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WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2011

WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

Senate Bill No. 435

(BY SENATOR MINARD)

[PASSED MARCH 12, 2011; TO TAKE EFFECT JULY 1, 2011.]

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CLERK OF COURTS
SECRETARY OF STATE

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[Passed March 12, 2011; to take effect July 1, 2011.]

AN ACT to amend and reenact §33-12C-3, §33-12C-5, §33-12C-7 and §33-12C-8 of the Code of West Virginia, 1931, as amended, all relating to surplus lines insurance; defining terms; providing for compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010; authorizing Insurance Commissioner to enter into multistate agreements regarding taxation of surplus lines insurance; establishing a blended taxation rate; authorizing participation in clearinghouse or other process for allocation of taxes; specifying disbursement and distribution of moneys; restricting certain provisions to transactions in which West Virginia is the home state of the insurer; and exempting certain large entities from compliance with due diligence requirements.

Be it enacted by the Legislature of West Virginia:

That §33-12C-3, §33-12C-5, §33-12C-7 and §33-12C-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12C. SURPLUS LINE - NONADMITTED INSURANCE ACT.

§33-12C-3. Definitions.

1 As used in this article:

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

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

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

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

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

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

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

24 (2) Generates annual revenues in excess of \$50 million;

25 (3) Employs more than five hundred full-time or full-time
26 equivalent employees per individual insured or is a member
27 of an affiliated group employing more than one thousand
28 employees in the aggregate;

29 (4) Is a not-for-profit organization or public entity generat-
30 ing annual budgeted expenditures of at least \$30 million; or

31 (5) Is a municipality with a population in excess of fifty
32 thousand persons: *Provided*, That on January 1, 2015 and
33 every five years thereafter, the amounts in subdivisions (1),
34 (2) and (4) of this subsection shall be adjusted to reflect the
35 percentage change for such five-year period in the Consumer
36 Price Index for All Urban Consumers published by the
37 Bureau of Labor Statistics of the federal Department of
38 Labor.

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

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

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

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

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

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

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

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

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

68 (n) “Kind of insurance” means one of the types of insur-
69 ance required to be reported in the annual statement which
70 must be filed with the commissioner by admitted insurers.

71 (o) “License” means a document issued by this state’s
72 Insurance Commissioner authorizing an individual to act as
73 a surplus lines licensee for the lines of authority specified in
74 the document. The license itself does not create any author-
75 ity, actual, apparent or inherent, in the holder to represent
76 or commit an insurer.

77 (p) “Nonadmitted insurer” means an insurer not licensed
78 to do an insurance business in this state.

79 (q) “Nonadmitted and Reinsurance Reform Act of 2010” or
80 “NRRRA” means those provisions incorporated as Subtitle B
81 of the Dodd-Frank Wall Street Reform and Consumer
82 Protection Act, P.L. 111-517.

83 (r) “Nonadmitted Insurance Multi-State Agreement” or
84 “NIMA” means the model agreement adopted by the Na-
85 tional Association of Insurance Commissioners on December
86 16, 2010, to facilitate the collection, allocation and disburse-
87 ment of premium taxes attributable to the placement of
88 nonadmitted insurance, provide for uniform methods of
89 allocation and reporting among nonadmitted insurance risk
90 classifications, and share information among states relating
91 to nonadmitted insurance premium taxes; such term includes
92 the agreements’ allocation tables and any changes made
93 thereto in response to changes to the laws of signatory states.

94 (s) “Person” means any natural person or other entity,
95 including, but not limited to, individuals, partnerships,
96 associations, trusts or corporations.

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

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

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

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

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

121 (y) "Transaction of insurance" –

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

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

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

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

135 (D) The receiving or collection of any premium, commis-
136 sion, membership fees, assessments, dues or other consider-
137 ation for insurance or any part thereof;

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

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

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

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

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

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

159 (2) The provisions of this subsection shall not operate to
160 prohibit employees, officers, directors or partners of a

161 commercial insured from acting in the capacity of an
162 insurance manager or buyer in placing insurance on behalf
163 of the employer, provided that the person's compensation is
164 not based on buying insurance.

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

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

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

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

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

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

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

180 (4) Insurance of personal property and interests therein, in
181 the course of exportation from or importation into any
182 country, or in the course of transportation coastwise or on
183 inland waters, including transportation by land, water or air
184 from point of origin to final destination, in connection with
185 any and all risks or perils of navigation, transit or transpor-
186 tation, and while being prepared for and while awaiting
187 shipment, and during any incidental delays, transshipment,
188 or reshipment; provided, however, that insurance of personal
189 property and interests therein shall not be considered wet
190 marine and transportation insurance if the property has:

191 (A) Been transported solely by land; or

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

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

§33-12C-5. Surplus lines insurance.

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

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

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

6 (2) Each insurer is authorized to write the type of insur-
7 ance in its domiciliary jurisdiction; and

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

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

25 (c) Subject to subdivision (3), subsection (b) of this section,
26 a surplus lines licensee may place any coverage with a

27 nonadmitted insurer eligible to accept the insurance, unless
28 specifically prohibited by the laws of this state.

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

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

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

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

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

41 (II) \$15 million;

42 (ii) The requirements of subparagraph (i), paragraph (A) of
43 this subdivision may be satisfied by an insurer's possessing
44 less than the minimum capital and surplus upon an affirma-
45 tive finding of acceptability by the commissioner. The
46 finding shall be based upon such factors as quality of
47 management, capital and surplus of any parent company,
48 company underwriting profit and investment income trends,
49 market availability and company record and reputation
50 within the industry. In no event shall the commissioner make
51 an affirmative finding of acceptability when the nonadmitted
52 insurer's capital and surplus is less than \$4,500,000; or

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

55 (i) The syndicates of the exchange shall maintain under
56 terms acceptable to the commissioner capital and surplus, or

57 its equivalent under the laws of its domiciliary jurisdiction,
58 of not less than \$75 million in the aggregate; and

59 (ii) The exchange shall maintain under terms acceptable to
60 the commissioner not less than fifty percent of the policy-
61 holder surplus of each syndicate in a custodial account
62 accessible to the exchange or its domiciliary commissioner in
63 the event of insolvency or impairment of the individual
64 syndicate; and

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

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

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

83 (C) In the case of a Lloyd's plan or other similar group of
84 insurers, which consists of unincorporated individual
85 insurers, or a combination of both unincorporated and
86 incorporated insurers:

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

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

95 (iii) The incorporated members of the group shall not be
96 engaged in any business other than underwriting as a
97 member of the group and shall be subject to the same level of
98 solvency regulation and control by the group's domiciliary
99 regulator as are the unincorporated members.

100 (iv) The trust funds shall be maintained in an irrevocable
101 trust account in the United States in a qualified financial
102 institution, consisting of cash, securities, letters of credit or
103 investments of substantially the same character and quality
104 as those which are eligible investments for the capital and
105 statutory reserves of admitted insurers to write like kinds of
106 insurance in this state and, in addition, the trust required by
107 subparagraph (ii) of this subdivision shall satisfy the re-
108 quirements of the standard trust agreement required for
109 listing with the National Association of Insurance Commis-
110 sioners (NAIC) International Insurers Department or any
111 successor thereto; or

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

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

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

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

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

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

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

146 (i) \$5,400,000; or

147 (ii) Thirty percent of the United States surplus lines gross
148 liabilities, excluding aviation, wet marine and transportation
149 insurance liabilities, not to exceed \$60 million, to be deter-
150 mined annually on the basis of accounting practices and
151 procedures substantially equivalent to those promulgated by
152 this state, as of December 31 next preceding the date of
153 determination, where:

154 (I) The liabilities are maintained in an irrevocable trust
155 account in the United States in a qualified financial institu-
156 tion, on behalf of U.S. policyholders consisting of cash,
157 securities, letters of credit or other investments of substan-
158 tially the same character and quality as those which are
159 eligible investments pursuant to article eight of this chapter
160 for the capital and statutory reserves of admitted insurers to

161 write like kinds of insurance in this state. The trust fund,
 162 which shall be included in any calculation of capital and
 163 surplus or its equivalent, shall satisfy the requirements of the
 164 Standard Trust Agreement required for listing with the
 165 NAIC International Insurers Department or any successor
 166 thereto; and

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

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

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

185 186	Year Following Enactment	Trust Fund Requirement
187	1	15% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maxi- mum of \$30 million
188	2	30% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maxi- mum of \$60 million

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

192 (3) In addition to all of the other requirements of this
193 subsection, an insurer not domiciled in the United States or
194 its territories shall be listed on the NAIC's quarterly listing
195 of alien insurers. The commissioner may waive the require-
196 ment in this subdivision or the requirements of subparagraph
197 (ii), paragraph (E), subdivision (2), subsection (d) of this
198 section may be satisfied by an insurer's possessing less than
199 the trust fund amount specified in subparagraph (ii), para-
200 graph (E), subdivision (2), subsection (d) of this section upon
201 an affirmative finding of acceptability by the commissioner
202 if the commissioner is satisfied that the placement of insur-
203 ance with the insurer is necessary and will not be detrimen-
204 tal to the public and the policyholder. In determining
205 whether business may be placed with the insurer, the
206 commissioner may consider such factors as:

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

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

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

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

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

220 (F) The past and projected trend in the size of the com-
221 pany's capital and surplus considering such factors as

222 premium growth, operating history, loss and expense ratios,
223 or other appropriate criteria; and

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

241 (5) In addition to meeting the requirements in subdivisions
242 (1) to (4) of this subsection an insurer shall be an eligible
243 surplus lines insurer if it appears on the most recent list of
244 eligible surplus lines insurers published by the commissioner
245 from time to time but at least annually. Nothing in this
246 subdivision shall require the commissioner to place or
247 maintain the name of any nonadmitted insurer on the list of
248 eligible surplus lines insurers.

249 (6) Notwithstanding subsection (a) of this section, only that
250 portion of any risk eligible for export for which the full
251 amount of coverage is not procurable from listed eligible
252 surplus lines insurers may be placed with any other
253 nonadmitted insurer which does not appear on the list of
254 eligible surplus lines insurers published by the commissioner
255 pursuant to subdivision (5) of this subsection but nonetheless
256 meets the requirements set forth in subdivisions (1) and (2),
257 subsection (d) of this section and any regulations of the
258 commissioner. The surplus lines licensee seeking to provide

259 coverage through an unlisted nonadmitted insurer shall
260 make a filing specifying the amounts and percentages of each
261 risk to be placed, and naming the nonadmitted insurers with
262 which placement is intended. Within thirty days after
263 placing the coverage, the surplus lines licensee shall also
264 send written notice to the insured that the insurance, or a
265 portion thereof, has been placed with the nonadmitted
266 insurer.

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

§33-12C-7. Surplus lines tax.

1 (a) In addition to the full amount of gross premiums
2 charged by the insurer for the insurance, every person
3 licensed pursuant to section eight of this article shall collect
4 and pay to the commissioner a sum equal to four and fifty-
5 five one-hundredths percent of the gross premiums and gross
6 fees charged, less any return premiums, for surplus lines
7 insurance provided by the licensee pursuant to the license.
8 Where the insurance covers properties, risks or exposures
9 located or to be performed both in and out of this state and
10 this state is the insured's home state, the sum payable shall
11 be computed on that portion of the gross premiums allocated
12 to this state, plus an amount equal to the portion of the gross
13 premiums allocated to other states or territories on the basis
14 of the tax rates and fees applicable to properties, risks or
15 exposures located or to be performed outside of this state,
16 and less the amount of gross premiums allocated to this state
17 and returned to the insured due to cancellation of policy:
18 *Provided*, That the surcharge imposed by section thirty-
19 three, article three of this chapter on surplus lines policies
20 shall no longer be effective with respect to premium attribut-
21 able to coverage under such policies for periods after June
22 30, 2011: *Provided, however*, That twelve per cent of taxes
23 collected under this subsection with respect to premium
24 attributable to coverage under such policies after June 30,
25 2011, shall be disbursed and distributed in accordance with
26 subsection (d), section thirty-three, article three of this

27 chapter and eighty-eight per cent in accordance with
28 subdivision two, subsection (f) of this section. The tax on any
29 portion of the premium unearned at termination of insurance
30 having been credited by the state to the licensee shall be
31 returned to the policyholder directly by the surplus lines
32 licensee or through the producing broker, if any.

33 (b) The individual insurance producer may not:

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

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

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

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

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

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

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

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

53 (2) Any fee charged;

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

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

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

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

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

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

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

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

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

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

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

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

120 (B) Where the allocation schedule does not identify a
121 classification appropriate to the coverage, the commissioner
122 may give significant weight to documented evidence of the

123 underwriting bases and other criteria used by the insurer.
124 The commissioner may also consider other available infor-
125 mation to the extent sufficient and relevant, including the
126 percentage of the insured's physical assets in this state, the
127 percentage of the insured's sales in this state, the percentage
128 of income or resources derived from this state, and the
129 amount of premium tax paid to another jurisdiction for the
130 policy.

131 (h) The commissioner is authorized to participate in a
132 clearinghouse established through NIMA or in a similar
133 allocation procedure for the purpose of collecting and
134 disbursing to signatory states any funds collected pursuant
135 to this section that are allocable to properties, risks or
136 exposures located or to be performed outside of this state:
137 *Provided*, That twelve percent of any moneys received from
138 a clearinghouse or through a similar allocation procedure is
139 subject to the provisions of subsection (d), section thirty-
140 three, article three of this chapter and eighty-eight per cent
141 of such moneys is subject to the provisions of subdivision (2),
142 subsection (f) of this section: *Provided, however*, That to the
143 extent other states where portions of the properties, risks or
144 exposures reside have failed to enter into NIMA or a similar
145 allocation procedure with this state, the net premium tax
146 collected shall be retained by this state and shall be dis-
147 bursed and distributed in the same manner as moneys
148 received through a clearinghouse or similar allocation
149 procedure.

150 (i) Collection of tax.

151 If the tax owed by a surplus lines licensee under this
152 section has been collected and is not paid within the time
153 prescribed, the same shall be recoverable in a suit brought
154 by the commissioner against the surplus lines licensee. The
155 commissioner may charge interest for any unpaid tax, fee,
156 financial assessment or penalty, or portion thereof: *Provided*,
157 That interest may not be charged on interest. Interest shall
158 be calculated using the annual rates which are established

159 by the Tax Commissioner pursuant to section seventeen-a of
160 article ten, chapter eleven of this code and shall accrue daily.

§33-12C-8. Surplus lines licenses.

1 (a) No person shall procure a contract of surplus lines
2 insurance with a nonadmitted insurer for an insured whose
3 home state is West Virginia unless the person possesses a
4 current surplus lines insurance license issued by the commis-
5 sioner.

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

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

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

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

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

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

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

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

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect July 1, 2011.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
Acting President of the Senate

[Signature]
.....
Speaker of the House of Delegates

2011 APR -5 PM 3:10
OFFICE OF THE
SECRETARY OF STATE

The within *is approved* this the *5th*
Day of *April*, 2011.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 29 2011

Time 10:10am