

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 578

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AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 27-18 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

### **ARTICLE 18. SURPLUS LINES INSURANCE COMPACT**

#### **Chapter 1. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Affiliate" means, with respect to an insured, an entity that controls, is controlled by, or is under common control with the insured.**

**Sec. 3. "Affiliated group" means a group of affiliates.**

**Sec. 4. "Allocation formula" means the uniform method adopted by the commission by which insured risk exposures are apportioned to each state to calculate premium taxes due.**

**Sec. 5. "Bylaws" refers to the bylaws governing the commission.**

**Sec. 6. "Clearinghouse" means the commission's operations involving the acceptance, processing, and dissemination among:**

- (1) compacting states;**
- (2) contracting states;**
- (3) surplus lines licensees;**
- (4) insureds; and**

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(5) other persons;  
of premium tax and clearinghouse transaction data for nonadmitted insurance of multistate risks under this compact.

Sec. 7. (a) "Clearinghouse transaction data" means information regarding nonadmitted insurance of multistate risks that must be reported, accepted, collected, processed, and disseminated by:

- (1) surplus lines licensees, for surplus lines insurance; and
  - (2) insureds, for independently procured insurance;
- under this compact.

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

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

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

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

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

- (1) has enacted this compact; and
- (2) has not:
  - (A) withdrawn; or
  - (B) been terminated;

under IC 27-18-14.

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

- (1) has not enacted this compact; and
- (2) has entered into a written contract with the commission to use the services of and fully participate in the clearinghouse.

Sec. 13. "Control" means:

- (1) ownership or power to vote at least twenty-five percent (25%) of any class of voting securities; or
- (2) power to determine the election of a majority of the directors or trustees;

of an entity.

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

- (1) With respect to an insured:
  - (A) the state in which the insured maintains:
    - (i) the insured's principal place of business; or
    - (ii) if the insured is an individual, the insured's principal residence; or
  - (B) if one hundred percent (100%) of the insured risk is

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located outside the state described in clause (A), the state to which the greatest percentage of the insured's taxable premium for the insurance contract is allocated.

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

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

Sec. 16. "Insurer eligibility requirements" means the criteria, forms, and procedures that are:

- (1) established to qualify as a surplus lines insurer under the law of the home state; and
- (2) consistent with the NRRA.

Sec. 17. "Member" means a person chosen by a compacting state as the compacting state's representative to the commission.

Sec. 18. "Multistate risk" means a risk with insured exposures in more than one (1) state.

Sec. 19. "Nonadmitted insurance" means:

- (1) surplus lines insurance; or
- (2) independently procured insurance;

procured from a nonadmitted insurer.

Sec. 20. "Nonadmitted insurer" means an insurer that is not authorized to transact the business of insurance under the law of the home state.

Sec. 21. "Noncompacting state" means a state that has not adopted this compact.

Sec. 22. "NRRA" refers to the federal Nonadmitted and Reinsurance Reform Act of 2010 (Subtitle B of Title V of P.L.111-203).

Sec. 23. "Policyholder notice" means the disclosure notice or stamp that must be furnished to an applicant or a policyholder in connection with a surplus lines insurance placement.

Sec. 24. "Premium tax" means, with respect to nonadmitted insurance, a tax, a fee, an assessment, or another charge imposed by a government entity based on a payment made as consideration for the nonadmitted insurance.

Sec. 25. "Principal place of business" means, with respect to determining the home state of an insured, the state where the:

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- (1) insured maintains the insured's headquarters; and
- (2) insured's officers direct, control, and coordinate the business activities of the insured.

**Sec. 26. "Purchasing group" means a group that:**

- (1) is formed under the federal Liability Risk Retention Act of 1986;
- (2) has as one (1) of the group's purposes the purchase of liability insurance on a group basis;
- (3) purchases liability insurance only:
  - (A) for the members of the group; and
  - (B) to cover the members' similar or related liability exposure;
- (4) is composed of members with similar or related business or activity liability exposure due to the members' related, similar, or common:
  - (A) business;
  - (B) trade;
  - (C) product;
  - (D) services;
  - (E) premises; or
  - (F) operations; and
- (5) is domiciled in any state.

**Sec. 27. "Rule" refers to a rule adopted by the commission:**

- (1) to implement, interpret, or prescribe law or policy; or
- (2) describing the organization, procedure, or practice requirements of the commission;

that has the force and effect of law in the compacting states.

**Sec. 28. "Single state risk" means a risk with insured exposures in only one (1) state.**

**Sec. 29. "State" means a state, district, or territory of the United States.**

**Sec. 30. "State transaction documentation" means information required under the laws of a home state to be filed by:**

- (1) a surplus lines licensee to:
  - (A) report surplus lines insurance; and
  - (B) verify compliance with surplus lines laws; and
- (2) an insured to report independently procured insurance.

**Sec. 31. (a) "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other nonadmitted insurer as permitted under the law of the home state.**

**(b) The term includes excess lines insurance (as defined by applicable state law).**

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**Sec. 32. (a) "Surplus lines insurer" means a nonadmitted insurer that is eligible under the law of the home state to accept business from a surplus lines licensee.**

**(b) The term includes an insurer that is permitted to write surplus lines insurance under the law of the state where the insurer is domiciled.**

**Sec. 33. "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.**

**Chapter 2. Establishment of the Commission and Venue**

**Sec. 1. The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multistate compliance compact commission.**

**Sec. 2. The commission may adopt mandatory rules to establish exclusive home state authority regarding nonadmitted insurance of multistate risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules to finance, administer, operate, and enforce compliance with this compact and the bylaws and rules.**

**Sec. 3. The commission may adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines insurance placement.**

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

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

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

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

**Chapter 3. Authority of Commission**

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

- (1) Allocation formulas for each type of nonadmitted insurance coverage, which must be used by each compacting**

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state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds to report to the clearinghouse. The rules described in this subdivision must be adopted with input from surplus lines licensees and must be based on readily available data, with simplicity and uniformity for the surplus lines licensee as a material consideration.

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

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

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

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

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

(C) Diligent search requirements.

(D) Providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax under this compact.

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

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

(A) the state shall establish a single rate of taxation applicable to all nonadmitted insurance transactions; and

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(B) no other tax, fee assessment, or other charge by a governmental or quasi-governmental agency is permitted, except that stamping office fees may be charged as a separate, additional cost unless the fees are incorporated into a state's single rate of taxation.

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

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

- (A) March 1.
- (B) June 1.
- (C) September 1.
- (D) December 1.

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

- (A) the insurance department or tax official; or
  - (B) a single designated agent of the insurance department or tax official;
- of the home state.

(9) The obligation of the home state:

- (A) itself; or
- (B) through a:
  - (i) designated agent; or
  - (ii) surplus lines stamping or service office;

to collect clearinghouse transaction data from surplus lines licensees and from insureds (for independently procured insurance), for reporting to the clearinghouse.

(10) A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees, and insureds who independently procure insurance:

- (A) all premium taxes owed to each of the compacting states and contracting states;
- (B) the dates upon which payment of the premium taxes are due; and
- (C) a method for paying the premium taxes through the

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clearinghouse.

(11) That each surplus lines licensee is required to be licensed only in the home state of each insured for whom the licensee has procured surplus lines insurance.

(12) That:

(A) a policy considered to be surplus lines insurance in the insured's home state shall be:

(i) considered to be surplus lines insurance in all compacting states and contracting states; and

(ii) taxed as a surplus lines transaction in all states to which a portion of the risk is allocated;

(B) each compacting state and each contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multistate risk through the clearinghouse at the tax rate charged on surplus lines transactions in the other compacting state or contracting state on the portion of the risk in the compacting state or contracting state, as determined by the applicable uniform allocation formula adopted by the commission;

(C) a policy considered to be independently procured insurance in the insured's home state is considered to be independently procured insurance in all compacting states and contracting states; and

(D) each compacting state and each contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multistate risk through the clearinghouse, as determined by the uniform allocation formula adopted by the commission.

(13) Uniform foreign insurer eligibility requirements, as authorized by the NRRA.

(14) A uniform policyholder notice.

(15) Uniform treatment of purchasing group surplus lines insurance placements.

Sec. 2. The commission has the following powers:

(1) To adopt rules and operating procedures under IC 27-18-8 that:

(A) have the force and effect of law; and

(B) are binding;

in the compacting states to the extent and in the manner provided in this compact.

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(2) To bring and prosecute legal actions in the name of the commission. This subdivision does not affect the standing of a state insurance department to sue or be sued under applicable law.

(3) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. This subdivision does not empower the commission to demand or subpoena records or data from nonadmitted insurers.

(4) To establish and maintain offices, including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding:

(A) nonadmitted insurance of multistate risks;

(B) single state risks for states that elect to require surplus lines licensees to pay premium tax on single state risks through the clearinghouse; and

(C) tax reporting forms.

(5) To purchase and maintain insurance and bonds.

(6) To borrow, accept, or contract for services of personnel, including employees of a compacting state or stamping office, under an open, objective, competitive process and procedure adopted by the commission.

(7) To:

(A) hire employees, professionals, or specialists;

(B) elect or appoint officers;

(C) fix the compensation of individuals described in clauses (A) and (B);

(D) define the duties of individuals described in clauses (A) and (B);

(E) give the individuals described in clauses (A) and (B) appropriate authority to carry out the purposes of this compact; and

(F) determine the qualifications of individuals described in clauses (A) and (B);

under an open, objective, competitive process and procedure adopted by the commission, and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel, and other related personnel matters.

(8) To:

(A) accept;

(B) receive;

(C) use; and

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(D) dispose of; appropriate donations and grants of money, equipment, supplies, materials, and services, avoiding at all times any appearance of impropriety or conflict of interest.

(9) To:

- (A) lease;
- (B) purchase;
- (C) accept appropriate gifts or donations of; or
- (D) otherwise own, hold, improve, or use;

real, personal, or real and personal property, avoiding at all times any appearance of impropriety or conflict of interest.

(10) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of real, personal, or real and personal property.

(11) To provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including the following:

- (A) Minimum audit standards, including sampling methods.
- (B) Review of internal controls.
- (C) Cooperation and sharing of audit responsibilities among compacting states.
- (D) Handling of refunds or credits due to overpayments or improper allocation of premium taxes.
- (E) Taxpayer records to be reviewed, including a minimum retention period.
- (F) Authority of compacting states to review, challenge, or re-audit taxpayer records.

(12) To enforce compliance by compacting states and contracting states with rules and bylaws under the authority set forth in IC 27-18-9.

(13) To provide for dispute resolution among compacting states and contracting states.

(14) To advise compacting states and contracting states on tax issues relating to insurers, insureds, surplus lines licensees, agents, or brokers domiciled or doing business in noncompacting states, consistent with the purposes of this compact.

(15) To:

- (A) make available advice and training to personnel in state stamping offices, state insurance departments, or other state departments for record keeping, tax

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compliance, and tax allocations; and

(B) serve as a resource for state insurance departments and other state departments.

(16) To establish a budget and make expenditures.

(17) To borrow money.

(18) To appoint and oversee committees, including advisory 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.

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(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), appointed by the governor of the compacting state.**

**(b) A member may be removed or suspended from office as provided by the law of the compacting state represented by the member.**

**(c) A vacancy on the commission must be filled in accordance with the law of the compacting state represented by the member whose position has become vacant.**

**Sec. 2. Each member:**

- (1) is entitled to one (1) vote; and**
- (2) has an opportunity to participate in the governance of the commission in accordance with the bylaws.**

**Sec. 3. (a) The commission shall, by a majority vote of the members, prescribe bylaws to govern the commission's conduct as necessary or appropriate to carry out the purposes and exercise the powers of this compact, including bylaws to do the following:**

- (1) Establish the fiscal year of the commission.**
- (2) Provide reasonable procedures for the calling and conduct of meetings of the following:**
  - (A) The commission, including the following:**
    - (i) Attendance of a majority of members, including members' participation in meetings by telephone or other means of communication.**
    - (ii) Ensuring reasonable advance notice of the meeting.**
    - (iii) Providing for the right of citizens to attend each meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets.**
    - (iv) Allowing the commission to meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part.**

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(v) Requiring that, as soon as practicable following a meeting described in item (iv), the commission publishes a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during the meeting.

(B) The executive committee.

(C) The operations committee.

(3) Provide reasonable standards and procedures:

(A) for the establishment and meetings of committees not described in subdivision (2); and

(B) governing general or specific delegation of authority or a function of the commission.

(4) Establish:

(A) the titles, duties, and authority; and

(B) reasonable procedures for the election; of the officers of the commission.

(5) Provide reasonable standards and procedures for the establishment of the personnel policies and programs of the commission.

(6) Adopt a code of ethics to address permissible and prohibited activities of members and commission employees.

(7) Provide a mechanism for winding up the operations of the commission and the equitable disposition of surplus funds existing after the:

(A) termination of this compact; and

(B) payment or reservation of the commission's debts and obligations.

(b) Notwithstanding any civil service or other similar laws of a compacting state, the bylaws exclusively govern the personnel policies and programs of the commission.

(c) The commission shall publish the bylaws in a convenient form and file a copy of the bylaws and any amendment to the bylaws with the appropriate agency or officer in each of the compacting states.

Sec. 4. (a) The commission shall establish an executive committee.

(b) All actions of the executive committee, including compliance and enforcement actions, are subject to the review and ratification of the commission as provided in the bylaws.

(c) The executive committee shall consist of not more than fifteen (15) representatives, or one (1) representative for each state if there are less than fifteen (15) compacting states, who are

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appointed and serve for a term in accordance with the bylaws.

(d) The executive committee has the authority and duties set forth in the bylaws, which must include the following:

- (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.
- (2) Establishing and overseeing:
  - (A) an organizational structure within; and
  - (B) appropriate procedures for the commission to provide for the creation of; rules and operating procedures.
- (3) Overseeing the offices of the commission.
- (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the commission.

(e) The commission shall annually elect officers from the membership of the executive committee. The officers have the authority and duties specified in the bylaws.

(f) The executive committee may:

- (1) subject to the approval of the commission; and
- (2) according to terms and conditions, and for compensation, that the commission determines to be appropriate;

appoint or retain an executive director.

(g) The executive director:

- (1) shall serve as secretary to the commission;
- (2) shall not serve as a member of the commission; and
- (3) shall hire and supervise other persons as authorized by the commission.

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

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

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

(d) The operations committee consists of not more than fifteen (15) representatives (or one (1) representative for each state if there are less than fifteen (15) compacting states) who are

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appointed and serve for a term according to the bylaws.

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

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

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

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

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

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

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

(f) All representatives of the operations committee must be individuals who have extensive experience or employment in the surplus lines insurance business, including executives and attorneys employed by:

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

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

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

(b) The bylaws must determine the manner of selecting the

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members of the legislative committee and the term of office of the legislative committee members.

(c) Before the commission adopts any:

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

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

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

**Chapter 5. Corporate Records of the Commission**

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

**Chapter 6. Qualified Immunity, Defense, and Indemnification**

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

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

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

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

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

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

within the scope of commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did

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not result from the person's intentional or willful or wanton misconduct.

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

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

(1) that occurs; or

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

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

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

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

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

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

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

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

Sec. 3. The commission:

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

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

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

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

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

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

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- (2) Disclose matters specifically exempted from disclosure by federal and state statute.
- (3) Disclose trade secrets or commercial or financial information that is privileged or confidential.
- (4) Involve:
  - (A) the accusation of a person of a crime; or
  - (B) the formal censure of a person.
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.
- (6) Disclose investigative records compiled for law enforcement purposes.
- (7) Specifically relate to the commission's issuance of a subpoena or the commission's participation in a civil action or other legal proceeding.

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

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

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

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

**Chapter 8. Rules and Operating Procedures**

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

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

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

Sec. 3. A rule, operating procedure, or amendment to a rule is effective on the date specified in the rule, operating procedure, or

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amendment.

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

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

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

**Chapter 9. Commission Records and Enforcement**

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

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

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

- (1)** make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure; and
- (2)** enter into agreements with agencies described in subdivision (1) to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

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

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

**(c)** Except as otherwise expressly provided in this compact, the commission is not subject to the laws of a compacting state

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described in subsection (a) with respect to records, data, and information in the commission's possession.

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

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

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

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

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

**Chapter 10. Dispute Resolution**

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

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

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

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

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

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

**Chapter 11. Review of Commission Decisions**

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

Sec. 2. (a) Not later than thirty (30) days after the commission has given notice of a rule or allocation formula, a third party filer

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or compacting state may appeal the commission's determination to a review panel appointed by the commission.

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

(c) An allegation that the commission, in making a compliance or tax determination, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law is subject to judicial review in accordance with IC 27-18-2-6.

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

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

**Chapter 12. Finance**

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

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

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

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

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

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

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

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

- (1) property used by the commission for; or
- (2) income or revenue resulting from;

purposes described in subsection (a), including any profit from a sale or an exchange.

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

- (1) internal receipts, including grants and donations; and
- (2) disbursements;

for all funds under the commission's control.

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

(c) The financial accounts and reports of the commission, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant.

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

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

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

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

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

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

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

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

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

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

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

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

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

**(1) there is a total of ten (10) compacting states and contracting states; or**

**(2) there are compacting states and contracting states representing more than forty percent (40%) of the total surplus lines insurance premium volume, based on the following apportionment of the total surplus lines insurance premium volume among the states:**

Alabama	1.47%
Alaska	0.29%
Arizona	2.18%
Arkansas	0.66%
California	18.49%
Colorado	1.79%
Connecticut	1.08%
Delaware	0.31%
Florida	8.75%
Georgia	2.95%
Hawaii	0.77%
Idaho	0.24%
Illinois	3.34%
Indiana	1.36%
Iowa	0.44%
Kansas	0.53%
Kentucky	0.55%
Louisiana	2.81%
Maine	0.20%
Maryland	1.43%
Massachusetts	2.33%
Michigan	2.31%
Minnesota	1.29%
Mississippi	0.87%
Missouri	1.33%
Montana	0.21%
Nebraska	0.30%

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Nevada	1.17%
New Hampshire	0.34%
New Jersey	3.58%
New Mexico	0.22%
New York	9.11%
North Carolina	1.69%
North Dakota	0.12%
Ohio	1.12%
Oklahoma	1.05%
Oregon	1.03%
Pennsylvania	2.57%
Rhode Island	0.24%
South Carolina	1.36%
South Dakota	0.13%
Tennessee	1.49%
Texas	10.06%
Utah	0.47%
Vermont	0.14%
Virginia	2.01%
Washington	2.43%
West Virginia	0.43%
Wisconsin	0.82%
Wyoming	0.13%

(c) After the commission becomes effective under subsection (b), the compact becomes effective and binding as to any other compacting state upon the enactment of the compact into law by that state.

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

(e) The commission shall:

- (1) set a date for the reporting of clearinghouse transaction data by states that become compacting states after the commission's effective date under subsection (b); and
- (2) provide notice of the date set under subdivision (1) to surplus lines licensees and all other interested parties at least ninety (90) days before the date set under subdivision (1).

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

(b) An amendment to this compact is not effective and binding upon the commission and the compacting states until all

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compacting states enact the amendment into law.

**Sec. 4. (a)** Subject to subsection (b), if this compact does not take effect under section 2(b) of this chapter or becomes ineffective, the Indiana department of insurance has the authority to enter into contracts to implement the requirements of the NRRA.

**(b)** The Indiana department of insurance shall not enter into a contract under subsection (a) (including a compact or multistate agreement) that is related to reporting, payment, collection, or allocation of fees or taxes on nonadmitted insurance, unless the Indiana department of insurance has done all of the following:

- (1)** Completed a fiscal analysis of the impact of the contract.
- (2)** Studied the expected effect of the contract on Indiana's gross receipt of premium tax.
- (3)** Reviewed whether the contract will create undue administrative burdens on the state of Indiana or surplus lines licensees.
- (4)** Concluded that entering into the contract:
  - (A)** is in Indiana's financial best interest; and
  - (B)** is consistent with the requirements of the NRRA.

#### **Chapter 14. Withdrawal, Default, and Termination**

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

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

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

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

- (1)** the compacting state and commission mutually agree that the withdrawal applies to the tax or compliance determination; or
- (2)** the approval of the tax or compliance determination is rescinded by the commission.

**Sec. 3. (a)** The member representing a compacting state shall immediately notify the executive committee of the commission in writing upon the introduction in the state's legislature of legislation

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to repeal this compact in the state.

(b) Not more than ten (10) days after receiving notice under subsection (a) of the legislation under which a state would withdraw from this compact, the commission shall notify the other compacting states of the introduction of the legislation.

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

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

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

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

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

- (1) the failure of the compacting state to perform its obligations or responsibilities; and
- (2) other grounds designated in commission rules.

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

- (1) the defaulting state's suspension, pending resolution of the default;
- (2) the conditions for resolution of the default; and
- (3) the period within which the defaulting state must resolve the default.

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

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

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

(e) Decisions of the commission that have already been issued on  
the effective date of a state's termination under subsection (d)  
remain in force in the defaulting state in the same manner as they  
would under sections 2(b) and 3 of this chapter if the defaulting  
state had withdrawn voluntarily under section 1 of this chapter.

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

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

(b) Upon the dissolution of this compact:

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

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

#### Chapter 15. Severability and Construction

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

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

#### Chapter 16. Binding Effect of Compact and Other Laws

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

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

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

(1) Clearinghouse transaction data reporting requirements.

(2) Allocation formula.

(3) Clearinghouse transaction data collection requirements.

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- (4) Premium tax payment time frames and rules concerning dissemination of data among the compacting states for nonadmitted insurance of multistate risks and single state risks.
- (5) Exclusive compliance with the surplus lines law of the home state of the insured.
- (6) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to nonadmitted insurance of multistate risks.
- (7) Uniform foreign insurers eligibility requirements.
- (8) Uniform policyholder notice.
- (9) Uniform treatment of purchasing groups procuring nonadmitted insurance.

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

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

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

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

(c) Upon:

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

(d) If a provision of this compact exceeds the constitutional

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**limits imposed on the legislature of a compacting state:**

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

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

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

**of the surplus lines insurance multistate compliance compact commission).**

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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