

mitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) Non-Admitted Insurance Model Act

The term “Non-Admitted Insurance Model Act” means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) Nonadmitted insurer

The term “nonadmitted insurer”—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 3901(a)(4) of this title.

(12) Premium tax

The term “premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) Qualified risk manager

The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National

Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) Reinsurance

The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) Surplus lines broker

The term “surplus lines broker” means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(16) State

The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(Pub. L. 111-203, title V, §527, July 21, 2010, 124 Stat. 1591.)

Statutory Notes and Related Subsidiaries

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—REINSURANCE

§ 8221. Regulation of credit for reinsurance and reinsurance agreements

(a) Credit for reinsurance

If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the in-

suror's ceded risk, then no other State may deny such credit for reinsurance.

(b) Additional preemption of extraterritorial application of State law

In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this subchapter; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

(Pub. L. 111-203, title V, § 531, July 21, 2010, 124 Stat. 1595.)

§ 8222. Regulation of reinsurer solvency

(a) Domiciliary State regulation

If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) Nondomiciliary States

(1) Limitation on financial information requirements

If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) Receipt of information

No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

(Pub. L. 111-203, title V, § 532, July 21, 2010, 124 Stat. 1595.)

§ 8223. Definitions

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

(1) Ceding insurer

The term “ceding insurer” means an insurer that purchases reinsurance.

(2) Domiciliary State

The terms “State of domicile” and “domiciliary State” mean, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) NAIC

The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(4) Reinsurance

The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) Reinsurer

(A) In general

The term “reinsurer” means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) Determination

A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(6) State

The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(Pub. L. 111-203, title V, § 533, July 21, 2010, 124 Stat. 1595.)

SUBCHAPTER III—RULE OF CONSTRUCTION

§ 8231. Rule of construction

Nothing in this chapter or the amendments made by this subtitle¹ shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this chapter and any amendments to this chapter and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

(Pub. L. 111-203, title V, § 541, July 21, 2010, 124 Stat. 1596.)

Editorial Notes

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§ 511-542) of title V of Pub. L. 111-203, which enacted this chapter and provisions set out as notes under section 8201 of this title. Subtitle B did not make any amendments.

§ 8232. Severability

If any section or subsection of this chapter, or any application of such provision to any person

¹ See References in Text note below.