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### MISSISSIPPI DEPARTMENT OF INSURANCE BULLETIN 2011-1 April 11, 2011

### HOUSE BILL 785, 2011 REGULAR SESSION MISSISSIPPI NONADMITTED INSURANCE STATUTES

#### **I. Purpose**

On March 11, 2011, House Bill 785 became law. This bill was passed by the Mississippi Legislature to conform Mississippi's surplus lines statutes to the requirements of the federal Nonadmitted and Reinsurance Reform Act ("NRRA"). The NRRA was signed into law by President Barack Obama on July 21, 2010, as part of the Dodd-Frank Wall Street Reform Bill. The intent behind the NRRA was to make the regulation of the surplus lines market, also known as the nonadmitted market, more efficient and more uniform on a national basis.

Under the NRRA, the states are required to establish uniform procedures for the collection of premium taxes and fees due from surplus lines policies for multi-state risks. The NRRA also requires that the states adopt certain uniform licensing requirements and standards for surplus lines insurers and insurance producers, and that the states adopt portions of the NAIC's Nonadmitted Insurance Model Act.

The Mississippi Department of Insurance ("Department") is issuing this Bulletin to highlight some of the more significant changes implemented by House Bill 785, which became effective upon passage. A copy of HB 785 is attached hereto as Attachment 1.

#### **II. Premium Tax and Fee Collection for Multi-State Risk Policies**

As noted above, the NRRA was passed by Congress and became law on July 21, 2010, bringing sweeping reforms to the U.S. surplus lines market. If the states fail to establish uniform procedures within 330 days of the passage of the NRRA, then the premium taxes and fees due from surplus lines policies for multi-state risks will only be received by the home state of the insured. In order to comply with the NRRA in establishing uniform procedures, state regulators are working through the National Association of Insurance Commissioners ("NAIC") to adopt a compact or agreement which would allow the states to collect and allocate premium taxes and fees through a central clearinghouse where a multi-state risk is involved. The adoption of such an

agreement by the states would meet the federal requirement of uniformity, and would allow the participating states to continue to receive their portion of premium taxes and fees due from multi-state surplus lines policies.

The Department is working closely with the NAIC on this matter, and when an agreement is adopted the Department will issue another Bulletin advising surplus lines insurers and producers of the terms of that agreement.

### **III. Premium Tax and Fee Collection for Single State Risk Policies**

HB 785 will not affect how premium taxes and fees for single state risk policies are collected. The Mississippi Surplus Lines Association (“MSLA”) will continue to collect the taxes and fees associated with those policies.

### **IV. Independently Procured Insurance**

An insured who does not purchase insurance through a surplus lines insurance producer and directly or independently procures or renews coverage from a nonadmitted carrier is subject to the 4% premium tax and 5% nonadmitted policy fee. The insured is responsible for payment of these taxes and fees.

### **V. Eligibility of Surplus Lines Insurers**

HB 785 adopts portions of the NAIC Nonadmitted Insurance Model Act regarding new capital and surplus requirements for surplus lines insurers. A surplus lines insurer should refer to HB 785 to verify that they meet the new capital and surplus requirements.

### **VI. Licensing Requirements for Surplus Lines Insurance Producers**

Surplus lines insurance may be placed by a surplus lines insurance producer if the following conditions are met:

- The insurer is an eligible surplus lines insurer;
- The insurer is authorized to write the line of insurance in its domiciliary jurisdiction; and,
- After having conducted a diligent search of admitted insurers in this state who are actually writing the type of insurance needed, the insurance producer cannot place the risk in the admitted market.

A nonresident person may receive a surplus lines insurance producer license in this state if the following conditions are met:

- The nonresident person is currently licensed as a surplus lines insurance producer or its equivalent in his or her home state;
- The nonresident person has submitted the proper request for licensure and has paid the biennial fee of One Hundred Dollars (\$100.00); and

- The nonresident person's home state awards nonresident surplus lines licenses to residents of this state on the same basis.

A nonresident person is not required to hold an insurance producer license with a property, casualty and/or personal lines line of authority if the person is not required to perform a diligent search of admitted insurers as set forth in Miss. Code Ann. § 83-21-23.

A nonresident surplus lines insurance producer or a resident surplus lines insurance producer that moves from one state to another must file a change of address and provide certification from the new resident state within thirty (30) days of the change of the legal residence. No additional fee or license application is required.

HB 785 also provides that the commissioner may deny, suspend, revoke or refuse the license of a surplus lines insurance producer or levy a civil penalty upon certain violations. The violations are the same as are found in the Uniform Producer Licensing Act, specifically Miss. Code Ann. § 83-17-71.

## **VII. Exempt Commercial Purchaser**

A surplus lines insurance producer is not required to perform a due diligence search when the surplus lines insurance producer is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser under the conditions provided in Section 5(2) of HB 785. A surplus lines insurance producer should review Section 5(2) of HB 785 to become familiar with the requirements for this exemption.

## **VIII. Nonadmitted Policy Fee**

In order to satisfy the uniformity requirements of the NRRA, House Bill 785 extends the nonadmitted policy fee, or as it is commonly referred to, the Windpool Assessment Fee, [Miss. Code Ann. § 83-34-4 (Supp. 2010)] to all surplus lines insurance policies written in Mississippi. Until the passage of House Bill 785, the nonadmitted policy fee was required only on real property and content risks. The 5% nonadmitted policy fee will now be imposed on nonadmitted insurance policies for any and all risks located within this state placed in the nonadmitted market. The imposition of this fee only applies to new or renewal policies; no midterm adjustments are required.

The extension of the nonadmitted policy fee to all risks in the nonadmitted market became effective on March 11, 2011. The Department expects full systems compliance for the collection of this fee by June 1, 2011.

## IX. Calculation of Taxes and Fees

In calculating the taxes and fees, the calculation would be the premium and any company or producer fee added together and multiplied by the amount of the combined premium tax and statutory fees.

$$[\text{Premium} + \text{Company/ Producer Fee}] \times [\text{Premium Tax (4\%)} + \text{Nonadmitted Policy Fee/Windpool Assessment Fee (5\%)} + \text{Stamping Fee (.25\%)} \text{ (if applicable)}] = \text{Amount Of Tax/Fee Owed.}$$

As an example, on a home state policy where a stamping fee will be collected and the premium is \$1000 and a producer policy fee of \$100 is imposed, the calculation to determine the taxes and fees owed would be as follows:

$$[\text{Premium (\$1000)} + \text{Producer Policy Fee (\$100)}] \times [\text{Premium Tax (4\%)} + \text{Nonadmitted Policy Fee/Windpool Assessment Fee (5\%)} + \text{Stamping Fee (.25\%)}] = \text{Tax/Fee Owed}$$
$$[\$1000 + \$100] \times [.04 + .05 + .0025] = \text{Tax/Fee Owed}$$
$$\$1100 \times .0925 = \$101.75$$

In this example, \$101.75 would be remitted to MSLA for payment of the statutory taxes and fees due.

If there are any questions concerning this Bulletin, please contact the Department at (601) 359-3569.

  
MIKE CHANEY  
COMMISSIONER OF INSURANCE

Chapter No. \_\_\_\_\_  
11/HR40/R886.2  
Sec 1 CT

*HOUSE BILL NO. 785*

Originated in House Don Richardson Clerk

HOUSE BILL NO. 785

AN ACT TO AMEND SECTION 83-21-17, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS OF LAWS REGARDING THE ELIGIBILITY OF NONADMITTED INSURERS TO WRITE BUSINESS IN THE STATE OF MISSISSIPPI; TO CREATE A NEW SECTION OF LAW TO BE CODIFIED AS SECTION 83-21-18, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ENTER INTO AN AGREEMENT WITH OTHER STATES TO ESTABLISH PROCEDURES FOR ALLOCATING PREMIUM TAXES; TO AMEND SECTION 83-21-19, MISSISSIPPI CODE OF 1972, TO REVISE THE LICENSING PROVISIONS FOR RESIDENT AND NONRESIDENT SURPLUS LINES INSURANCE PRODUCERS; TO AMEND SECTION 83-21-21, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT STAMPING PROCEDURES MAY APPLY TO THE REPORTING, PAYMENT, COLLECTION AND ALLOCATION OF PREMIUM TAXES FOR NONADMITTED INSURANCE CONSISTENT WITH ANY AGREEMENT, COMPACT OR PROCEDURES ENTERED INTO BY THE COMMISSIONER OF INSURANCE; TO AMEND SECTION 83-21-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT, WHEN PLACING NONADMITTED INSURANCE FOR AN EXEMPT COMMERCIAL PURCHASER, A SURPLUS LINES INSURANCE PRODUCER IS NOT REQUIRED TO MAKE A DUE DILIGENCE SEARCH TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE CAN BE OBTAINED FROM ADMITTED INSURERS; TO AMEND SECTIONS 83-21-25, 83-21-27 AND 83-21-29, MISSISSIPPI CODE OF 1972, TO MAKE CERTAIN TECHNICAL AND NONSUBSTANTIVE CHANGES; TO AMEND SECTION 83-34-4, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT EACH INSURED IN THIS STATE WHO DIRECTLY PROCURES OR RENEWS INSURANCE WITH A NONADMITTED INSURER ON PROPERTIES, RISKS OR EXPOSURES LOCATED IN THIS STATE, OTHER THAN INSURANCE PROCURED THROUGH A SURPLUS LINES LICENSEE, SHALL BE SUBJECT TO THE NONADMITTED POLICY FEE WHICH SHALL BE PAID PURSUANT TO THE PROCEDURES PROVIDED FOR PREMIUM TAXES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 83-21-17, Mississippi Code of 1972, is amended as follows:

83-21-17. (1) The Commissioner of Insurance shall annually promulgate a list of nonadmitted insurers found eligible for writing business in the State of Mississippi, provided each such insurer qualifies under one (1) of the following paragraphs:

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

(i) The same requirements as to capital and surplus as is required of a company licensed to do business in the State of Mississippi; or

(ii) Fifteen Million Dollars (\$15,000,000.00).

(b) The requirements of paragraph (a) of this subsection may be satisfied by an insurer's possessing of 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 Four Million Five Hundred Thousand Dollars (\$4,500,000.00).

(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 incorporated and unincorporated insurers:

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

(ii) In addition, the group shall establish and maintain in trust a surplus in the amount of One Hundred Million Dollars (\$100,000,000.00), 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 regulation and control by the group's domiciliary regulator as are the unincorporated members; and

(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 paragraph shall satisfy the requirements of the Standard Trust Agreement required for listing with the National Association of Insurance Commissioners' (NAIC) International Insurers Department.

(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 (3) 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 Ten Billion Dollars (\$10,000,000,000.00); and

(ii) The group shall maintain in trust a surplus in the amount of One Hundred Million Dollars (\$100,000,000.00), 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 Twenty-five Million Dollars (\$25,000,000.00) per company; and

(iv) The trust funds shall satisfy the requirements of the Standard Trust Agreement requirement for listing with the NAIC's International Insurers Department, 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; and

(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.

(e) Except for a plan complying with paragraphs (c) or (d) of this subsection, an insurer not domiciled in one (1) of the United States or its territories shall satisfy the capital and surplus requirements of paragraph (a) and shall have in force a trust fund of not less than the greater of:

(i) Five Million Four Hundred Thousand Dollars (\$5,400,000.00); or

(ii) Thirty percent (30%) of the United States surplus lines gross liabilities, excluding aviation, wet marine and transportation insurance liabilities, not to exceed Sixty Million Dollars (\$60,000,000.00) 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:

1. The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of United States policyholders consisting of cash, securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments under Section 83-19-51 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's International Insurers Department; and

2. 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 Five Million Four Hundred Thousand Dollars (\$5,400,000.00) or thirty percent (30%) of the insurer's current gross United States surplus lines liabilities, excluding aviation, wet marine and transportation insurance liabilities; and

3. 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 United States 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 (2) years from the date of enactment to meet the requirements of paragraph (e) of this subsection as follows:

<u>Year Following Enactment</u>	<u>Trust Fund Requirement</u>
<u>1</u>	<u>Fifteen percent (15%) of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of Thirty Million Dollars (\$30,000,000.00)</u>
<u>2</u>	<u>Thirty percent (30%) of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of Sixty</u>

Million Dollars

(\$60,000,000.00)

(g) The commissioner shall have the authority to adjust, in response to inflation, the trust fund amounts required by paragraph (e) of this subsection.

(h) An alien insurer shall be listed with the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners. \* \* \*

(2) The Commissioner of Insurance is specifically vested with authority to promulgate such rules and regulations as deemed necessary to carry out the provisions hereof.

(3) The commissioner shall publish a list of nonadmitted insurers found eligible for writing business in the State of Mississippi on a nonadmitted basis. The commissioner may, by giving seven (7) days' notice, at any time remove a nonadmitted insurer from such eligible list when it appears that such insurer no longer meets the requirements of the statute or regulations of the commissioner. When a nonadmitted insurer is placed upon or removed from the eligible list, all surplus lines insurance producers holding licenses under Sections 83-21-17 through 83-21-31 shall be notified of such eligibility or removal. \* \* \*

(4) Each nonadmitted insurer shall annually pay a filing fee of Five Hundred Dollars (\$500.00) in order to be eligible for certification as a nonadmitted insurer.

(5) (a) Each insured in this state who directly procures or renews insurance with a nonadmitted insurer on properties, risks or exposures located or to be performed, in whole or in part, in this state, other than insurance procured through a surplus lines licensee, shall, within thirty (30) days after the date the insurance was so procured or renewed, file a written report with the commissioner, upon forms prescribed by the commissioner, showing the name and address of the insured or insureds, name and

address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged, and additional pertinent information reasonably requested by the commissioner.

(b) Gross premiums charged for the independently procured insurance, less any return premiums, are subject to the same premium tax rate as set forth in Section 83-21-25. At the time of filing the report required in paragraph (a) of this subsection (5), the insured shall pay the tax to the commissioner.

SECTION 2. The following shall be codified as Section 83-21-18, Mississippi Code of 1972:

83-21-18. (1) The Commissioner of Insurance may enter into an agreement, compact, or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state according to the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA), which was incorporated intact into the Dodd-Frank Financial Reform Bill, H.R. 4173, which provides that only an insured's "home state" may require a premium tax payment for nonadmitted insurance, and that the placement of all nonadmitted insurance shall be subject solely to the statutory and regulatory requirements imposed by the insured's "home state."

(a) The agreement, compact, or procedures may provide for the adoption of nationwide uniform requirements, forms and procedures which provide for the reporting, payment, collection and allocation of premium taxes for nonadmitted insurance consistent with the NRRRA.

(b) This agreement may allow the commissioner to collect and disburse to reciprocal states any funds collected under a policy that may be allocated to another reciprocal state where the insurance covers properties, risks or exposures located or to be performed both in and out of this state. The sum payable may include the amount of gross premiums and fees allocated to this state, plus an amount equal to the portion of premium and

fees 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. To the extent that other states where portions of the properties, risks or exposures reside have failed to enter into a compact or reciprocal allocation procedures with this state, the net premium tax may be retained by this state.

(c) The commissioner is authorized to enter into a cooperative agreement or interstate agreement or compact to establish additional and alternative nationwide uniform eligibility requirements that shall be applicable to nonadmitted insurers domiciled in another state or territory of the United States.

(2) For the purposes of this chapter, the following definitions shall apply:

(a) "Home state" means:

(i) In general, except as provided in subparagraph (ii), the term "home state" means, with respect to an insured:

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 (100%) of the insured risk is located outside the state referred to in item 1 of this subparagraph (i), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(ii) If more than one (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 according to subparagraph (i)1 of this paragraph (a), of the member of the affiliated group that the largest percentage of premium attributed to it under such insurance contract.

(b) "Independently procured insurance" means any property and casualty insurance permitted in a state to be placed directly with a nonadmitted insurer eligible to accept such business.

(c) "Multistate risk" means a risk covered by a nonadmitted insurer with insured exposures in more than one (1) state.

(d) "Nonadmitted insurance" means any property and casualty insurance permitted in a state to be placed directly or through a surplus lines insurance producer with a nonadmitted insurer eligible to accept such insurance.

(e) "Principal place of business" means, with respect to determining the home state of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities.

(f) "Principal residence" means, with respect to determining the home state of the individual, the state where the individual resides for the greatest number of days during a calendar year.

(g) "Single-state risk" means a risk covered by a nonadmitted insurer with insured exposures in only one (1) state.

(h) "Surplus lines insurance" means any property and casualty insurance permitted in a state to be placed through a surplus lines insurance producer with a nonadmitted insurer eligible to accept such insurance.

(i) "Surplus lines insurance producer" means an individual who is licensed in this state to sell, solicit or negotiate insurance on properties, risks or exposures located or to be performed in this state with nonadmitted insurers.

(3) The provisions set forth in Sections 83-21-19 through 83-21-27 shall only apply if Mississippi is the home state as defined herein.

SECTION 3. Section 83-21-19, Mississippi Code of 1972, is amended as follows:

83-21-19. (1) Surplus lines insurance may be placed by a surplus lines insurance producer if:

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

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

(c) The full amount or type 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 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; and

(d) All other requirements as set forth by law are met.

(2) The Commissioner of Insurance, upon the biennial payment of a fee of One Hundred Dollars (\$100.00) and submission of a completed license application on a form approved by the commissioner, may issue a surplus lines insurance producer license to a qualified holder of an insurance producer license with a property, casualty and/or personal lines line of authority, who is regularly commissioned to represent two (2) or more fire and casualty \* \* \* insurance companies licensed to do business in the state \* \* \*.

(3) The privilege license shall continue from the date of issuance until the last day of the month of the licensee's birthday in the second year following issuance or renewal of the license, with a minimum term of twelve (12) months.

(4) A nonresident person shall receive a surplus lines insurance producer license if:

(a) The person is currently licensed as a surplus lines insurance producer or equivalent and in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the biennial fee of One Hundred Dollars (\$100.00); and

(c) The person's home state awards nonresident surplus lines licenses to residents of this state on the same basis.

(5) A nonresident person shall not be required to hold an insurance producer license with a property, casualty and/or personal lines line of authority if the person is not required to perform a diligent search of admitted insurers as set forth in Section 83-21-23.

(6) The commissioner may verify a person's licensing status through the National Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(7) A nonresident surplus lines insurance producer licensee who moves from one (1) state to another state, or a resident surplus lines licensee who moves from this state to another state, shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.

(8) The commissioner may deny, suspend, revoke or refuse the license of a surplus lines insurance producer licensee and/or levy a civil penalty in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) per violation, after notice and hearing as provided hereunder, for one or more of the following grounds:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;



(b) Violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing the business of insurance;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation; or

(n) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(9) If the action by the commissioner is to nonrenew, suspend, revoke or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within ten (10) days for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty (30) days.

(10) Every surplus lines insurance contract procured and delivered according to Sections 83-21-17 through 83-21-31 shall have stamped upon it in bold ten-point type, and bear the name of the surplus lines insurance producer who procured it, the following: "NOTE: This insurance policy is issued pursuant to Mississippi law covering surplus lines insurance. The company issuing the policy is not licensed by the State of Mississippi, but is authorized to do business in Mississippi as a nonadmitted company. The policy is not protected by the Mississippi Insurance Guaranty Association in the event of the insurer's insolvency." No diminution of the license fee herein provided shall occur as to any license effective after January 1 of any year. \* \* \*

SECTION 4. Section 83-21-21, Mississippi Code of 1972, is amended as follows:

83-21-21. (1) The Commissioner of Insurance may establish a stamping procedure for all eligible nonadmitted/surplus lines insurance policies sold on risks subject to the payment of premium taxes to the State of Mississippi.

(2) The Commissioner of Insurance may rely upon the advice and assistance of a duly constituted association of surplus lines insurance producers in carrying out the purposes of this chapter, if the association files with the commissioner:

(a) A copy of the association's constitution and articles of agreement of association or the association's

certificate of incorporation and bylaws and any rules and regulations governing the association's activities;

(b) A list of the association's members; and

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued by the commissioner may be served.

(3) The Commissioner of Insurance may examine the association's records concerning the functions or duties performed on behalf of the commissioner by the association.

(4) The association shall provide a means for the examination of all surplus lines coverages written to determine whether such coverages comply with the law and such rules or regulations as may be issued by the Commissioner of Insurance.

(5) The Commissioner of Insurance may refuse to accept, or may suspend or revoke the acceptance of, an association for any of the following reasons:

(a) It reasonably appears that the association will not be able to carry out the purposes of this chapter;

(b) The association does not maintain and enforce rules and regulations which will ensure that members of the association and persons associated with those members will comply with this chapter, other applicable state law or rules or regulations promulgated under either;

(c) The rules or regulations of the association do not ensure a fair representation of its members in the selection of directors and in the administration of its affairs;

(d) The rules or regulations of the association do not provide for an equitable allocation of reasonable dues, fees and other charges among members;

(e) The rules or regulations of the association impose an undue burden on competition; or

(f) The association fails to meet other applicable requirements prescribed in this chapter.

(6) A surplus lines insurance producer shall cooperate with the association and the Commissioner of Insurance in fulfilling the surplus lines agent's statutory responsibility under this chapter.

(7) Upon request from the association, the Commissioner of Insurance may approve the levy of an examination fee of not more than one percent (1%) of premiums charged under this chapter for the operation of the association to the extent that such operation relieves the commissioner of duties otherwise required of the Commissioner of Insurance under this chapter.

(8) The association may revoke the membership of, and the Commissioner of Insurance may revoke the license in this state of, any licensee who fails to pay the examination fee when due, if the examination fee has been approved by the Commissioner of Insurance.

(9) The fees levied and collected by the association pursuant to this section shall be subject to transfer to the Department of Insurance Special Fund by act of the Legislature.

(10) The association, the association's board members and employees shall not be subject to liability for any functions or duties performed in good faith, from and after May 9, 2008, by the association pursuant to this chapter. \* \* \*

(11) In the alternative, the Commissioner of Insurance may contract with a third party to assist the commissioner with carrying out the purposes of this chapter. The third party may collect an examination fee in an amount determined by the commissioner but not more than one percent (1%) of premiums charged under this chapter. The fees shall be collected and deposited into the Department of Insurance Special Fund, and from this fund the department may pay the third party a reasonable fee for its services.

(12) Notwithstanding the provisions of Section 83-21-18(3), any stamping procedure established under this section may apply to

the reporting, payment, collection and allocation of premium taxes for nonadmitted insurance consistent with any agreement, compact or procedures entered into by the commissioner under Section 83-21-18(1).

(13) The commissioner may promulgate rules and regulations necessary for the implementation of this section.

SECTION 5. Section 83-21-23, Mississippi Code of 1972, is amended as follows:

83-21-23. (1) When any policy of insurance or certificate of insurance is procured under the authority of such license, there shall be executed by the surplus lines insurance producer an affidavit setting forth facts in complete detail as to what was done to place such kind of insurance and showing that such surplus lines insurance producer therein was unable, after diligent effort, to procure from any licensed company or companies the full amount of insurance required to protect the property, liability, or risk desired to be insured, and further showing that the amount of insurance procured from the eligible nonadmitted insurer or insurers is only the excess over the amount so procurable from licensed companies. Each such affidavit, which shall be effective for the term of the policy, shall be filed with the Commissioner of Insurance along with the report required in Section 83-21-25.

The Commissioner of Insurance may promulgate rules and regulations and establish appropriate fees for the implementation of Sections 83-21-17 through 83-21-31. \* \* \*

(2) (a) A surplus lines insurance producer is not required to make a due diligence search to determine whether the full amount or type of insurance can be obtained from admitted insurers when the surplus lines insurance producer is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser provided:

(i) The surplus lines insurance producer 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

(ii) The exempt commercial purchaser has subsequently requested in writing for the surplus lines insurance producer to procure or place such insurance from a nonadmitted insurer.

(b) The term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager, as defined in Section 527(13) of the Nonadmitted and Reinsurance Reform Act of 2010, to negotiate insurance coverage.

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of One Hundred Thousand Dollars (\$100,000.00) in the immediately preceding twelve (12) months.

(iii) 1. The person meets at least one (1) of the following criteria:

a. The person possesses a net worth in excess of Twenty Million Dollars (\$20,000,000.00) as such amount is adjusted according to item 2 of this subparagraph (iii).

b. The person generates annual revenues in excess of Fifty Million Dollars (\$50,000,000.00) as such amount is adjusted according to item 2 of this subparagraph (iii).

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

d. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least Thirty Million Dollars (\$30,000,000.00)

as such amount is adjusted according to item 2 of this subparagraph (iii).

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

2. Effective on January 1, 2015, and every five (5) years thereafter, the amounts in items 1a, 1b and 1d of this subparagraph (iii) 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 Federal Bureau of Labor Statistics of the United States Department of Labor.

SECTION 6. Section 83-21-25, Mississippi Code of 1972, is amended as follows:

83-21-25. The surplus lines insurance producer shall report under oath to the Commissioner of Insurance, within thirty (30) days from the first of January and July of each year, the amount of gross premiums received by him for such insurance in nonadmitted insurers, and shall pay to the Commissioner of Insurance a tax of four percent (4%) thereon. The term "gross premiums" shall mean the total gross amount of premiums received on each and every surplus lines insurance contract, less returned premiums. In default of the payment of any sum which may be due the state under this law, the Commissioner of Insurance may sue for the same. The surplus lines insurance producer shall keep a separate record of all transactions, as herein provided, open at all times to the inspection of the Commissioner of Insurance. The surplus lines insurance producer may designate another surplus lines insurance producer that actually procured the insurance from the nonadmitted insurer to report and pay, on behalf of the surplus lines insurance producer, to the Commissioner of Insurance the tax due the state under this law. The surplus lines insurance producer designated to pay the tax shall be deemed to have the same obligations and responsibilities for reporting and paying the tax due the state on the insurance procured from the nonadmitted

insurer as the surplus lines insurance producer who was initially responsible for reporting and paying the tax, and the Commissioner of Insurance may sue such surplus lines insurance producer designated to pay the tax in the event such surplus lines insurance producer is in default of any sum which is due the state for which the designated surplus lines insurance producer is responsible or obligated to pay.

SECTION 7. Section 83-21-27, Mississippi Code of 1972, is amended as follows:

83-21-27. Nothing contained in Sections 83-21-17 to 83-21-31 shall authorize any person, firm, association, or corporation to guarantee or otherwise validate or secure the performance or legality of any agreement, instrument, or policy of insurance of any nonadmitted insurer \* \* \*, nor to permit or authorize any nonadmitted insurer to do any insurance business by or through any person or surplus lines insurance producer acting within this state; but surplus lines insurance producers licensed hereunder acting pursuant to the cited sections may issue and deliver to their clients, the insured, binders, policies, and other confirmation of direct insurance so lawfully placed, and shall not be personally liable to the holder of any policy of insurance so issued or delivered for any loss covered thereby.

SECTION 8. Section 83-21-29, Mississippi Code of 1972, is amended as follows:

83-21-29. A nonadmitted insurer may be sued upon any cause of action arising in this state under any contract issued by it as hereinabove authorized, in a court of competent jurisdiction in any county in which the plaintiff may reside, or in which the cause of action arose. Any such policy or contract shall contain a provision authorizing service of citation or other legal process upon a person or firm whose name and address shall be set out therein, which said person, or at least one (1) member of a firm, shall be a resident of Mississippi. In lieu thereof any such



policy or contract shall contain a provision authorizing service of citation or other legal process upon the Commissioner of Insurance, designating the person to whom said Commissioner of Insurance shall mail citation or other legal process. In the event service of legal process against a nonadmitted insurer is made by service upon the Commissioner of Insurance, he shall forthwith mail citation or other document or process required to the person designated by the nonadmitted insurer in the policy for the purpose by registered mail or certified mail with return receipt requested. In the event of service of citation or other legal process upon the Commissioner of Insurance, the nonadmitted insurer shall have thirty (30) days from date of service upon said Commissioner of Insurance within which to plead, answer, or otherwise defend the action. Upon service of process upon the Insurance Commissioner in accordance with this law, or upon the person or firm designated in the policy or contract in accordance with this law, or as provided for by the Mississippi Rules of Civil Procedure, the court shall be deemed to have jurisdiction in personam of the nonadmitted insurer. A nonadmitted insurer issuing such insurance policy or contract shall be deemed thereby to have authorized service of process upon it in the manner and effect as provided in Sections 83-21-17 through 83-21-31, and as provided in the Mississippi Rules of Civil Procedure.

**SECTION 9.** Section 83-34-4, Mississippi Code of 1972, is amended as follows:

83-34-4. (1) Nonadmitted insurers shall not be assessable insurers of the association. All surplus lines insurance producers placing insurance through nonadmitted insurers shall collect from the insured and remit to the association a nonadmitted policy fee on all premiums collected after January 1, 2008, for all insurance written by such surplus lines insurance producer for a policy from a nonadmitted insurer for any and all risks \* \* \* in this state. By procuring or selling insurance on

property in this state from a nonadmitted insurer, each surplus lines insurance producer placing insurance through a nonadmitted insurer agrees to be bound by the provisions of this chapter and to collect and remit the nonadmitted policy fee provided for herein.

(2) The nonadmitted policy fee shall be a percentage of the total policy premium but the nonadmitted policy fee shall not be considered premium and is not subject to premium taxes or commissions. However, failure to pay the nonadmitted policy fee shall be treated the same as failure to pay premium. "Total policy premium" includes taxes and commissions.

(3) The nonadmitted policy fee percentage shall be set by the commissioner. Such percentage may be changed from time to time in the discretion of the commissioner, but in no event shall the nonadmitted policy fee percentage be less than five percent (5%).

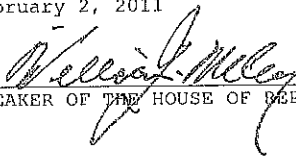
(4) Within twenty (20) days of the end of the quarter, surplus lines insurance producers placing insurance through nonadmitted insurers shall remit directly to the association all nonadmitted policy fees collected in the preceding quarter. In addition to the nonadmitted policy fee provided for herein, surplus lines insurance producers placing insurance through nonadmitted insurers shall collect and remit surcharges as provided by this chapter. Surplus lines insurance producers placing insurance through nonadmitted insurers may designate another surplus lines insurance producer that actually procured the insurance from the nonadmitted carrier to collect and remit the nonadmitted policy fees \* \* \*.

(5) Each insured in this state who directly procures or renews insurance with a nonadmitted insurer on properties, risks or exposures located or to be performed, in whole or in part, in this state, other than insurance procured through a surplus lines licensee, shall be subject to the nonadmitted policy fee which

shall be paid by the insured according to the procedures provided for premium taxes in Section 83-21-17(5).

SECTION 10. This act shall take effect and be in force from and after its passage.

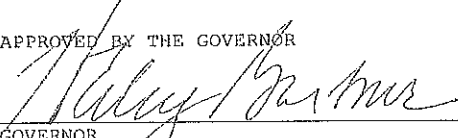
PASSED BY THE HOUSE OF REPRESENTATIVES  
February 2, 2011

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 2, 2011

  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
GOVERNOR

