performed in this state, the tax due shall be computed on the  
93 portions of the premiums which are attributable to properties,  
94 risks or exposures located or to be performed in this state and  
95 which relates to the kinds of insurance being placed as deter-  
96 mined by reference to the model allocation schedule and  
97 reporting form.

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

99 (A) For any portion of the coverage identified by a classifi-  
100 cation on the Allocation Schedule, the tax shall be computed by  
101 using the Allocation Schedule for the corresponding portion of  
102 the premium;

103 (B) For any portion of the coverage not identified by a  
104 classification on the Allocation Schedule, the tax shall be  
105 computed by using an alternative equitable method of allocation  
106 for the property or risk;

107 (C) For any portion of the coverage where the premium is  
108 indivisible, the tax shall be computed by using the method of

109 allocation which pertains to the classification describing the  
110 predominant coverage.

111 (2) If the information provided by the surplus lines licensee  
112 is insufficient to substantiate the method of allocation used by  
113 the surplus lines licensee, or if the commissioner determines  
114 that the licensee's method is incorrect, the commissioner shall  
115 determine the equitable and appropriate amount of tax due to  
116 this state as follows:

117 (A) By use of the Allocation Schedule where the risk is  
118 appropriately identified in the schedule;

119 (B) Where the Allocation Schedule does not identify a  
120 classification appropriate to the coverage, the commissioner  
121 may give significant weight to documented evidence of the  
122 underwriting bases and other criteria used by the insurer. The  
123 commissioner may also consider other available information to  
124 the extent sufficient and relevant, including the percentage of  
125 the insured's physical assets in this state, the percentage of the  
126 insured's sales in this state, the percentage of income or  
127 resources derived from this state, and the amount of premium  
128 tax paid to another jurisdiction for the policy.

129 (i) Collection of Tax

130 If the tax owed by a surplus lines licensee under this section  
131 has been collected and is not paid within the time prescribed,  
132 the same shall be recoverable in a suit brought by the commis-  
133 sioner against the surplus lines licensee. The commissioner may  
134 charge interest for any unpaid tax, fee, financial assessment or  
135 penalty, or portion thereof; *Provided*, That interest may not be  
136 charged on interest. Interest shall be calculated using the annual  
137 rates which are established by the tax commissioner pursuant to  
138 section seventeen-a of article ten, chapter eleven of this code,  
139 and shall accrue daily.

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

1 (a) A person shall not procure a contract of surplus lines  
2 insurance with a nonadmitted insurer unless the person pos-  
3 sesses a current surplus lines insurance license issued by the  
4 commissioner.

5 (b) The commissioner may issue a surplus lines license to  
6 a qualified holder of a current property and casualty individual  
7 insurance producer's license but only when the individual  
8 insurance producer has:

9 (1) Remitted the two hundred dollar annual fee to the  
10 commissioner, of which all fees so collected are to be used for  
11 the purposes set forth in section thirteen, article three of this  
12 chapter;

13 (2) Submitted a completed license application on a form  
14 supplied by the commissioner;

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

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

21 (c) If the commissioner determines that a surplus lines  
22 licensee of another state is competent, trustworthy and meets  
23 the licensing requirements of this state, the commissioner may,  
24 in his or her discretion, issue a nonresident surplus lines license.  
25 A license shall not be issued unless the prospective licensee  
26 furnishes the commissioner with the name and address of a  
27 resident of this state upon whom notices or orders of the  
28 commissioner or process affecting the nonresident surplus lines  
29 licensee may be served. The licensee shall promptly notify the

30 commissioner in writing of every change in its designated agent  
31 for service of process, and the change shall not become  
32 effective until acknowledged by the commissioner.

33 (d) Each surplus lines license shall expire at midnight on  
34 the thirty-first day of May next following the date of issuance,  
35 and an application for renewal shall be filed before the first day  
36 of May of each year upon payment of the annual fee and  
37 compliance with other provisions of this article. A surplus lines  
38 licensee who fails to apply for renewal of the license before the  
39 first day of May shall pay a penalty of one hundred dollars and  
40 be subject to penalties provided by law before the license will  
41 be renewed.

**§33-12C-9. Suspension, revocation or nonrenewal of surplus lines  
licensee's license.**

1 (a) The commissioner may examine and investigate the  
2 business affairs of every individual applying for or holding a  
3 surplus lines insurance license to determine whether such  
4 individual has been or is engaged in unfair or deceptive  
5 practices in any state.

6 (b) The commissioner may place on probation, suspend,  
7 revoke or refuse to issue or renew the license of a surplus lines  
8 licensee or may levy a civil penalty in a sum not to exceed five  
9 thousand dollars or any combination of actions after notice and  
10 hearing pursuant to section thirteen, article two of this chapter  
11 upon one or more of the following grounds:

12 (1) Removal of the resident surplus lines licensee's office  
13 from this state;

14 (2) Removal of the resident surplus lines licensee's office  
15 accounts and records from this state during the period during  
16 which the accounts and records are required to be maintained  
17 under section sixteen of this article;

18 (3) Closing of the surplus lines licensee's office for a period  
19 of more than thirty business days, unless permission is granted  
20 by the commissioner;

21 (4) Failure to make and file required reports;

22 (5) Failure to transmit required tax on surplus lines premi-  
23 ums to this state or a reciprocal state to which a tax is owing;

24 (6) Violation of any provision of this article; or

25 (7) For any cause for which an insurance license could be  
26 denied, revoked, suspended or renewal refused pursuant to  
27 section twenty-four, article twelve of this chapter.

**§33-12c-10. Actions against eligible surplus lines insurers trans-  
acting surplus lines business.**

1 (a) An eligible surplus lines insurer may be sued upon a  
2 cause of action arising in this state under a surplus lines  
3 insurance contract made by it or evidence of insurance issued  
4 or delivered by the surplus lines licensee. A policy issued by the  
5 eligible surplus lines insurer shall contain a provision stating  
6 the substance of this section and designating the person to  
7 whom the commissioner shall mail process.

8 (b) The remedies provided in this section are in addition to  
9 any other methods provided by law for service of process upon  
10 insurers.

**§33-12C-11. Duty to file evidence of insurance and affidavits.**

1 (a) On or before the first day of March, two thousand four,  
2 and on or before the first day of March thereafter, each surplus  
3 lines licensee shall file, on a form prescribed by the commis-  
4 sioner, a report under oath, setting forth facts from which it may  
5 be determined whether the requirements of section five of this

6 article have been met with respect to each surplus line policy  
7 procured by the surplus lines licensee during the preceding  
8 calendar year.

9 (b) The written report shall include, but not be limited to,  
10 the following:

11 (1) The name and address of the insured;

12 (2) The identity of the insurer or insurers;

13 (3) A description of the subject and location of the risk and  
14 the risk insured against;

15 (4) Return premium paid, if any;

16 (5) The amount of gross premium charged for the insur-  
17 ance;

18 (6) The amount of the insurance;

19 (7) Such other pertinent information as the commissioner  
20 may reasonably require; and

21 (8) An affidavit on a standardized form promulgated by the  
22 commissioner, as to the diligent efforts to place the coverage  
23 with admitted insurers and the results of that effort. The  
24 affidavit shall be open to public inspection. The affidavit shall  
25 affirm that the insured was expressly advised in writing prior to  
26 placement of the insurance that:

27 (A) The surplus lines insurer with whom the insurance was  
28 to be placed is not licensed in this state and is not subject to its  
29 supervision; and

30 (B) In the event of the insolvency of the surplus lines  
31 insurer, losses will not be paid by the state insurance guaranty  
32 fund.

**§33-12C-12. Evidence of the insurance and subsequent changes to the insurance.**

1 (a) Upon placing surplus lines insurance, the surplus lines  
2 licensee shall promptly deliver to the insured the policy, or if  
3 the policy is not then available, a certificate as described in  
4 subsection (d) of this section, cover note, binder or other  
5 evidence of insurance. The certificate described in subsection  
6 (d) of this section, cover note, binder or other evidence of  
7 insurance shall be executed by the surplus lines licensee and  
8 shall show the description and location of the subject of the  
9 insurance, coverages including any material limitations other  
10 than those in standard forms, a general description of the  
11 coverages of the insurance, the premium and rate charged and  
12 taxes to be collected from the insured, and the name and  
13 address of the insured and surplus lines insurer or insurers and  
14 proportion of the entire risk assumed by each, and the name of  
15 the surplus lines licensee and the licensee's license number.

16 (b) A surplus lines licensee shall not issue or deliver any  
17 evidence of insurance or purport to insure or represent that  
18 insurance will be or has been written by any eligible surplus  
19 lines insurer, or a nonadmitted insurer pursuant to subdivision  
20 (4), subsection (c), section five, of this article, unless the  
21 licensee has authority from the insurer to cause the risk to be  
22 insured, or has received information from the insurer in the  
23 regular course of business that the insurance has been granted.

24 (c) If, after delivery of any evidence of insurance, there is  
25 any change in the identity of the insurers, or the proportion of  
26 the risk assumed by any insurer, or any other material change  
27 in coverage as stated in the surplus lines licensee's original  
28 evidence of insurance, or in any other material as to the  
29 insurance coverage so evidenced, the surplus lines licensee  
30 shall promptly issue and deliver to the insured or the original  
31 producing individual insurance producer appropriate substitute

32 for, or endorsement of the original document, accurately  
33 showing the current status of the coverage and the insurers  
34 responsible for the coverage.

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

43 (e) A surplus lines licensee who fails to comply with the  
44 requirements of this subsection shall be subject to the penalties  
45 provided in this article.

46 (f) The surplus lines licensee shall give the following  
47 consumer notice to every person applying for insurance with a  
48 nonadmitted insurer. The notice shall be printed in sixteen-point  
49 type on a separate document affixed to the application. The  
50 applicant shall sign and date a copy of the notice to acknowl-  
51 edge receiving it. The surplus lines licensee shall maintain the  
52 signed notice in its file for a period of ten years from expiration  
53 of the policy. The surplus lines licensee shall tender a copy of  
54 the signed notice to the insured at the time of delivery of each  
55 policy the licensee transacts with a nonadmitted insurer. The  
56 copy shall be a separate document affixed to the policy.

57 “Notice: 1. An insurer that is not licensed in this state is  
58 issuing the insurance policy that you have applied to purchase.  
59 These companies are called “nonadmitted” or “surplus lines”  
60 insurers. 2. The insurer is not subject to the financial solvency  
61 regulation and enforcement that applies to licensed insurers in  
62 this state. 3. These insurers generally do not participate in  
63 insurance guaranty funds created by state law. These guaranty

64 funds will not pay your claims or protect your assets if the  
65 insurer becomes insolvent and is unable to make payments as  
66 promised. 4. Some states maintain lists of approved or eligible  
67 surplus lines insurers and surplus lines brokers may use only  
68 insurers on the lists. Some states issue orders that particular  
69 surplus lines insurers can not be used. 5. For additional infor-  
70 mation about the above matters and about the insurer, you  
71 should ask questions of your insurance agent or surplus lines  
72 licensee. You may also contact your insurance commission  
73 consumer help line.”

**§33-12C-13. Licensee’s duty to notify insured.**

1 (a) No contract of insurance placed by a surplus lines  
2 licensee under this article shall be binding upon the insured and  
3 no premium or fee charged shall be due and payable until the  
4 surplus lines licensee shall have notified the insured in writing,  
5 in a form acceptable to the commissioner, a copy of which shall  
6 be maintained by the licensee with the records of the contract  
7 and available for possible examination, that:

8 (1) The insurer with which the licensee places the insurance  
9 is not licensed by this state and is not subject to its supervision;  
10 and

11 (2) In the event of the insolvency of the surplus lines  
12 insurer, losses will not be paid by the state insurance guaranty  
13 fund.

14 (b) Nothing herein contained shall nullify any agreement by  
15 any insurer to provide insurance.

**§33-12C-14. Effect of payment to surplus lines licensee.**

1 A payment of premium to a surplus lines licensee acting for  
2 a person other than itself in procuring, continuing or renewing  
3 any policy of insurance procured under this section shall be

4 deemed to be payment to the insurer, whatever conditions or  
5 stipulations may be inserted in the policy or contract notwith-  
6 standing.

**§33-12C-15. Surplus lines licensees may accept business from other producers.**

1 A surplus lines licensee may originate surplus lines  
2 insurance or accept such insurance from any other individual  
3 insurance producer duly licensed as to the kinds of insurance  
4 involved, and the surplus lines licensee may compensate the  
5 individual insurance producer for the business. The surplus  
6 lines licensee shall have the right to receive from the insurer the  
7 customary commission.

**§33-12C-16. Records of surplus lines licensee.**

1 (a) Each surplus lines licensee shall keep in this state a full  
2 and true record of each surplus lines insurance contract placed  
3 by or through the licensee, including a copy of the policy,  
4 certificate, cover note or other evidence of insurance showing  
5 each of the following items applicable:

6 (1) Amount of the insurance, risks and perils insured;

7 (2) Brief description of the property insured and its loca-  
8 tion;

9 (3) Gross premium charged;

10 (4) Any return premium paid;

11 (5) Rate of premium charged upon the several items of  
12 property;

13 (6) Effective date and terms of the contract;

14 (7) Name and address of the insured;

15 (8) Name and address of the insurer;

16 (9) Amount of tax and other sums to be collected from the  
17 insured;

18 (10) Allocation of taxes by state as referred to in subsection  
19 (f) of this section; and

20 (11) Identity of the producing broker, any confirming  
21 correspondence from the insurer or its representative, and the  
22 application.

23 (b) The record of each contract shall be kept open at all  
24 reasonable times to examination by the commissioner without  
25 notice for a period not less than ten years following termination  
26 of the contract. In lieu of maintaining offices in this state, each  
27 nonresident surplus lines licensee shall make available to the  
28 commissioner any and all records that the commissioner deems  
29 necessary for examination.

**§33-2C-17. Reports - summary of exported business.**

1 (a) On or before the first day of May, two thousand and  
2 four, and on or before the first day of May thereafter, the end of  
3 the month following each year, each surplus lines licensee shall  
4 file with the commissioner, on forms prescribed by the commis-  
5 sioner, a verified report in duplicate of all surplus lines insur-  
6 ance transacted during the preceding period;

7 (b) The report shall show the following:

8 (1) Aggregate gross premiums written;

9 (2) Aggregate return premiums;

10 (3) Amount of aggregate tax remitted to this state; and

11 (4) Amount of aggregate tax due or remitted to each other  
12 state for which an allocation is made pursuant to section seven  
13 of this article.

**§33-12C-18. Penalties.**

1 (a) A person who in this state represents or aids a  
2 nonadmitted insurer in violation of this article is guilty of a  
3 misdemeanor and upon conviction thereof, may be fined not  
4 more than ten thousand dollars per each act or sentenced to not  
5 less than ten days nor more than one year, or both fined and  
6 imprisoned.

7 (b) In addition to any other penalty provided herein or  
8 otherwise provided by law, including any suspension, revoca-  
9 tion or refusal to renew a license, any person, firm, association  
10 or corporation violating any provision of this article shall be  
11 liable to a civil penalty not exceeding ten thousand dollars for  
12 the first offense, and not exceeding twenty thousand dollars for  
13 each succeeding offense.

14 (c) The above penalties are not exclusive remedies.  
15 Penalties may also be assessed under article eleven of this  
16 chapter.

**§33-12C-19. Violations.**

1 Whenever the commissioner believes, from evidence  
2 satisfactory to him or her, that a person is violating or about to  
3 violate the provisions of this article, the commissioner may  
4 cause a complaint to be filed in the Circuit Court of Kanawha  
5 County for restitution and to enjoin and restrain the person from  
6 continuing the violation or engaging in or doing any act in  
7 furtherance thereof. The court shall have jurisdiction of the  
8 proceeding and shall have the power to make and enter an order  
9 of judgment awarding such preliminary or final injunctive relief  
10 and restitution as in its judgment is proper.

**§33-12C-20. Service of process.**

1 (a) Any act of transacting insurance by an unauthorized  
2 person or a nonadmitted insurer is equivalent to and shall  
3 constitute an irrevocable appointment by the unauthorized  
4 person or insurer, binding upon it, its executor or administrator,  
5 or successor in interest of the secretary of state or his or her  
6 successor in office, to be the true and lawful attorney of the  
7 unauthorized person or insurer upon whom may be served all  
8 lawful process in any action, suit or proceeding in any court by  
9 the commissioner or by the state and upon whom may be served  
10 any notice, order, pleading or process in any proceeding before  
11 the commissioner and which arises out of transacting insurance  
12 in this state by the unauthorized person or insurer. Any act of  
13 transacting insurance in this state by a nonadmitted insurer shall  
14 signify its acceptance of its agreement that any lawful process  
15 in such court action, suit or proceeding and any notice, order,  
16 pleading or process in such administrative proceeding before  
17 the commissioner so served shall be of the same legal force and  
18 validity as personal service of process in this state upon the  
19 unauthorized person or insurer.

20 (b) Service of process in the action shall be made by  
21 delivering to and leaving with the secretary of state, or some  
22 person in apparent charge of the office, two copies thereof and  
23 by payment to the secretary of state of the fee prescribed by  
24 law. Service upon the secretary of state as attorney shall be  
25 service upon the principal.

26 (c) The secretary of state shall forward by certified mail one  
27 of the copies of the process or notice, order, pleading or process  
28 in proceedings before the commissioner to the defendant in the  
29 court proceeding or to whom the notice, order, pleading or  
30 process in the administrative proceeding is addressed or  
31 directed at its last known principal place of business and shall  
32 keep a record of all process so served on the commissioner

33 which shall show the day and hour of service. Service is  
34 sufficient, provided:

35 (1) Notice of service and a copy of the court process or the  
36 notice, order, pleading or process in the administrative proceed-  
37 ing are sent within fifteen days by certified mail by the plaintiff  
38 or the plaintiff's attorney in the court proceeding or by the  
39 commissioner in the administrative proceeding to the defendant  
40 in the court proceeding or to whom the notice, order, pleading  
41 or process in the administrative proceeding is addressed or  
42 directed at the last known principal place of business of the  
43 defendant in the court or administrative proceeding; and

44 (2) The defendant's receipt or receipts issued by the post  
45 office with which the letter is registered, showing the name of  
46 the sender of the letter and the name and address of the person  
47 or insurer to whom the letter is addressed, and an affidavit of  
48 the plaintiff or the plaintiff's attorney in a court proceeding or  
49 of the commissioner in an administrative proceeding, showing  
50 compliance are filed with the clerk of the court in which the  
51 action, suit or proceeding is pending or with the commissioner  
52 in administrative proceedings, on or before the date the defen-  
53 dant in the court or administrative proceeding is required to  
54 appear or respond, or within such further time as the court or  
55 commissioner may allow.

56 (d) A plaintiff shall not be entitled to a judgment or a  
57 determination by default in any court or administrative proceed-  
58 ing in which court process or notice, order, pleading or process  
59 in proceedings before the commissioner is served under this  
60 section until the expiration of forty-five days from the date of  
61 filing of the affidavit of compliance.

62 (e) Nothing in this section shall limit or affect the right to  
63 serve any process, notice, order or demand upon any person or  
64 insurer in any other manner now or hereafter permitted by law.

65 (f) Each nonadmitted insurer assuming insurance in this  
66 state, or relative to property, risks or exposures located or to be  
67 performed in this state, shall be deemed to have subjected itself  
68 to this article.

69 (g) Notwithstanding conditions or stipulations in the policy  
70 or contract, a nonadmitted insurer may be sued upon any cause  
71 of action arising in this state, or relative to property, risks or  
72 exposures located or to be performed in this state, under any  
73 insurance contract made by it.

74 (h) Notwithstanding conditions or stipulations in the policy  
75 or contract, a nonadmitted insurer subject to arbitration or other  
76 alternative dispute resolution mechanism arising in this state or  
77 relative to property, risks or exposures located or to be per-  
78 formed in this state under an insurance contract made by it shall  
79 conduct the arbitration or other alternative dispute resolution  
80 mechanism in this state.

81 (i) A policy or contract issued by the nonadmitted insurer  
82 or one which is otherwise valid and contains a condition or  
83 provision not in compliance with the requirements of this article  
84 is not thereby rendered invalid but shall be construed and  
85 applied in accordance with the conditions and provisions which  
86 would have applied had the policy or contract been issued or  
87 delivered in full compliance with this article.

### **§33-12C-21. Legal or administrative procedures.**

1 (a) Before any nonadmitted insurer files or causes to be  
2 filed any pleading in any court action, suit or proceeding or in  
3 any notice, order, pleading or process in an administrative  
4 proceeding before the commissioner instituted against the  
5 person or insurer, by services made as provided in this article,  
6 the insurer shall either:

7 (1) File with the clerk of the court in which the action, suit  
8 or proceeding is pending, or with the commissioner of insur-  
9 ance in administrative proceedings before the commissioner a  
10 bond with good and sufficient sureties, to be approved by the  
11 clerk or commissioner in an amount to be fixed by the court or  
12 commissioner sufficient to secure the payment of any final  
13 judgment which may be rendered in the action or administrative  
14 proceeding; or

15 (2) Procure a certificate of authority to transact the business  
16 of insurance in this state. In considering the application of an  
17 insurer for a certificate of authority, for the purposes of this  
18 paragraph the commissioner need not assert the provisions of  
19 section sixteen, article three of this chapter against the insurer  
20 with respect to its application if the commissioner determines  
21 that the company would otherwise comply with the require-  
22 ments for a certificate of authority.

23 (b) The commissioner of insurance, in any administrative  
24 proceeding in which service is made as provided in this article,  
25 may in the commissioner's discretion, order such postponement  
26 as may be necessary to afford the defendant reasonable oppor-  
27 tunity to comply with the provisions of subsection (a) of this  
28 section and to defend the action.

29 (c) Nothing in subsection (a) of this section shall be  
30 construed to prevent a nonadmitted insurer from filing a motion  
31 to quash a writ or to set aside service thereof made in the  
32 manner provided in this article, on the ground that the  
33 nonadmitted insurer has not done any of the acts enumerated in  
34 the pleadings.

35 (d) Nothing in subsection (a) of this section shall apply to  
36 placements of insurance which were lawful in the state in which  
37 the placement took place and which were not unlawful place-  
38 ments under the laws of this state. Without limiting the general-

39 ity of the foregoing, nothing in subsection (a) of this section  
40 shall apply to a placement made pursuant to section five of this  
41 article.

### **§33-12C-22. Enforcement.**

1 (a) The commissioner shall have the authority to proceed in  
2 the courts of this state or any other United States jurisdiction to  
3 enforce an order or decision in any court proceeding or in any  
4 administrative proceeding before the commissioner of insur-  
5 ance.

#### 6 (b) Filing and Status of Foreign Decrees

7 A copy of a foreign decree authenticated in accordance with  
8 the statutes of this state may be filed in the office of the clerk of  
9 any Circuit Court of this state. The clerk, upon verifying with  
10 the commissioner that the decree or order qualifies as a “foreign  
11 decree” shall treat the foreign decree in the same manner as a  
12 decree of a Circuit Court of this state. A foreign decree so filed  
13 has the same effect and shall be deemed a decree of a Circuit  
14 Court of this state, and is subject to the same procedures,  
15 defenses and proceedings for reopening, vacating or staying as  
16 a decree of a Circuit Court of this state and may be enforced or  
17 satisfied in like manner.

#### 18 (c) Notice of Filing

19 (1) At the time of the filing of the foreign decree, the  
20 plaintiff shall make and file with the clerk of the court an  
21 affidavit setting forth the name and last known post office  
22 address of the defendant.

23 (2) Promptly upon the filing of the foreign decree and the  
24 affidavit, the clerk shall mail notice of the filing of the foreign  
25 decree to the defendant at the address given and to the commis-  
26 sioner of this state and shall make a note of the mailing in the

27 docket. In addition, the plaintiff may mail a notice of the filing  
28 of the foreign decree to the defendant and to the commissioner  
29 of this state and may file proof of mailing with the clerk. Lack  
30 of mailing notice of filing by the clerk shall not affect the  
31 enforcement proceedings if proof of mailing by the plaintiff has  
32 been filed.

33 (3) No execution or other process for enforcement of a  
34 foreign decree filed hereunder may issue until thirty days after  
35 the date the decree is filed.

36 (d) Stay of the Foreign Decree

37 (1) If the defendant shows the Circuit Court that an appeal  
38 from the foreign decree is pending or will be taken, or that a  
39 stay of execution has been granted, the court shall stay enforce-  
40 ment of the foreign decree until the appeal is concluded, the  
41 time for appeal expires, or the stay of execution expires or is  
42 vacated, upon proof that the defendant has furnished the  
43 security for the satisfaction of the decree required by the state  
44 in which it was rendered.

45 (2) If the defendant shows the Circuit Court any ground  
46 upon which enforcement of a decree of any Circuit Court of this  
47 state would be stayed, the court shall stay enforcement of the  
48 foreign decree for an appropriate period, upon requiring the  
49 same security for satisfaction of the decree which is required in  
50 this state.

51 (e) It shall be the policy of this state that the insurance  
52 commissioner shall cooperate with regulatory officials in other  
53 United States jurisdictions to the greatest degree reasonably  
54 practicable in enforcing lawfully issued orders of such other  
55 officials subject to public policy and the insurance laws of the  
56 state. Without limiting the generality of the foregoing, the  
57 commissioner may enforce an order lawfully issued by other

58 officials provided the order does not violate the laws or public  
59 policy of this state.

**§33-12C-23. Suits by nonadmitted insurers.**

1 A nonadmitted insurer may not commence or maintain an  
2 action in law or equity, including arbitration or any other  
3 dispute resolution mechanism, in this state to enforce any right  
4 arising out of any insurance transaction except with respect to:

5 (a) Claims under policies lawfully written in this state;

6 (b) Liquidation of assets and liabilities of the insurer (other  
7 than collection of new premium), resulting from its former  
8 authorized operations in this state;

9 (c) Transactions subsequent to issuance of a policy not  
10 covering domestic risks at the time of issuance, and lawfully  
11 procured under the laws of the jurisdiction where the transac-  
12 tion took place;

13 (d) Surplus lines insurance placed by a licensee under  
14 authority of section eight of this article;

15 (e) Reinsurance placed under the authority of article thirty-  
16 eight of this chapter.

17 (f) The continuation and servicing of life insurance, health  
18 insurance policies or annuity contracts remaining in force as to  
19 residents of this state where the formerly authorized insurer has  
20 withdrawn from the state and is not transacting new insurance  
21 in the state;

22 (g) Servicing of policies written by an admitted insurer in  
23 a state to which the insured has moved but in which the  
24 company does not have a certificate of authority until the term  
25 expires;

26 (h) Claims under policies covering wet marine and trans-  
27 portation insurance;

28 (i) Placements of insurance which were lawful in the  
29 jurisdiction in which the transaction took place and which were  
30 not unlawful placements under the laws of this state.

**§33-12C-24. Countersignature requirements.**

1 Surplus line insurance shall be countersigned by a duly  
2 licensed resident surplus lines licensee.

**§33-12C-25. Fees.**

1 The commissioner shall receive the following fees from  
2 surplus lines licensees: For letters of certification, five dollars;  
3 for letters of clearance, ten dollars; for duplicate license, five  
4 dollars. All fees and moneys so collected shall be used for the  
5 purposes set forth in section thirteen, article three of this  
6 chapter.

**§33-12C-26. Coverage must be placed in solvent insurer.**

1 No surplus lines licensee may knowingly place any  
2 coverage in an insolvent insurer.

**§33-12C-27. Change of address.**

1 A surplus lines licensee shall notify the commissioner of  
2 any change in his or her mailing address within thirty days of  
3 such change. The commissioner shall maintain the mailing  
4 address of each surplus lines licensee on file. Failure to timely  
5 inform the insurance commissioner of a change in legal name  
6 or address may result in a penalty pursuant to section twenty-  
7 four, article twelve of this chapter.

**§33-12C-28. Separability provisions.**

1       If any provisions of this article, or the application of the  
2 provision to any person or circumstance, shall be held invalid,  
3 the remainder of the article and the application of the provision  
4 to persons or circumstances other than those as to which it is  
5 held invalid, shall not be affected thereby.

**§33-12C-29. Hearings.**

1       (a) When conducting any hearing authorized by section  
2 thirteen, article two of this chapter which concerns any surplus  
3 lines licensee, the commissioner shall give notice of the hearing  
4 and the matters to be determined therein to the surplus lines  
5 licensee by certified mail, return receipt requested, sent to the  
6 last address filed by a person or entity pursuant to section eight  
7 of this article.

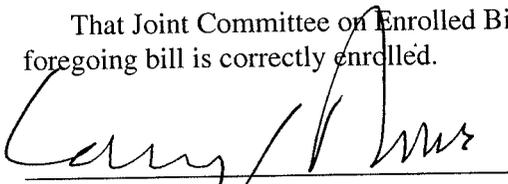
8       (b) If an surplus lines licensee fails to appear at the hearing,  
9 the hearing may proceed, at which time the commissioner shall  
10 establish that notice was sent to the person pursuant to this  
11 section prior to the entry of any orders adverse to the interests  
12 of an surplus lines licensee based upon the allegations against  
13 the person which were set forth in the notice of hearing.  
14 Certified copies of all orders entered by the commissioner shall  
15 be sent to the person affected therein by certified mail, return  
16 receipt requested, at the last address filed by a person with the  
17 commissioner.

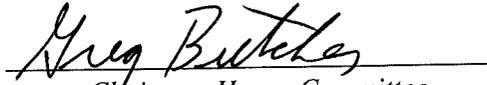
18       (c) An surplus lines licensee who fails to appear at a  
19 hearing of which notice has been provided pursuant to this  
20 section, and who has had an adverse order entered by the  
21 commissioner against them as a result of their failure to so  
22 appear may, within thirty calendar days of the entry of an  
23 adverse order, file with the commissioner a written verified  
24 appeal with any relevant documents attached thereto, which

25 demonstrates good and reasonable cause for the person's failure  
26 to appear, and may request reconsideration of the matter and a  
27 new hearing. The commissioner in his or her discretion, and  
28 upon a finding that the surplus lines licensee has shown good  
29 and reasonable cause for his or her failure to appear, shall issue  
30 an order that the previous order be rescinded, that the matter be  
31 reconsidered, and that a new hearing be set.

32 (d) Orders entered pursuant to this section are subject to the  
33 judicial review provisions of section fourteen, article two of this  
34 chapter.

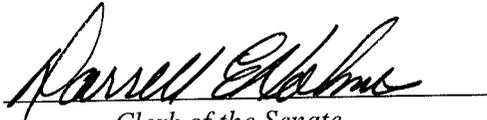
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

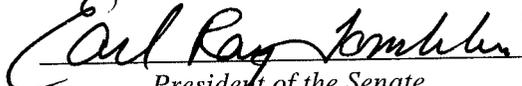
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage

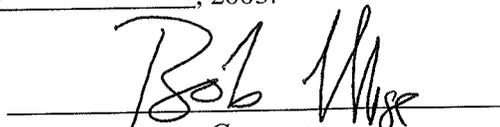
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup>  
day of March, 2003.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/03

Time 9:40am