

SUBCHAPTER I—NONADMITTED
INSURANCE

§ 8201. Reporting, payment, and allocation of premium taxes

(a) Home State's exclusive authority

No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) Allocation of nonadmitted premium taxes

(1) In general

The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) Effective date

Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on July 21, 2010, shall apply to any premium taxes that, on or after July 21, 2010, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) Report

Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) Nationwide system

The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) Allocation based on tax allocation report

To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

(Pub. L. 111-203, title V, § 521, July 21, 2010, 124 Stat. 1589.)

EFFECTIVE DATE

Pub. L. 111-203, title V, § 512, July 21, 2010, 124 Stat. 1589, provided that: "Except as otherwise specifically provided in this subtitle [see Short Title note below], this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle [July 21, 2010]."

SHORT TITLE

Pub. L. 111-203, title V, § 511, July 21, 2010, 124 Stat. 1589, provided that: "This subtitle [subtitle B (§§ 511-542) of title V of Pub. L. 111-203, enacting this chapter and provisions set out as a note under this section] may be cited as the 'Nonadmitted and Reinsurance Reform Act of 2010'."

§ 8202. Regulation of nonadmitted insurance by insured's home State

(a) Home State authority

Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) Broker licensing

No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) Enforcement provision

With respect to section 8201 of this title and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) Workers' compensation exception

This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

(Pub. L. 111-203, title V, § 522, July 21, 2010, 124 Stat. 1590.)

§ 8203. Participation in national producer database

After the expiration of the 2-year period beginning on July 21, 2010, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

(Pub. L. 111-203, title V, § 523, July 21, 2010, 124 Stat. 1590.)

§ 8204. Uniform standards for surplus lines eligibility

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for,

nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 8201(b) of this title that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

(Pub. L. 111-203, title V, § 524, July 21, 2010, 124 Stat. 1590.)

§ 8205. Streamlined application for commercial purchasers

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

(Pub. L. 111-203, title V, § 525, July 21, 2010, 124 Stat. 1591.)

§ 8206. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Admitted insurer

The term “admitted insurer” means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) Affiliate

The term “affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) Affiliated group

The term “affiliated group” means any group of entities that are all affiliated.

(4) Control

An entity has “control” over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) Exempt commercial purchaser

The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after July 21, 2010, and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) Home State

(A) In general

Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

(i) 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

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) Affiliated groups

If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.