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LC01774

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO INSURANCE

Introduced By: Representative Michael J. Marcello

Date Introduced: March 17, 2011

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. The title of Chapter 27-3 of the General Laws entitled "Agents, Brokers,
2 and Solicitors" is hereby amended to read as follows:

3 ~~CHAPTER 27-3~~

4 ~~Agents, Brokers, and Solicitors~~

5 CHAPTER 27-3

6 SURPLUS LINES INSURANCE

7 SECTION 2. Chapter 27-3 of the General Laws entitled "Agents, Brokers, and Solicitors"
8 is hereby amended by adding thereto the following section:

9 **27-3-37.1. Definitions.** – As used in this chapter:

10 (1) "Admitted insurer" means an insurer licensed to operate an insurance business in this
11 state.

12 (2) "Capital" as used in the financial requirements of section 27-3-40, means funds paid
13 in for stock or other evidence of ownership.

14 (3) "Commissioner" means the insurance commissioner of Rhode Island or his or her
15 designee, deputies or staff, or the commissioner, director or superintendent of insurance in any
16 other state.

17 (4) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus
18 lines licensee may place surplus lines insurance pursuant to section 27-3-38.

19 (5) "Home State" means, with respect to an insured:

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

3 (ii) If one hundred percent (100%) of the insured risk is located out of the state referred to
4 in subparagraph (i), the state to which the greatest percentage of the insured's taxable premium
5 for that insurance contract is allocated.

6 (6) "Principal place of business" means, with respect to determining the home state of the
7 insured:

8 (a) The state where the insured maintains its headquarters and where the insured's high-
9 level officers direct, control and coordinate the business activities; or

10 (b) If the insured's high-level officers direct, control and coordinate the business activities
11 in more than one state, the state in which the greatest percentage of the insured's taxable premium
12 for that insurance contract is allocated; or

13 (c) If the insured maintains its headquarters or the insured's high-level officers direct,
14 control and coordinate the business activities outside any state the state to which the greatest
15 percentage of the insured's taxable premium for that insurance contract is allocated.

16 (7) "Principal residence" means, with respect to determining the home state of the
17 insured:

18 (a) The state where the insured resides for the greatest number of days during a calendar
19 year; or

20 (b) If the insured's principal residence is located outside any state, the state to which the
21 greatest percentage of the insured's taxable premium for that insurance contract is allocated.

22 (c) Affiliated groups. If more than one insured for an affiliated group are named insureds
23 on a single nonadmitted insurance contract, the term "home state" means the home state, as
24 determined above, of the member of the affiliated group that has the largest percentage of
25 premium attributed to it under such insurance contract.

26 (d) Group insurance. When the group policyholders pays one hundred percent (100%) of
27 the premium from its own funds, the term "home state" means the home state, as determined
28 above, of the group policyholder. When the group policyholder does not pay one hundred percent
29 (100%) of the premium from its own funds, the term "home state" means the home state, as
30 determined above, of the group member.

31 (8) "Insurer" means any person, corporation, association, partnership, reciprocal
32 exchange, interinsurer, Lloyds insurer, insurance exchange syndicate, fraternal benefit society,
33 and any other legal entity engaged in the business of insurance.

34 (9) "NAIC" means the National Association of Insurance Commissioners.

1 (10) "Nonadmitted insurer" means an insurer not licensed to operate an insurance
2 business in this state.

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

5 (12) "Surplus" as used in the financial requirements of section 27-3-40, means funds over
6 and above liabilities and capital of the company for the protection of policyholders.

7 (13) "Surplus lines insurance" means any property and casualty insurance in this state on
8 properties, risks or exposures, located or to be performed in this state, permitted to be placed
9 through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance,
10 pursuant to section 27-3-40.

11 (14) "Surplus lines licensee" means an individual, firm or corporation licensed under
12 section 27-3-38 to place insurance on properties, risks or exposures located or to be performed in
13 this state with nonadmitted insurers eligible to accept such insurance.

14 **27-3-37.2. Tax on surplus lines insurance.** – (a) In addition to the full amount of gross
15 premiums charged by the insurer for the insurance, every person licensed pursuant to section 27-
16 3-38 shall collect and pay to the tax administrator a sum computed at the rate of four percent (4%)
17 of gross premiums charged, less any return premiums, for surplus lines insurance provided by the
18 licensee pursuant to the license.

19 (b) Where the insurance covers properties, risks or exposures located or to be performed
20 both in and out of this state, the sum payable shall be computed based on:

21 (1) An amount equal to four percent (4%) on that portion of the gross premiums allocated
22 to this state pursuant to subsection (d); plus

23 (2) An amount equal to the portion of the premiums allocated to other states or territories
24 on the basis of the tax rates and fees applicable to properties, risks or exposures located or to be
25 performed outside of this state pursuant to subsection (d); less

26 (3) The amount of gross premiums allocated to this state and returned to the insured. The
27 tax on any portion of the premium unearned at termination of insurance having been credited by
28 the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee
29 or through the producing broker, if any. The surplus lines licensee is prohibited from rebating, for
30 any reason any part of the tax.

31 (c)(1) For the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of
32 2010, the commissioner is authorized to enter into a multi-state surplus lines agreement in order
33 to facilitate the collection, allocation and disbursement of premium taxes attributable to the
34 placement of nonadmitted insurance; provide for uniform methods of allocation and reporting

1 among nonadmitted insurance risk classifications; and share information among states relating to
2 nonadmitted insurance premium taxes.

3 (2) The commissioner is authorized to participate in the clearinghouse established
4 through a multi-state surplus lines agreement for the purpose of collecting and disbursing to
5 reciprocal states any funds collected applicable to properties, risks or exposures located or to be
6 performed outside of this state. To the extent that other states where portions of the properties,
7 risks or exposures reside have failed to enter into a compact or reciprocal allocation procedure
8 with this state, the net premium tax collected shall be retained by this state.

9 (3) The commissioner is authorized to utilize the allocation schedule included in a multi-
10 state surplus lines agreement for the purpose of allocating risk and computing the tax due on the
11 portion of premium attributable to each risk classification and to each state where properties, risks
12 or exposures are located.

13 (4) In order to participate in a multi-state surplus lines agreement, the commissioner is
14 authorized to establish a uniform, statewide rate of taxation applicable to lines of nonadmitted
15 insurance subject to the agreement. This rate shall encompass all existing rates of taxation, fees
16 and assessments imposed by this state and any political subdivision hereof, and the commissioner
17 shall document the method by which the statewide rate is calculated. The commissioner is
18 authorized to receive any monies obtained through the clearinghouse established through the
19 agreement for the collection and disbursement of such funds on behalf of any agency of political
20 subdivision of this state and shall transfer monies to any agency or political subdivision of this
21 state and shall transfer monies to any agency or political subdivision in proportion to the
22 inclusion of any rate of taxation, fee or assessment in the statewide rate.

23 (5) If the tax owed by a surplus lines broker under this section has been collected and is
24 not paid within the time prescribed, the same shall be recoverable in a suit brought by the
25 commissioner against the surplus lines licensee and the surety on the bond filed under section 27-
26 3-39. The tax administrator may charge interest at the rate established in statutes governing
27 unpaid taxes for the unpaid tax.

28 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO INSURANCE

1 This act would provide the authority necessary to allow Rhode Island enter into a
2 multistate surplus lines agreement. The Nonadmitted and Reinsurance reform Act of 2010
3 ("NRRA") enacted as part of the Dodd/Frank Wall Street Reform and Consumer Protection Act
4 of 2010 requires that the states come to an agreement and establish a methodology to distribute
5 premium tax on multistate surplus line risks. This legislation will allow Rhode Island to
6 participate in a clearinghouse which accomplishes this objective. If the various states do not come
7 to an agreement the "home state" of the insured will be allowed to collect and retain all of the tax.
8 Small states like Rhode Island are likely to lose revenue if the issue is not addressed.

9 This act would take effect upon passage.

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