

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1015 be amended to read as follows:

- 1 Page 2, after line 11, begin a new paragraph and insert:
2 "SECTION 2. IC 27-18 IS ADDED TO THE INDIANA CODE AS
3 A **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
4 **2011]:**
5 **ARTICLE 18. SURPLUS LINES INSURANCE COMPACT**
6 **Chapter 1. Definitions**
7 **Sec. 1. The definitions in this chapter apply throughout this**
8 **article.**
9 **Sec. 2. "Affiliate" means, with respect to an insured, an entity**
10 **that controls, is controlled by, or is under common control with the**
11 **insured.**
12 **Sec. 3. "Affiliated group" means a group of affiliates.**
13 **Sec. 4. "Allocation formula" means the uniform method**
14 **adopted by the commission by which insured risk exposures are**
15 **apportioned to each state to calculate premium taxes due.**
16 **Sec. 5. "Bylaws" refers to the bylaws governing the commission.**
17 **Sec. 6. "Clearinghouse" means the commission's operations**
18 **involving the acceptance, processing, and dissemination among:**
19 **(1) compacting states;**
20 **(2) contracting states;**
21 **(3) surplus lines licensees;**
22 **(4) insureds; and**
23 **(5) other persons;**
24 **of premium tax and clearinghouse transaction data for**
25 **nonadmitted insurance of multistate risks under this compact.**
26 **Sec. 7. (a) "Clearinghouse transaction data" means information**
27 **regarding nonadmitted insurance of multistate risks that must be**
28 **reported, accepted, collected, processed, and disseminated by:**
29 **(1) surplus lines licensees, for surplus lines insurance; and**
30 **(2) insureds, for independently procured insurance;**

1 under this compact.

2 (b) The term includes information related to single state risks if
3 a state elects to have the clearinghouse collect taxes for the state on
4 single state risks.

5 Sec. 8. "Commission" refers to the surplus lines insurance
6 multistate compliance compact commission established by this
7 compact.

8 Sec. 9. "Commissioner" refers to the chief insurance regulatory
9 official of a state or the official's designee.

10 Sec. 10. "Compact" refers to the compact entered into under
11 this article.

12 Sec. 11. "Compacting state" means a state that:

13 (1) has enacted this compact; and

14 (2) has not:

15 (A) withdrawn; or

16 (B) been terminated;

17 under IC 27-18-14.

18 Sec. 12. "Contracting state" means a state that:

19 (1) has not enacted this compact; and

20 (2) has entered into a written contract with the commission to
21 use the services of and fully participate in the clearinghouse.

22 Sec. 13. "Control" means:

23 (1) ownership or power to vote at least twenty-five percent
24 (25%) of any class of voting securities; or

25 (2) power to determine the election of a majority of the
26 directors or trustees;

27 of an entity.

28 Sec. 14. "Home state" means the following:

29 (1) With respect to an insured:

30 (A) the state in which the insured maintains:

31 (i) the insured's principal place of business; or

32 (ii) if the insured is an individual, the insured's principal
33 residence; or

34 (B) if one hundred percent (100%) of the insured risk is
35 located outside the state described in clause (A), the state
36 to which the greatest percentage of the insured's taxable
37 premium for the insurance contract is allocated.

38 (2) With respect to an affiliated group, if more than one (1)
39 insured from the affiliated group is a named insured on a
40 single nonadmitted insurance contract, the home state
41 determined under subdivision (1) of the member of the
42 affiliated group that has the largest percentage of premium
43 attributed to the member under the insurance contract.

44 Sec. 15. "Independently procured insurance" means insurance
45 procured by an insured directly from a surplus lines insurer or
46 other nonadmitted insurer under the law of the home state.

47 Sec. 16. "Insurer eligibility requirements" means the criteria,

- 1 forms, and procedures that are:
- 2 (1) established to qualify as a surplus lines insurer under the
- 3 law of the home state; and
- 4 (2) consistent with the NRRA.
- 5 Sec. 17. "Member" means a person chosen by a compacting
- 6 state as the compacting state's representative to the commission.
- 7 Sec. 18. "Multistate risk" means a risk with insured exposures
- 8 in more than one (1) state.
- 9 Sec. 19. "Nonadmitted insurance" means:
- 10 (1) surplus lines insurance; or
- 11 (2) independently procured insurance;
- 12 procured from a nonadmitted insurer.
- 13 Sec. 20. "Nonadmitted insurer" means an insurer that is not
- 14 authorized to transact the business of insurance under the law of
- 15 the home state.
- 16 Sec. 21. "Noncompacting state" means a state that has not
- 17 adopted this compact.
- 18 Sec. 22. "NRRA" refers to the federal Nonadmitted and
- 19 Reinsurance Reform Act of 2010 (Subtitle B of Title V of
- 20 P.L.111-203).
- 21 Sec. 23. "Policyholder notice" means the disclosure notice or
- 22 stamp that must be furnished to an applicant or a policyholder in
- 23 connection with a surplus lines insurance placement.
- 24 Sec. 24. "Premium tax" means, with respect to nonadmitted
- 25 insurance, a tax, a fee, an assessment, or another charge imposed
- 26 by a government entity based on a payment made as consideration
- 27 for the nonadmitted insurance.
- 28 Sec. 25. "Principal place of business" means, with respect to
- 29 determining the home state of an insured, the state where the:
- 30 (1) insured maintains the insured's headquarters; and
- 31 (2) insured's officers direct, control, and coordinate the
- 32 business activities of the insured.
- 33 Sec. 26. "Purchasing group" means a group that:
- 34 (1) is formed under the federal Liability Risk Retention Act of
- 35 1986;
- 36 (2) has as one (1) of the group's purposes the purchase of
- 37 liability insurance on a group basis;
- 38 (3) purchases liability insurance only:
- 39 (A) for the members of the group; and
- 40 (B) to cover the members' similar or related liability
- 41 exposure;
- 42 (4) is composed of members with similar or related business
- 43 or activity liability exposure due to the members' related,
- 44 similar, or common:
- 45 (A) business;
- 46 (B) trade;
- 47 (C) product;

- 1 (D) services;
- 2 (E) premises; or
- 3 (F) operations; and
- 4 (5) is domiciled in any state.
- 5 **Sec. 27. "Rule" refers to a rule adopted by the commission:**
- 6 (1) to implement, interpret, or prescribe law or policy; or
- 7 (2) describing the organization, procedure, or practice
- 8 requirements of the commission;
- 9 **that has the force and effect of law in the compacting states.**
- 10 **Sec. 28. "Single state risk" means a risk with insured exposures**
- 11 **in only one (1) state.**
- 12 **Sec. 29. "State" means a state, district, or territory of the United**
- 13 **States.**
- 14 **Sec. 30. "State transaction documentation" means information**
- 15 **required under the laws of a home state to be filed by:**
- 16 (1) a surplus lines licensee to:
- 17 (A) report surplus lines insurance; and
- 18 (B) verify compliance with surplus lines laws; and
- 19 (2) an insured to report independently procured insurance.
- 20 **Sec. 31. (a) "Surplus lines insurance" means insurance procured**
- 21 **by a surplus lines licensee from a surplus lines insurer or other**
- 22 **nonadmitted insurer as permitted under the law of the home state.**
- 23 (b) The term includes excess lines insurance (as defined by
- 24 applicable state law).
- 25 **Sec. 32. (a) "Surplus lines insurer" means a nonadmitted**
- 26 **insurer that is eligible under the law of the home state to accept**
- 27 **business from a surplus lines licensee.**
- 28 (b) The term includes an insurer that is permitted to write
- 29 surplus lines insurance under the law of the state where the insurer
- 30 is domiciled.
- 31 **Sec. 33. "Surplus lines licensee" means an individual, firm, or**
- 32 **corporation licensed under the law of the home state to place**
- 33 **surplus lines insurance.**
- 34 **Chapter 2. Establishment of the Commission and Venue**
- 35 **Sec. 1. The compacting states hereby create and establish a joint**
- 36 **public agency known as the surplus lines insurance multistate**
- 37 **compliance compact commission.**
- 38 **Sec. 2. The commission may adopt mandatory rules to establish**
- 39 **exclusive home state authority regarding nonadmitted insurance**
- 40 **of multistate risks, allocation formulas, clearinghouse transaction**
- 41 **data, a clearinghouse for receipt and distribution of allocated**
- 42 **premium tax and clearinghouse transaction data, and uniform**
- 43 **rulemaking procedures and rules to finance, administer, operate,**
- 44 **and enforce compliance with this compact and the bylaws and**
- 45 **rules.**
- 46 **Sec. 3. The commission may adopt mandatory rules establishing**
- 47 **foreign insurer eligibility requirements and a concise and objective**

1 policyholder notice regarding the nature of a surplus lines
2 insurance placement.

3 **Sec. 4. The commission is a body corporate and politic and an**
4 **instrumentality of the compacting states.**

5 **Sec. 5. The commission is solely responsible for the**
6 **commission's liabilities, except as otherwise specifically provided**
7 **in this compact.**

8 **Sec. 6. (a) Venue is proper, and judicial proceedings by or**
9 **against the commission must be brought solely and exclusively, in**
10 **a court of competent jurisdiction where the principal office of the**
11 **commission is located.**

12 **(b) The commission may waive venue and jurisdictional**
13 **defenses to the extent the commission adopts or consents to**
14 **participate in alternative dispute resolution proceedings.**

15 **Chapter 3. Authority of Commission**

16 **Sec. 1. The commission shall adopt mandatory rules to establish**
17 **the following:**

18 **(1) Allocation formulas for each type of nonadmitted**
19 **insurance coverage, which must be used by each compacting**
20 **state and contracting state in acquiring premium tax and**
21 **clearinghouse transaction data from surplus lines licensees**
22 **and insureds to report to the clearinghouse. The rules**
23 **described in this subdivision must be adopted with input from**
24 **surplus lines licensees and must be based on readily available**
25 **data, with simplicity and uniformity for the surplus lines**
26 **licensee as a material consideration.**

27 **(2) Uniform clearinghouse transaction data reporting**
28 **requirements for all information reported to the**
29 **clearinghouse.**

30 **(3) Methods by which compacting states and contracting**
31 **states will require surplus lines licensees and insureds to pay**
32 **premium tax and report clearinghouse transaction data to the**
33 **clearinghouse, including processing clearinghouse transaction**
34 **data through state stamping and service offices, state**
35 **insurance departments, or other state designated agencies or**
36 **entities.**

37 **(4) That nonadmitted insurance of multistate risks is subject**
38 **to all regulatory compliance requirements of the home state**
39 **exclusively. The regulatory compliance requirements that will**
40 **be applicable to surplus lines insurance under the rules**
41 **described in this subdivision include the following:**

42 **(A) Licensure requirements for persons to sell, solicit, or**
43 **negotiate surplus lines insurance.**

44 **(B) Insurer eligibility requirements or other approved**
45 **nonadmitted insurer requirements.**

46 **(C) Diligent search requirements.**

47 **(D) Providing state transaction documentation and**

1 clearinghouse transaction data regarding the payment of
2 premium tax under this compact.

3 **The regulatory compliance requirements that will be**
4 **applicable to independently procured insurance placements**
5 **under the rules described in this subdivision include providing**
6 **state transaction documentation and clearinghouse**
7 **transaction data regarding the payment of premium tax**
8 **under this compact.**

9 **(5) That each compacting state and each contracting state**
10 **may charge its own rate of taxation on the premium allocated**
11 **to the compacting state or contracting state based on the**
12 **applicable allocation formula. However:**

13 **(A) the state shall establish a single rate of taxation**
14 **applicable to all nonadmitted insurance transactions; and**
15 **(B) no other tax, fee assessment, or other charge by a**
16 **governmental or quasi-governmental agency is permitted,**
17 **except that stamping office fees may be charged as a**
18 **separate, additional cost unless the fees are incorporated**
19 **into a state's single rate of taxation.**

20 **(6) That a change in the rate of taxation by a compacting state**
21 **or contracting state is restricted to changes made**
22 **prospectively with at least ninety (90) days advance notice to**
23 **the commission.**

24 **(7) That each compacting state and each contracting state**
25 **shall require premium tax payments either annually,**
26 **semiannually, or quarterly, using only one (1) or more of the**
27 **following dates:**

28 **(A) March 1.**
29 **(B) June 1.**
30 **(C) September 1.**
31 **(D) December 1.**

32 **(8) That each compacting state and each contracting state**
33 **shall prohibit any state agency or political subdivision from**
34 **requiring surplus lines licensees to provide clearinghouse**
35 **transaction data and state transaction documentation other**
36 **than to:**

37 **(A) the insurance department or tax official; or**
38 **(B) a single designated agent of the insurance department**
39 **or tax official;**
40 **of the home state.**

41 **(9) The obligation of the home state:**

42 **(A) itself; or**
43 **(B) through a:**
44 **(i) designated agent; or**
45 **(ii) surplus lines stamping or service office;**

46 **to collect clearinghouse transaction data from surplus lines**
47 **licensees and from insureds (for independently procured**

- 1 insurance), for reporting to the clearinghouse.
 2 (10) A method for the clearinghouse to periodically report to
 3 compacting states, contracting states, surplus lines licensees,
 4 and insureds who independently procure insurance:
 5 (A) all premium taxes owed to each of the compacting
 6 states and contracting states;
 7 (B) the dates upon which payment of the premium taxes
 8 are due; and
 9 (C) a method for paying the premium taxes through the
 10 clearinghouse.
 11 (11) That each surplus lines licensee is required to be licensed
 12 only in the home state of each insured for whom the licensee
 13 has procured surplus lines insurance.
 14 (12) That:
 15 (A) a policy considered to be surplus lines insurance in the
 16 insured's home state shall be:
 17 (i) considered to be surplus lines insurance in all
 18 compacting states and contracting states; and
 19 (ii) taxed as a surplus lines transaction in all states to
 20 which a portion of the risk is allocated;
 21 (B) each compacting state and each contracting state shall
 22 require each surplus lines licensee to pay to every other
 23 compacting state and contracting state premium taxes on
 24 each multistate risk through the clearinghouse at the tax
 25 rate charged on surplus lines transactions in the other
 26 compacting state or contracting state on the portion of the
 27 risk in the compacting state or contracting state, as
 28 determined by the applicable uniform allocation formula
 29 adopted by the commission;
 30 (C) a policy considered to be independently procured
 31 insurance in the insured's home state is considered to be
 32 independently procured insurance in all compacting states
 33 and contracting states; and
 34 (D) each compacting state and each contracting state shall
 35 require the insured to pay every other compacting state
 36 and contracting state the independently procured
 37 insurance premium tax on each multistate risk through the
 38 clearinghouse, as determined by the uniform allocation
 39 formula adopted by the commission.
 40 (13) Uniform foreign insurer eligibility requirements, as
 41 authorized by the NRRA.
 42 (14) A uniform policyholder notice.
 43 (15) Uniform treatment of purchasing group surplus lines
 44 insurance placements.
 45 **Sec. 2. The commission has the following powers:**
 46 (1) To adopt rules and operating procedures under IC 27-18-8
 47 that:

- 1 (A) have the force and effect of law; and
 2 (B) are binding;
 3 **in the compacting states to the extent and in the manner**
 4 **provided in this compact.**
 5 **(2) To bring and prosecute legal actions in the name of the**
 6 **commission. This subdivision does not affect the standing of**
 7 **a state insurance department to sue or be sued under**
 8 **applicable law.**
 9 **(3) To issue subpoenas requiring the attendance and**
 10 **testimony of witnesses and the production of evidence. This**
 11 **subdivision does not empower the commission to demand or**
 12 **subpoena records or data from nonadmitted insurers.**
 13 **(4) To establish and maintain offices, including the creation of**
 14 **a clearinghouse for the receipt of premium tax and**
 15 **clearinghouse transaction data regarding:**
 16 (A) nonadmitted insurance of multistate risks;
 17 (B) single state risks for states that elect to require surplus
 18 lines licensees to pay premium tax on single state risks
 19 through the clearinghouse; and
 20 (C) tax reporting forms.
 21 **(5) To purchase and maintain insurance and bonds.**
 22 **(6) To borrow, accept, or contract for services of personnel,**
 23 **including employees of a compacting state or stamping office,**
 24 **under an open, objective, competitive process and procedure**
 25 **adopted by the commission.**
 26 **(7) To:**
 27 (A) hire employees, professionals, or specialists;
 28 (B) elect or appoint officers;
 29 (C) fix the compensation of individuals described in clauses
 30 (A) and (B);
 31 (D) define the duties of individuals described in clauses (A)
 32 and (B);
 33 (E) give the individuals described in clauses (A) and (B)
 34 appropriate authority to carry out the purposes of this
 35 compact; and
 36 (F) determine the qualifications of individuals described in
 37 clauses (A) and (B);
 38 **under an open, objective, competitive process and procedure**
 39 **adopted by the commission, and to establish the commission's**
 40 **personnel policies and programs relating to conflicts of**
 41 **interest, rates of compensation and qualifications of**
 42 **personnel, and other related personnel matters.**
 43 **(8) To:**
 44 (A) accept;
 45 (B) receive;
 46 (C) use; and
 47 (D) dispose of;

- 1 appropriate donations and grants of money, equipment,
 2 supplies, materials, and services, avoiding at all times any
 3 appearance of impropriety or conflict of interest.
- 4 (9) To:
- 5 (A) lease;
 6 (B) purchase;
 7 (C) accept appropriate gifts or donations of; or
 8 (D) otherwise own, hold, improve, or use;
 9 real, personal, or real and personal property, avoiding at all
 10 times any appearance of impropriety or conflict of interest.
- 11 (10) To sell, convey, mortgage, pledge, lease, exchange,
 12 abandon, or otherwise dispose of real, personal, or real and
 13 personal property.
- 14 (11) To provide for tax audit rules and procedures for the
 15 compacting states with respect to the allocation of premium
 16 taxes, including the following:
- 17 (A) Minimum audit standards, including sampling
 18 methods.
 19 (B) Review of internal controls.
 20 (C) Cooperation and sharing of audit responsibilities
 21 among compacting states.
 22 (D) Handling of refunds or credits due to overpayments or
 23 improper allocation of premium taxes.
 24 (E) Taxpayer records to be reviewed, including a minimum
 25 retention period.
 26 (F) Authority of compacting states to review, challenge, or
 27 re-audit taxpayer records.
- 28 (12) To enforce compliance by compacting states and
 29 contracting states with rules, and bylaws under the authority
 30 set forth in IC 27-18-9.
- 31 (13) To provide for dispute resolution among compacting
 32 states and contracting states.
- 33 (14) To advise compacting states and contracting states on tax
 34 issues relating to insurers, insureds, surplus lines licensees,
 35 agents, or brokers domiciled or doing business in
 36 noncompacting states, consistent with the purposes of this
 37 compact.
- 38 (15) To:
- 39 (A) make available advice and training to personnel in
 40 state stamping offices, state insurance departments, or
 41 other state departments for record keeping, tax
 42 compliance, and tax allocations; and
 43 (B) serve as a resource for state insurance departments
 44 and other state departments.
- 45 (16) To establish a budget and make expenditures.
- 46 (17) To borrow money.
- 47 (18) To appoint and oversee committees, including advisory

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committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and other interested persons designated in this compact and the bylaws.

(19) To establish an executive committee under IC 27-18-4-4 that:

(A) is comprised of at least seven (7) and not more than fifteen (15) representatives, including officers elected by the commission and such other representatives as are provided for in this article or determined by the bylaws, who:

- (i) serve a one (1) year term; and**
- (ii) are each entitled to one (1) vote;**

(B) has the power to act on behalf of the commission, except for rulemaking, when the commission is not in session;

(C) oversees the day to day activities of the administration of this compact, including the activities of the operations committee created under subdivision (20) and IC 27-18-4-5, and compliance and enforcement of the provisions of this compact and the bylaws and rules; and
(D) has other duties as provided in this article and as considered necessary.

(20) To establish an operations committee under IC 27-18-4-5 consisting of at least seven (7) and not more than fifteen (15) representatives to provide analysis, advice, determinations, and recommendations regarding:

- (A) technology, software, and systems integration to be acquired by the commission; and**
- (B) the establishment of mandatory rules to be adopted by the commission.**

(21) To enter into contracts with contracting states to enable contracting states to use the services of and fully participate in the clearinghouse under the terms and conditions set forth in the contracts.

(22) To adopt and use a corporate seal.

(23) To perform other functions that are necessary or appropriate to the achievement of the purposes of this compact, consistent with state regulation of the business of insurance.

Chapter 4. Organization of the Commission

Sec. 1. (a) Each compacting state is represented on the commission by only one (1) member. A member shall be:

- (1) chosen through a process and according to the qualifications and method of selection determined by the compacting state; or**
- (2) in the absence of provisions described in subdivision (1),**

- 1 **appointed by the governor of the compacting state.**
- 2 **(b) A member may be removed or suspended from office as**
- 3 **provided by the law of the compacting state represented by the**
- 4 **member.**
- 5 **(c) A vacancy on the commission must be filled in accordance**
- 6 **with the law of the compacting state represented by the member**
- 7 **whose position has become vacant.**
- 8 **Sec. 2. Each member:**
- 9 **(1) is entitled to one (1) vote; and**
- 10 **(2) has an opportunity to participate in the governance of the**
- 11 **commission in accordance with the bylaws.**
- 12 **Sec. 3. (a) The commission shall, by a majority vote of the**
- 13 **members, prescribe bylaws to govern the commission's conduct as**
- 14 **necessary or appropriate to carry out the purposes and exercise the**
- 15 **powers of this compact, including bylaws to do the following:**
- 16 **(1) Establish the fiscal year of the commission.**
- 17 **(2) Provide reasonable procedures for the calling and conduct**
- 18 **of meetings of the following:**
- 19 **(A) The commission, including the following:**
- 20 **(i) Attendance of a majority of members, including**
- 21 **members' participation in meetings by telephone or**
- 22 **other means of communication.**
- 23 **(ii) Ensuring reasonable advance notice of the meeting.**
- 24 **(iii) Providing for the right of citizens to attend each**
- 25 **meeting with enumerated exceptions designed to protect**
- 26 **the public's interest, the privacy of individuals, and**
- 27 **insurers' and surplus lines licensees' proprietary**
- 28 **information, including trade secrets.**
- 29 **(iv) Allowing the commission to meet in camera only**
- 30 **after a majority of the entire membership votes to close**
- 31 **a meeting in toto or in part.**
- 32 **(v) Requiring that, as soon as practicable following a**
- 33 **meeting described in item (iv), the commission publishes**
- 34 **a copy of the vote to close the meeting revealing the vote**
- 35 **of each member with no proxy votes allowed, and votes**
- 36 **taken during the meeting.**
- 37 **(B) The executive committee.**
- 38 **(C) The operations committee.**
- 39 **(3) Provide reasonable standards and procedures:**
- 40 **(A) for the establishment and meetings of committees not**
- 41 **described in subdivision (2); and**
- 42 **(B) governing general or specific delegation of authority or**
- 43 **a function of the commission.**
- 44 **(4) Establish:**
- 45 **(A) the titles, duties, and authority; and**
- 46 **(B) reasonable procedures for the election;**
- 47 **of the officers of the commission.**

- 1 **(5) Provide reasonable standards and procedures for the**
2 **establishment of the personnel policies and programs of the**
3 **commission.**
- 4 **(6) Adopt a code of ethics to address permissible and**
5 **prohibited activities of members and commission employees.**
- 6 **(7) Provide a mechanism for winding up the operations of the**
7 **commission and the equitable disposition of surplus funds**
8 **existing after the:**
- 9 **(A) termination of this compact; and**
- 10 **(B) payment or reservation of the commission's debts and**
11 **obligations.**
- 12 **(b) Notwithstanding any civil service or other similar laws of a**
13 **compacting state, the bylaws exclusively govern the personnel**
14 **policies and programs of the commission.**
- 15 **(c) The commission shall publish the bylaws in a convenient**
16 **form and file a copy of the bylaws and any amendment to the**
17 **bylaws with the appropriate agency or officer in each of the**
18 **compacting states.**
- 19 **Sec. 4. (a) The commission shall establish an executive**
20 **committee.**
- 21 **(b) All actions of the executive committee, including compliance**
22 **and enforcement actions, are subject to the review and ratification**
23 **of the commission as provided in the bylaws.**
- 24 **(c) The executive committee shall consist of not more than**
25 **fifteen (15) representatives, or one (1) representative for each state**
26 **if there are less than fifteen (15) compacting states, who are**
27 **appointed and serve for a term in accordance with the bylaws.**
- 28 **(d) The executive committee has the authority and duties set**
29 **forth in the bylaws, which must include the following:**
- 30 **(1) Managing the affairs of the commission in a manner**
31 **consistent with the bylaws and purposes of the commission.**
- 32 **(2) Establishing and overseeing:**
- 33 **(A) an organizational structure within; and**
- 34 **(B) appropriate procedures for the commission to provide**
35 **for the creation of;**
36 **rules and operating procedures.**
- 37 **(3) Overseeing the offices of the commission.**
- 38 **(4) Planning, implementing, and coordinating**
39 **communications and activities with other state, federal, and**
40 **local government organizations to advance the goals of the**
41 **commission.**
- 42 **(e) The commission shall annually elect officers from the**
43 **membership of the executive committee. The officers have the**
44 **authority and duties specified in the bylaws.**
- 45 **(f) The executive committee may:**
- 46 **(1) subject to the approval of the commission; and**
47 **(2) according to terms and conditions, and for compensation,**

1 that the commission determines to be appropriate;
2 appoint or retain an executive director.

3 (g) The executive director:

4 (1) shall serve as secretary to the commission;

5 (2) shall not serve as a member of the commission; and

6 (3) shall hire and supervise other persons as authorized by the
7 commission.

8 Sec. 5. (a) The commission shall establish an operations
9 committee.

10 (b) All actions of the operations committee are subject to the
11 review and oversight of the commission and the executive
12 committee, and must be approved by the commission.

13 (c) The executive committee shall accept the determinations and
14 recommendations of the operations committee unless good cause
15 is shown why those determinations and recommendations should
16 not be approved. Disputes as to whether good cause exists to reject
17 a determination or recommendation of the operations committee
18 must be resolved by a majority vote of the commission.

19 (d) The operations committee consists of not more than fifteen
20 (15) representatives (or one (1) representative for each state if
21 there are less than fifteen (15) compacting states) who are
22 appointed and serve for a term according to the bylaws.

23 (e) The operations committee shall have responsibility for the
24 following:

25 (1) Evaluating technology requirements for the clearinghouse,
26 assessing existing systems used by state regulatory agencies
27 and state stamping offices:

28 (A) to maximize the efficiency and successful integration of
29 the clearinghouse technology systems with state and state
30 stamping office technology platforms; and

31 (B) to minimize costs to the states, the state stamping
32 offices, and the clearinghouse.

33 (2) Making recommendations to the executive committee
34 based on the operations committee's analysis and
35 determination of the clearinghouse technology requirements
36 and compatibility with existing state and state stamping office
37 systems.

38 (3) Evaluating the most suitable proposals for adoption as
39 mandatory rules, assessing the proposals for ease of
40 integration by states and likelihood of successful
41 implementation, and reporting to the executive committee the
42 operations committee's determinations and recommendations.

43 (4) Other duties and responsibilities delegated to the
44 operations committee by the bylaws, the executive committee,
45 or the commission.

46 (f) All representatives of the operations committee must be
47 individuals who have extensive experience or employment in the

1 surplus lines insurance business, including executives and attorneys
2 employed by:

- 3 (1) surplus lines insurers;
- 4 (2) surplus lines licensees;
- 5 (3) law firms;
- 6 (4) state insurance departments; or
- 7 (5) state stamping offices.

8 (g) Operations committee representatives from compacting
9 states that use the services of a state stamping office shall appoint
10 the chief operating officer or a senior manager of the state
11 stamping office to the operations committee.

12 Sec. 6. (a) A legislative committee comprised of state legislators
13 or state legislators' designees shall be established to monitor the
14 operations of and make recommendations to the commission,
15 including the executive committee.

16 (b) The bylaws must determine the manner of selecting the
17 members of the legislative committee and the term of office of the
18 legislative committee members.

19 (c) Before the commission adopts any:

- 20 (1) uniform standard;
- 21 (2) revision to the bylaws;
- 22 (3) annual budget; or
- 23 (4) other significant matter as provided in the bylaws;

24 the executive committee shall consult with and report to the
25 legislative committee.

26 Sec. 7. The commission may establish additional advisory
27 committees, as the bylaws provide, for carrying out the
28 commission's functions.

29 Chapter 5. Corporate Records of the Commission

30 Sec. 1. The commission shall maintain the commission's
31 corporate books and records in accordance with the bylaws.

32 Chapter 6. Qualified Immunity, Defense, and Indemnification

33 Sec. 1. (a) The members, officers, executive director, employees,
34 and representatives of the commission, members of the executive
35 committee, and members of any other committee of the
36 commission are, personally and in their official capacity, immune
37 from suit and liability for a claim for damage to or loss of property,
38 personal injury, or other civil liability caused by or arising out of
39 an actual or alleged act, error, or omission:

- 40 (1) that occurs; or
- 41 (2) that the person against whom the claim is made has a
42 reasonable basis for believing to have occurred;

43 within the scope of commission employment, duties, or
44 responsibilities.

45 (b) This section does not protect a person described in
46 subsection (a) from suit or liability for damage, loss, injury, or
47 liability caused by the intentional or willful or wanton misconduct

1 of the person.

2 **Sec. 2. (a) The commission shall defend a member, officer,**
 3 **executive director, employee, or representative of the commission,**
 4 **the executive committee, or any other committee of the commission**
 5 **in a civil action seeking to impose liability arising out of an actual**
 6 **or alleged act, error, or omission:**

7 (1) that occurs; or

8 (2) that the person against whom the claim is made has a
 9 reasonable basis for believing to have occurred;

10 **within the scope of commission employment, duties, or**
 11 **responsibilities if the actual or alleged act, error, or omission did**
 12 **not result from the person's intentional or willful or wanton**
 13 **misconduct.**

14 **(b) This section does not prohibit a person described in**
 15 **subsection (a) from retaining the person's own counsel.**

16 **Sec. 3. The commission shall indemnify and hold harmless a**
 17 **member, officer, executive director, employee, or representative of**
 18 **the commission, executive committee, or other committee of the**
 19 **commission for the amount of a settlement or judgment obtained**
 20 **against the person arising out of an actual or alleged act, error, or**
 21 **omission:**

22 (1) that occurs; or

23 (2) that the person against whom the claim is made has a
 24 reasonable basis for believing to have occurred;

25 **within the scope of commission employment, duties, or**
 26 **responsibilities if the actual or alleged act, error, or omission did**
 27 **not result from the person's intentional or willful or wanton**
 28 **misconduct.**

29 **Chapter 7. Meetings and Acts of the Commission**

30 **Sec. 1. The commission shall meet and take action consistent**
 31 **with this compact and the bylaws.**

32 **Sec. 2. (a) Each member of the commission has the right and**
 33 **power to:**

34 (1) cast a vote to which the compacting state represented by
 35 the member is entitled; and

36 (2) participate in the business and affairs of the commission.

37 **(b) A member shall vote in person or by other means provided**
 38 **in the bylaws.**

39 **Sec. 3. The commission:**

40 (1) shall meet at least once during each calendar year; and

41 (2) shall hold additional meetings according to the bylaws.

42 **Sec. 4. Public notice shall be given of all meetings, and all**
 43 **meetings shall be open to the public, except as set forth in the rules**
 44 **or in this compact.**

45 **Sec. 5. The commission shall adopt rules concerning the**
 46 **commission's meetings consistent with the principles contained in**
 47 **5 U.S.C. 552b.**

1 **Sec. 6. The commission and the commission's committees may**
 2 **close a meeting, or a part of a meeting, upon a determination by**
 3 **the commission by majority vote that an open meeting would be**
 4 **likely to do any of the following:**

5 **(1) Relate solely to the commission's internal personnel**
 6 **practices and procedures.**

7 **(2) Disclose matters specifically exempted from disclosure by**
 8 **federal and state statute.**

9 **(3) Disclose trade secrets or commercial or financial**
 10 **information that is privileged or confidential.**

11 **(4) Involve:**

12 **(A) the accusation of a person of a crime; or**

13 **(B) the formal censure of a person.**

14 **(5) Disclose information of a personal nature where disclosure**
 15 **would constitute a clearly unwarranted invasion of personal**
 16 **privacy.**

17 **(6) Disclose investigative records compiled for law**
 18 **enforcement purposes.**

19 **(7) Specifically relate to the commission's issuance of a**
 20 **subpoena or the commission's participation in a civil action or**
 21 **other legal proceeding.**

22 **Sec. 7. (a) For a meeting or part of a meeting that is closed**
 23 **under section 6 of this chapter, the commission's legal counsel or**
 24 **the counsel's designee shall certify that the meeting may be closed**
 25 **and shall reference each relevant exemptive provision.**

26 **(b) The commission shall keep minutes of each meeting that**
 27 **fully and clearly describe all matters discussed in the meeting and**
 28 **provide a full and accurate summary of actions taken and the**
 29 **reasons for the actions, including a description of the views**
 30 **expressed and the record of any roll call vote.**

31 **(c) All documents considered in connection with an action by the**
 32 **commission must be identified in the minutes.**

33 **(d) All minutes and documents of a closed meeting must remain**
 34 **under seal, subject to release by a majority vote of the commission.**

35 **Chapter 8. Rules and Operating Procedures**

36 **Sec. 1. (a) The commission shall adopt reasonable rules to**
 37 **effectively and efficiently achieve the purposes of this compact.**

38 **(b) If the commission exercises its rulemaking authority in a**
 39 **manner that is beyond the scope of the purposes of this compact,**
 40 **or the powers granted by this compact, the action by the**
 41 **commission is invalid and has no force or effect.**

42 **Sec. 2. Rules adopted under this chapter must be made under a**
 43 **rulemaking process that substantially conforms to the Model State**
 44 **Administrative Procedure Act of 1981, Uniform Laws Annotated,**
 45 **Vol. 15, p.1 (2000), as appropriate for the operations of the**
 46 **commission.**

47 **Sec. 3. A rule, operating procedure, or amendment to a rule is**

1 effective on the date specified in the rule, operating procedure, or
2 amendment.

3 **Sec. 4. (a) Not later than thirty (30) days after a rule is adopted,**
4 **any person may file a petition for judicial review of the rule.**

5 **(b) The filing under subsection (a) of a petition for judicial**
6 **review of a rule does not stay or otherwise prevent the rule from**
7 **becoming effective unless the court finds that the petitioner has a**
8 **substantial likelihood of success.**

9 **(c) The court shall give deference to the actions of the**
10 **commission consistent with applicable law and shall not find a rule**
11 **that is the subject of a petition under this section to be unlawful if**
12 **the rule represents a reasonable exercise of the commission's**
13 **authority.**

14 **Chapter 9. Commission Records and Enforcement**

15 **Sec. 1. (a) The commission shall adopt rules establishing**
16 **conditions and procedures for public inspection and copying of the**
17 **commission's information and official records, not including**
18 **information and records involving the privacy of individuals,**
19 **insurers, or insureds, or surplus lines licensee trade secrets.**

20 **(b) State transaction documentation and clearinghouse**
21 **transaction data collected by the clearinghouse may be used only**
22 **for purposes expressed in or reasonably implied under the**
23 **provisions of this compact, and the commission shall afford the**
24 **state transaction documentation and clearinghouse transaction**
25 **data the broadest protections as permitted by applicable law for**
26 **proprietary information, trade secrets, or personal data.**

27 **(c) The commission may adopt additional rules under which the**
28 **commission may:**

29 **(1) make available to federal and state agencies, including law**
30 **enforcement agencies, records and information otherwise**
31 **exempt from disclosure; and**

32 **(2) enter into agreements with agencies described in**
33 **subdivision (1) to receive or exchange information or records**
34 **subject to nondisclosure and confidentiality provisions.**

35 **Sec. 2. (a) Except for privileged records, data, and information,**
36 **the laws of a compacting state pertaining to confidentiality or**
37 **nondisclosure do not relieve a compacting state member of the**
38 **duty to disclose any relevant records, data, or information to the**
39 **commission.**

40 **(b) Disclosure to the commission as described in subsection (a)**
41 **does not waive or otherwise affect a confidentiality requirement.**

42 **(c) Except as otherwise expressly provided in this compact, the**
43 **commission is not subject to the laws of a compacting state**
44 **described in subsection (a) with respect to records, data, and**
45 **information in the commission's possession.**

46 **(d) Confidential information of the commission remains**
47 **confidential after the information is provided to a member.**

1 (e) The commission shall maintain the confidentiality of
2 information provided by a member if that information is
3 confidential under the member's state's law.

4 Sec. 3. (a) The commission shall monitor compacting states for
5 compliance with the bylaws and rules.

6 (b) The commission shall provide written notice of
7 noncompliance to a compacting state that does not comply with the
8 bylaws and rules.

9 (c) If a compacting state that receives a notice of noncompliance
10 under subsection (b) fails to remedy the noncompliance within the
11 time specified in the notice of noncompliance, the compacting state
12 is considered to be in default under IC 27-18-14.

13 Chapter 10. Dispute Resolution

14 Sec. 1. (a) The commission shall attempt, upon the request of a
15 member, to resolve disputes or other issues that:

- 16 (1) are subject to this compact; and
- 17 (2) may arise between two (2) or more compacting states,
18 contracting states, or noncompacting states.

19 A member may not bring an action in a court with jurisdiction
20 alleging a violation of a provision, standard, or requirement of this
21 compact unless the commission, at the member's request, has
22 attempted to resolve the dispute concerning the alleged violation.

23 (b) The commission shall adopt a rule providing alternative
24 dispute resolution procedures for disputes described in subsection
25 (a).

26 Sec. 2. The commission shall provide alternative dispute
27 resolution procedures to resolve any disputes between insureds or
28 surplus lines licensees concerning tax calculation or allocation or
29 related issues that are the subject of this compact.

30 Sec. 3. Alternative dispute resolution procedures provided
31 under this chapter must be used in circumstances where a dispute
32 arises as to which state constitutes the home state.

33 Chapter 11. Review of Commission Decisions

34 Sec. 1. Except as necessary in adopting rules to fulfill the
35 purposes of this compact, the commission does not have authority
36 to regulate insurance in the compacting states.

37 Sec. 2. (a) Not later than thirty (30) days after the commission
38 has given notice of a rule or allocation formula, a third party filer
39 or compacting state may appeal the commission's determination to
40 a review panel appointed by the commission.

41 (b) The commission shall adopt rules to establish procedures for
42 the appointment of a review panel to consider an appeal described
43 in subsection (a) and to provide for notice and hearing in the
44 appeal.

45 (c) An allegation that the commission, in making a compliance
46 or tax determination, acted arbitrarily, capriciously, or in a
47 manner that is an abuse of discretion or otherwise not in

1 accordance with the law is subject to judicial review in accordance
2 with IC 27-18-2-6.

3 **Sec. 3. (a) The commission may monitor and review commission**
4 **decisions, and may reconsider commission decisions upon a finding**
5 **that the determinations or allocations do not meet the relevant**
6 **rule.**

7 **(b) The commission may withdraw or modify a determination**
8 **or allocation described in subsection (a) after proper notice and**
9 **hearing, subject to appeal under section 2 of this chapter.**

10 **Chapter 12. Finance**

11 **Sec. 1. (a) The commission shall pay or provide for the payment**
12 **of the reasonable expenses of the commission's establishment and**
13 **organization.**

14 **(b) To fund the cost of the commission's initial operations, the**
15 **commission may accept contributions, grants, and other forms of**
16 **funding from state stamping offices, compacting states, and other**
17 **sources.**

18 **Sec. 2. (a) The commission shall collect a fee, payable by the**
19 **insured directly or through a surplus lines licensee, on each**
20 **transaction processed through the compact clearinghouse, to cover**
21 **the cost of the operations and activities of the commission and the**
22 **commission's staff.**

23 **(b) The revenue from the fee collected under subsection (a) must**
24 **be sufficient to cover the commission's annual budget.**

25 **Sec. 3. The commission's budget for a fiscal year shall not be**
26 **approved until the budget has been subject to notice and comment**
27 **as provided in IC 27-18-8.**

28 **Sec. 4. (a) The commission shall be regarded as performing**
29 **essential governmental functions in:**

- 30 **(1) exercising the commission's powers and functions; and**
- 31 **(2) carrying out the provisions of:**
 - 32 **(A) this compact; and**
 - 33 **(B) any law relating to this compact.**

34 **(b) The commission is not required to pay a tax or assessment**
35 **of any kind levied by a state or political subdivision upon:**

- 36 **(1) property used by the commission for; or**
 - 37 **(2) income or revenue resulting from;**
- 38 **purposes described in subsection (a), including any profit from a**
39 **sale or an exchange.**

40 **Sec. 5. (a) The commission shall keep complete and accurate**
41 **accounts of all of the commission's:**

- 42 **(1) internal receipts, including grants and donations; and**
 - 43 **(2) disbursements;**
- 44 **for all funds under the commission's control.**

45 **(b) The internal financial accounts of the commission are**
46 **subject to the accounting procedures established under the bylaws.**

47 **(c) The financial accounts and reports of the commission,**

1 including the system of internal controls and procedures of the
2 commission, must be audited annually by an independent certified
3 public accountant.

4 (d) Upon the determination of the commission, but not less than
5 every three (3) years, the annual audit conducted by the
6 independent auditor under subsection (c) must include a
7 management and performance audit of the commission.

8 (e) The commission shall make an annual report to the
9 governors and legislatures of the compacting states, including a
10 report of the independent audit conducted under subsection (c).

11 (f) Subject to subsection (g), the commission's internal accounts
12 are not confidential and may be shared with the commissioner,
13 controller, or stamping office of a compacting state upon request.

14 (g) The commission shall maintain the confidentiality of the
15 following:

- 16 (1) Work papers related to an internal or independent audit.
- 17 (2) Information regarding the privacy of individuals.
- 18 (3) Licensees' and insurers' proprietary information,
19 including trade secrets.

20 Sec. 6. A compacting state does not have a claim to or ownership
21 of:

- 22 (1) property held by or vested in the commission; or
- 23 (2) commission funds held under this compact.

24 Sec. 7. (a) The commission shall not make political contributions
25 to candidates for elected office, elected officials, political parties, or
26 political action committees.

27 (b) The commission shall not engage in lobbying, except with
28 respect to changes to this compact.

29 Chapter 13. Compacting States, Effective Date, and Amendment

30 Sec. 1. Any state is eligible to become a compacting state.

31 Sec. 2. (a) Subject to subsection (b), this compact becomes
32 effective and binding upon legislative enactment of the compact
33 into law by two (2) compacting states.

34 (b) The commission established by this compact becomes
35 effective for purposes of adopting rules and creating the
36 clearinghouse when:

- 37 (1) there is a total of ten (10) compacting states and
38 contracting states; or
- 39 (2) there are compacting states and contracting states
40 representing more than forty percent (40%) of the total
41 surplus lines insurance premium volume, based on the
42 following apportionment of the total surplus lines insurance
43 premium volume among the states:

44	Alabama	1.47%
45	Alaska	0.29%
46	Arizona	2.18%
47	Arkansas	0.66%

1	California	18.49%
2	Colorado	1.79%
3	Connecticut	1.08%
4	Delaware	0.31%
5	Florida	8.75%
6	Georgia	2.95%
7	Hawaii	0.77%
8	Idaho	0.24%
9	Illinois	3.34%
10	Indiana	1.36%
11	Iowa	0.44%
12	Kansas	0.53%
13	Kentucky	0.55%
14	Louisiana	2.81%
15	Maine	0.20%
16	Maryland	1.43%
17	Massachusetts	2.33%
18	Michigan	2.31%
19	Minnesota	1.29%
20	Mississippi	0.87%
21	Missouri	1.33%
22	Montana	0.21%
23	Nebraska	0.30%
24	Nevada	1.17%
25	New Hampshire	0.34%
26	New Jersey	3.58%
27	New Mexico	0.22%
28	New York	9.11%
29	North Carolina	1.69%
30	North Dakota	0.12%
31	Ohio	1.12%
32	Oklahoma	1.05%
33	Oregon	1.03%
34	Pennsylvania	2.57%
35	Rhode Island	0.24%
36	South Carolina	1.36%
37	South Dakota	0.13%
38	Tennessee	1.49%
39	Texas	10.06%
40	Utah	0.47%
41	Vermont	0.14%
42	Virginia	2.01%
43	Washington	2.43%
44	West Virginia	0.43%
45	Wisconsin	0.82%
46	Wyoming	0.13%

(c) After the commission becomes effective under subsection (b),

1 the compact becomes effective and binding as to any other
2 compacting state upon the enactment of the compact into law by
3 that state.

4 (d) The clearinghouse operations and the duty to report
5 clearinghouse transaction data begin on the first January 1 or July
6 1 following the first anniversary of the commission's effective date
7 under subsection (b).

8 (e) The commission shall:

9 (1) set a date for the reporting of clearinghouse transaction
10 data by states that become compacting states after the
11 commission's effective date under subsection (b); and

12 (2) provide notice of the date set under subdivision (1) to
13 surplus lines licensees and all other interested parties at least
14 ninety (90) days before the date set under subdivision (1).

15 Sec. 3. (a) Amendments to this compact may be proposed by the
16 commission for enactment by the compacting states.

17 (b) An amendment to this compact is not effective and binding
18 upon the commission and the compacting states until all
19 compacting states enact the amendment into law.

20 Sec. 4. If this compact does not take effect or becomes
21 ineffective, the state department of insurance has the authority to
22 enter into contracts to implement the requirements of the NRRA.

23 Chapter 14. Withdrawal, Default, and Termination

24 Sec. 1. (a) Subject to subsection (b), after this compact becomes
25 effective, the compact continues in force and remains binding upon
26 every compacting state.

27 (b) A compacting state may withdraw from this compact by
28 enacting a statute specifically repealing the statute that enacted
29 this compact into law.

30 Sec. 2. (a) The effective date of a compacting state's withdrawal
31 under section 1 of this chapter is the effective date of the statute
32 repealing the statute that enacted this compact.

33 (b) Except by mutual agreement of the commission and the
34 withdrawing state, a withdrawal under subsection (a) does not
35 apply to a tax or compliance determination that has already been
36 approved on the date the repealing statute becomes effective,
37 unless:

38 (1) the compacting state and commission mutually agree that
39 the withdrawal applies to the tax or compliance
40 determination; or

41 (2) the approval of the tax or compliance determination is
42 rescinded by the commission.

43 Sec. 3. (a) The member representing a compacting state shall
44 immediately notify the executive committee of the commission in
45 writing upon the introduction in the state's legislature of legislation
46 to repeal this compact in the state.

47 (b) Not more than ten (10) days after receiving notice under

1 subsection (a) of the legislation under which a state would
2 withdraw from this compact, the commission shall notify the other
3 compacting states of the introduction of the legislation.

4 (c) A withdrawing state is responsible for all obligations, duties,
5 and liabilities incurred through the effective date of the state's
6 withdrawal, including obligations the performance of which
7 extends beyond the effective date of withdrawal.

8 (d) To the extent that obligations described in subsection (c)
9 have been released or relinquished by mutual agreement of the
10 commission and the withdrawing state, the commission's
11 determinations before the effective date of the state's withdrawal
12 continue to be effective and shall be given full force and effect in
13 the withdrawing state, unless formally rescinded by the
14 commission.

15 (e) A state that has withdrawn from this compact shall be
16 reinstated upon the effective date of the state's legislature's
17 reenactment of this compact.

18 **Sec. 4. (a) If the commission determines that a compacting state**
19 **has defaulted in the performance of any of the compacting state's**
20 **obligations or responsibilities under this compact or under the**
21 **bylaws or rules, the commission shall, after notice and hearing**
22 **under the bylaws, suspend all rights, privileges, and benefits**
23 **conferred by this compact on the defaulting state, effective on the**
24 **effective date of default as fixed by the commission.**

25 (b) The grounds for the suspension of a compacting state for
26 default under subsection (a) include:

27 (1) the failure of the compacting state to perform its
28 obligations or responsibilities; and

29 (2) other grounds designated in commission rules.

30 (c) Upon making a determination under subsection (a), the
31 commission shall immediately notify the defaulting state in writing
32 of:

33 (1) the defaulting state's suspension, pending resolution of the
34 default;

35 (2) the conditions for resolution of the default; and

36 (3) the period within which the defaulting state must resolve
37 the default.

38 (d) If a defaulting state notified under subsection (c) fails to
39 resolve the default within the period specified by the commission
40 under subsection (c)(3):

41 (1) the defaulting state shall be terminated from this compact;
42 and

43 (2) all rights, privileges, and benefits conferred on the state by
44 this compact are terminated on the effective date of the state's
45 termination from this compact.

46 (e) Decisions of the commission that have already been issued on
47 the effective date of a state's termination under subsection (d)

1 remain in force in the defaulting state in the same manner as they
 2 would under sections 2(b) and 3 of this chapter if the defaulting
 3 state had withdrawn voluntarily under section 1 of this chapter.

4 (f) Reinstatement following termination of a compacting state
 5 requires legislative reenactment of the compact in the state.

6 Sec. 5. (a) This compact dissolves effective on the date of the
 7 withdrawal or termination for default of the compacting state
 8 whose withdrawal or termination reduces membership in the
 9 compact to one (1) compacting state.

10 (b) Upon the dissolution of this compact:

11 (1) this compact becomes void and has no further force or
 12 effect; and

13 (2) the business and affairs of the commission shall be wound
 14 up and any surplus funds shall be distributed in accordance
 15 with the bylaws and rules.

16 **Chapter 15. Severability and Construction**

17 Sec. 1. The provisions of this compact are severable in the
 18 manner provided in IC 1-1-1-8(b) and if any phrase, clause,
 19 sentence, or provision of this compact is considered unenforceable,
 20 the remaining provisions of this compact are enforceable.

21 Sec. 2. The provisions of this compact shall be liberally
 22 construed to effectuate this compact's purposes.

23 **Chapter 16. Binding Effect of Compact and Other Laws**

24 Sec. 1. Except as provided in section 2 of this chapter, this
 25 article does not prevent the enforcement of any other law of a
 26 compacting state.

27 Sec. 2. (a) Decisions of the commission and rules and other
 28 requirements of the commission constitute the exclusive rule or
 29 determination applicable to the compacting states.

30 (b) A law or regulation regarding nonadmitted insurance of
 31 multistate risks that is contrary to rules of the commission is
 32 preempted with respect to the following:

33 (1) Clearinghouse transaction data reporting requirements.

34 (2) Allocation formula.

35 (3) Clearinghouse transaction data collection requirements.

36 (4) Premium tax payment time frames and rules concerning
 37 dissemination of data among the compacting states for
 38 nonadmitted insurance of multistate risks and single state
 39 risks.

40 (5) Exclusive compliance with the surplus lines law of the
 41 home state of the insured.

42 (6) Rules for reporting to a clearinghouse for receipt and
 43 distribution of clearinghouse transaction data related to
 44 nonadmitted insurance of multistate risks.

45 (7) Uniform foreign insurers eligibility requirements.

46 (8) Uniform policyholder notice.

47 (9) Uniform treatment of purchasing groups procuring

1 **nonadmitted insurance.**

2 **(c) Except as provided in subsection (b), a rule, uniform**
 3 **standard, or other requirement of the commission constitutes the**
 4 **exclusive provision that a commissioner may apply to compliance**
 5 **or tax determinations. However, an action taken by the commission**
 6 **does not abrogate or restrict:**

- 7 **(1) the access of a person to state courts;**
 8 **(2) the availability of alternative dispute resolution under**
 9 **IC 27-18-10;**
 10 **(3) remedies available under state law related to breach of**
 11 **contract or torts, or other laws not specifically directed to**
 12 **compliance or tax determinations;**
 13 **(4) state law relating to the construction of insurance**
 14 **contracts; or**
 15 **(5) the authority of the attorney general of the state, including**
 16 **the authority to maintain any actions or proceedings, as**
 17 **authorized by law.**

18 **Sec. 3. (a) Except as provided in this section, lawful actions of**
 19 **the commission, including rules adopted by the commission, are**
 20 **binding upon the compacting states.**

21 **(b) Agreements between the commission and the compacting**
 22 **states are binding in accordance with the terms of the agreements.**

23 **(c) Upon:**

- 24 **(1) the request of a party to a conflict over the meaning or**
 25 **interpretation of a commission action; and**
 26 **(2) the affirmative vote of a majority of the compacting states;**
 27 **the commission may issue advisory opinions regarding the meaning**
 28 **or interpretation in dispute. This subsection may be implemented**
 29 **by rule at the discretion of the commission.**

30 **(d) If a provision of this compact exceeds the constitutional**
 31 **limits imposed on the legislature of a compacting state:**

- 32 **(1) the conferral upon the commission of obligations, duties,**
 33 **powers, and jurisdiction through this compact is ineffective as**
 34 **to the compacting state; and**
 35 **(2) the obligations, duties, powers, and jurisdiction:**
 36 **(A) remain in the compacting state; and**
 37 **(B) shall be exercised by the agency of the compacting state**
 38 **to which the obligations, duties, powers, or jurisdiction are**
 39 **delegated by law in effect at the time this compact becomes**
 40 **effective.**

41 **SECTION 3. IC 34-30-2-119.8 IS ADDED TO THE INDIANA**
 42 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 43 **[EFFECTIVE JULY 1, 2011]: Sec. 119.8. IC 27-18-6-1(a)**
 44 **(Concerning:**

- 45 **(1) the members, officers, executive director, employees, and**
 46 **representatives; and**
 47 **(2) the members of the executive committee and of any other**

1 **committee;**
2 **of the surplus lines insurance multistate compliance compact**
3 **commission)."**

4 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1015 as printed March 25, 2011.)

Senator SIMPSON