WEST VIRGINIA CODE CHAPTER 33 ARTICLE 12C

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§33-12C-1. Short title.

This article shall be known and may be cited as "The Nonadmitted Insurance Act".

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

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

(a) Protecting persons seeking insurance in this state;

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

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

(d) Providing a system through which persons may purchase insurance other than surplus lines insurance, from nonadmitted insurers pursuant to this article;

(e) Protecting revenues of this state; and

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

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§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.

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

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(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.

(s) "Person" means any natural person or other entity, including, but not limited to,

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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;

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

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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 personal property and interests therein shall not be considered wet marine and

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

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

(b) A person shall not engage in a transaction of insurance or shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist the insurer in the transaction of insurance.

(c) A person who represents or aids a nonadmitted insurer in violation of this section shall be subject to the penalties set forth in section eighteen of this article. No insurance contract entered into in violation of this section shall preclude the insured from enforcing his rights under the contract in accordance with the terms and provisions of the contract of insurance and the laws of this state, to the same degree those rights would have been enforceable had the contract been lawfully procured.

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

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

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

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

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

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

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

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

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

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

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

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§33-12C-5. Surplus lines insurance.

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

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

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

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

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

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

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

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

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

(2) Qualifies under one of the following paragraphs:

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

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

(II) $15 million;

(ii) The requirements of subparagraph (i), paragraph (A) of this subdivision may be satisfied

by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than $4,500,000; or

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

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

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

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

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

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

(C) In the case of a Lloyd's plan or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers:(i) The plan or group maintains a trust fund that shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States; and

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

(iii) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency

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regulation and control by the group's domiciliary regulator as are the unincorporated members.

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

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

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

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

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

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

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

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

(i) $5,400,000; or

(ii) Thirty percent of the United States surplus lines gross liabilities, excluding aviation, wet

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marine and transportation insurance liabilities, not to exceed $60 million, to be determined annually on the basis of accounting practices and procedures substantially equivalent to those promulgated by this state, as of December 31 next preceding the date of determination, where:

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

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

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

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

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

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

(3) In addition to all of the other requirements of this subsection, an insurer not domiciled in the United States or its territories shall be listed on the NAIC's quarterly listing of alien insurers. The commissioner may waive the requirement in this subdivision or the requirements of subparagraph (ii), paragraph (E), subdivision (2), subsection (d) of this

section may be satisfied by an insurer's possessing less than the trust fund amount specified in subparagraph (ii), paragraph (E), subdivision (2), subsection (d) of this section upon an affirmative finding of acceptability by the commissioner if the commissioner is satisfied that the placement of insurance with the insurer is necessary and will not be detrimental to the public and the policyholder. In determining whether business may be placed with the insurer, the commissioner may consider such factors as:

(A) The interests of the public and policyholders;

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

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

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

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

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

(4) Has caused to be provided to the commissioner a copy of its current annual statement certified by the insurer and an actuarial opinion as to the adequacy of, and methodology used to determine, the insurer's loss reserves. The statement shall be provided at the same time it is provided to the insurer's domicile, but in no event more than eight months after the close of the period reported upon, and shall be certified as a true and correct copy by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile and certified by a senior officer of the nonadmitted insurer as a true and correct copy of the statement filed with the regulatory authority in the domicile of the nonadmitted insurer. In the case of an insurance exchange qualifying under paragraph (B), subdivision (2) of this subsection, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported; and

(5) In addition to meeting the requirements in subdivisions (1) to (4) of this subsection an insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the commissioner from time to time but at least annually. Nothing in this subdivision shall require the commissioner to place or maintain the name of any nonadmitted insurer on the list of eligible surplus lines insurers.(6) Notwithstanding subsection (a) of this section, only that portion of any risk eligible for export for which the full amount of coverage is not procurable from listed eligible surplus

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lines insurers may be placed with any other nonadmitted insurer which does not appear on the list of eligible surplus lines insurers published by the commissioner pursuant to subdivision (5) of this subsection but nonetheless meets the requirements set forth in subdivisions (1) and (2), subsection (d) of this section and any regulations of the commissioner. The surplus lines licensee seeking to provide coverage through an unlisted nonadmitted insurer shall make a filing specifying the amounts and percentages of each risk to be placed, and naming the nonadmitted insurers with which placement is intended. Within thirty days after placing the coverage, the surplus lines licensee shall also send written notice to the insured that the insurance, or a portion thereof, has been placed with the nonadmitted insurer.

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

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

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

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

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

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

(4) Does not conduct a proper claims practice;

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

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§33-12C-6a. Debris removal liens; noncompliance; penalties.

The commissioner may declare a surplus lines insurer ineligible for committing any violation of the provisions of article ten-e, chapter thirty-eight of this code.

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§33-12C-7. Surplus lines tax.

(a) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to section eight of this article shall collect and pay to the commissioner a sum equal to four and fifty-five one-hundredths percent of the gross premiums and gross fees charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of this state and this state is the insured's home state, the sum payable shall be computed on that portion of the gross premiums allocated to this state, plus an amount equal to the portion of the gross premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks or exposures located or to be performed outside of this state, and less the amount of gross premiums allocated to this state and returned to the insured due to cancellation of policy: Provided, That the surcharge imposed by section thirty-three, article three of this chapter on surplus lines policies shall no longer be effective with respect to premium attributable to coverage under such policies for periods after June 30, 2011: Provided, however, That twelve per cent of taxes collected under this subsection with respect to premium attributable to coverage under such policies after June 30, 2011, shall be disbursed and distributed in accordance with subsection (d), section thirty-three, article three of this chapter and eighty-eight per cent in accordance with subdivision two, subsection (f) of this section. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any.

(b) The individual insurance producer may not:

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

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

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

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

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

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

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

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

(2) Any fee charged;

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

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

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

(f)(1) This tax is imposed for the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and additional revenue for volunteer and part-volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made on or before March 1 of the succeeding year. Provisions of this chapter relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this tax to the extent that the provisions are not in conflict with this section.

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

(g) In determining the amount of gross premiums taxable in this state for a placement of surplus lines insurance covering properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to properties, risks or exposures located or to be performed in this state and which relates to the kinds of insurance being placed as determined by reference to an appropriate allocation table.

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

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

the premium;

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

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

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

(A) By use of the allocation schedule where the risk is appropriately identified in the schedule;

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

(h) The commissioner is authorized to participate in a clearinghouse established through NIMA or in a similar allocation procedure for the purpose of collecting and disbursing to signatory states any funds collected pursuant to this section that are allocable to properties, risks or exposures located or to be performed outside of this state: Provided, That twelve per cent of any moneys received from a clearinghouse or through a similar allocation procedure is subject to the provisions of subsection (d), section thirty-three, article three of this chapter and eighty-eight per cent of such moneys is subject to the provisions of subdivision (2), subsection (f) of this section: Provided, however, That to the extent other states where portions of the properties, risks or exposures reside have failed to enter into NIMA or a similar allocation procedure with this state, the net premium tax collected shall be retained by this state and shall be disbursed and distributed in the same manner as moneys received through a clearinghouse or similar allocation procedure.

(i) Collection of tax.

If the tax owed by a surplus lines licensee under this section has been collected and is not paid within the time prescribed, the same shall be recoverable in a suit brought by the commissioner against the surplus lines licensee. The commissioner may charge interest for any unpaid tax, fee, financial assessment or penalty, or portion thereof: Provided, That

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interest may not be charged on interest. Interest shall be calculated using the annual rates which are established by the Tax Commissioner pursuant to section seventeen-a of article ten, chapter eleven of this code and shall accrue daily.

WV Legislature

§33-12C-8. Surplus lines licenses.

(a) No person shall procure a contract of surplus lines insurance with a nonadmitted insurer for an insured whose home state is West Virginia unless the person possesses a current surplus lines insurance license issued by the commissioner.

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

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

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

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

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

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

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

WV Legislature

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

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

(b) The commissioner may place on probation, suspend, revoke or refuse to issue or renew the license of a surplus lines licensee or may levy a civil penalty in a sum not to exceed $5,000 or any combination of actions after notice and hearing pursuant to section thirteen, article two of this chapter upon one or more of the following grounds:

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

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

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

(4) Failure to make and file required reports;

(5) Failure to transmit required tax on surplus lines premiums to this state or a reciprocal state to which a tax is owing;

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

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

WV Legislature

§33-12C-10. Actions against eligible surplus lines insurers transacting surplus lines business.

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

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

WV Legislature

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

(a) On or before March 1, 2004, and on or before March 1 thereafter, each surplus lines licensee shall file, on a form prescribed by the commissioner, a report under oath, setting forth facts from which it may be determined whether the requirements of section five of this article have been met with respect to each surplus line policy procured by the surplus lines licensee during the preceding calendar year.

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

(1) The name and address of the insured;

(2) The identity of the insurer or insurers;

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

(4) Return premium paid, if any;

(5) The amount of gross premium charged for the insurance;

(6) The amount of the insurance;

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

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

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

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

WV Legislature

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

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

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

(c) If, after delivery of any evidence of insurance, there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the surplus lines licensee's original evidence of insurance, or in any other material as to the insurance coverage so evidenced, the surplus lines licensee shall promptly issue and deliver to the insured or the original producing individual insurance producer appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible for the coverage.

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

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

(f) The surplus lines licensee shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice shall be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines licensee shall maintain the signed notice in its file for a period of ten years from expiration of the policy. The surplus lines licensee shall tender a copy of the signed notice to the insured at the time

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of delivery of each policy the licensee transacts with a nonadmitted insurer. The copy shall be a separate document affixed to the policy.

"Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines brokers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance agent or surplus lines licensee. You may also contact your Insurance Commission consumer help line."

WV Legislature

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

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

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

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

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

WV Legislature

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

A payment of premium to a surplus lines licensee acting for a person other than itself in procuring, continuing or renewing any policy of insurance procured under this section shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the policy or contract notwithstanding.

WV Legislature

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

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

WV Legislature

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

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

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

(2) Brief description of the property insured and its location;

(3) Gross premium charged;

(4) Any return premium paid;

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

(6) Effective date and terms of the contract;

(7) Name and address of the insured;

(8) Name and address of the insurer;

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

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

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

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

WV Legislature

§33-12C-17. Reports - summary of exported business.

(a) On or before May 1, 2004, and on or before May 1 thereafter, the end of the month following each year, each surplus lines licensee shall file with the commissioner, on forms prescribed by the commissioner, a verified report in duplicate of all surplus lines insurance transacted during the preceding period;

(b) The report shall show the following:

(1) Aggregate gross premiums written;

(2) Aggregate return premiums;

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

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

WV Legislature

§33-12C-18. Penalties.

(a) A person who in this state represents or aids a nonadmitted insurer in violation of this article is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than $10,000 per each act or sentenced to not less than ten days nor more than one year, or both fined and imprisoned.

(b) In addition to any other penalty provided herein or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this article shall be liable to a civil penalty not exceeding $10,000 for the first offense, and not exceeding $20,000 for each succeeding offense.

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

WV Legislature

§33-12C-19. Violations.

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

WV Legislature

§33-12C-20. Service of process.

(a) Any act of transacting insurance by an unauthorized person or a nonadmitted insurer is equivalent to and shall constitute an irrevocable appointment by the unauthorized person or insurer, binding upon it, its executor or administrator, or successor in interest of the Secretary of State or his or her successor in office, to be the true and lawful attorney of the unauthorized person or insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of transacting insurance in this state by the unauthorized person or insurer. Any act of transacting insurance in this state by a nonadmitted insurer shall signify its acceptance of its agreement that any lawful process in such court action, suit or proceeding and any notice, order, pleading or process in such administrative proceeding before the commissioner so served shall be of the same legal force and validity as personal service of process in this state upon the unauthorized person or insurer.

(b) Service of process in the action shall be made by delivering to and leaving with the Secretary of State, or some person in apparent charge of the office, two copies thereof and by payment to the Secretary of State of the fee prescribed by law. Service upon the Secretary of State as attorney shall be service upon the principal.

(c) The Secretary of State shall forward by certified mail one of the copies of the process or notice, order, pleading or process in proceedings before the commissioner to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on the commissioner which shall show the day and hour of service. Service is sufficient, provided:

(1) Notice of service and a copy of the court process or the notice, order, pleading or process in the administrative proceeding are sent within fifteen days by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding; and

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

WV Legislature

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

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

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

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

(h) Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer subject to arbitration or other alternative dispute resolution mechanism arising in this state or relative to property, risks or exposures located or to be performed in this state under an insurance contract made by it shall conduct the arbitration or other alternative dispute resolution mechanism in this state.

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

WV Legislature

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

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

(1) File with the clerk of the court in which the action, suit or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in the action or administrative proceeding; or

(2) Procure a certificate of authority to transact the business of insurance in this state. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph the commissioner need not assert the provisions of section sixteen, article three of this chapter against the insurer with respect to its application if the commissioner determines that the company would otherwise comply with the requirements for a certificate of authority.

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

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

(d) Nothing in subsection (a) of this section shall apply to placements of insurance which were lawful in the state in which the placement took place and which were not unlawful placements under the laws of this state. Without limiting the generality of the foregoing, nothing in subsection (a) of this section shall apply to a placement made pursuant to section five of this article.

WV Legislature

§33-12C-22. Enforcement.

(a) The commissioner shall have the authority to proceed in the courts of this state or any other United States jurisdiction to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

(b) Filing and status of foreign decrees.

A copy of a foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk, upon verifying with the commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree so filed has the same effect and shall be deemed a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(c) Notice of filing.

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

(2) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner of this state and shall make a note of the mailing in the docket. In addition, the plaintiff may mail a notice of the filing of the foreign decree to the defendant and to the commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the plaintiff has been filed.

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

(d) Stay of the foreign decree.

(1) If the defendant shows the circuit court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

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

(e) It shall be the policy of this state that the Insurance Commissioner shall cooperate with regulatory officials in other United States jurisdictions to the greatest degree reasonably practicable in enforcing lawfully issued orders of such other officials subject to public policy and the insurance laws of the state. Without limiting the generality of the foregoing, the commissioner may enforce an order lawfully issued by other officials provided the order does not violate the laws or public policy of this state.

WV Legislature

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

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

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

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

(c) Transactions subsequent to issuance of a policy not covering domestic risks at the time of issuance, and lawfully procured under the laws of the jurisdiction where the transaction took place;

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

(e) Reinsurance placed under the authority of article thirty-eight of this chapter;

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

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

(h) Claims under policies covering wet marine and transportation insurance;

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

WV Legislature

§33-12C-24. Countersignature requirements.

Surplus lines insurance shall be countersigned by a duly licensed resident surplus lines licensee: Provided, That the countersignature requirements imposed by this section shall no longer be required for any surplus line of insurance executed, issued or delivered after December 31, 2004.

WV Legislature

§33-12C-25. Fees.

The commissioner shall receive the following fees from surplus lines licensees: For letters of certification, $5; for letters of clearance, $10; for duplicate license, $5. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter.

WV Legislature

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

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

WV Legislature

§33-12C-27. Change of address.

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

WV Legislature

§33-12C-28. Separability provisions.

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

WV Legislature

§33-12C-29. Hearings.

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

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

(c) A surplus lines licensee who fails to appear at a hearing of which notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within thirty calendar days of the entry of an adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and reasonable cause for the person's failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his or her discretion, and upon a finding that the surplus lines licensee has shown good and reasonable cause for his or her failure to appear, shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

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

WV Legislature