WEST VIRGINIA CODE: §33-12C-3

§33-12C-3. Definitions.

As used in this article:

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

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

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

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

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

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

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

(2) Generates annual revenues in excess of $50 million;(3) Employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(4) Is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30 million; or (5) Is a municipality with a population in excess of fifty thousand persons: Provided, That on January 1, 2015 and every five years thereafter, the amounts in subdivisions (1), (2) and (4) of this subsection shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the federal Department of Labor.

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

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

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

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

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

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

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

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

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

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

(o) "License" means a document issued by this state's Insurance Commissioner authorizing an individual to act as a surplus lines licensee for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurer.

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

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

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

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

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

(u) " Signatory state" means a state that has entered into NIMA or a similar allocation procedure with this state.

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

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

(x) "Surplus lines licensee" means an individual licensed under section five of this article to place insurance on properties, risks or exposures located or to be performed in this state with nonadmitted insurers eligible to accept such insurance. Wherever the term "excess line broker" appears in this chapter, it shall mean surplus lines licensee.

(y) "Transaction of insurance" –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(bb) "Wet marine and transportation insurance" means:

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

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

(3) Insurance of freight and disbursements pertaining to a subject of insurance within the scope of this subsection; and(4) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any incidental delays, transshipment, or reshipment; provided, however, that insurance of

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personal property and interests therein shall not be considered wet marine and transportation insurance if the property has:

(A) Been transported solely by land; or

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

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

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