

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0715.01 Bart Miller x2173

HOUSE BILL 12-1215

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HOUSE SPONSORSHIP

Gerou, Becker, Levy

SENATE SPONSORSHIP

Hodge, Steadman, Lambert

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House Committees  
Finance

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING CHANGES TO THE "NONADMITTED INSURANCE ACT" TO  
102 CONFORM IT TO THE REQUIREMENTS OF THE FEDERAL  
103 "NONADMITTED AND REINSURANCE REFORM ACT OF 2010".

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

**Joint Budget Committee.** The bill makes the following changes to the "Nonadmitted Insurance Act" to comply with requirements of the federal "Nonadmitted and Reinsurance Reform Act of 2010", commonly referred to as "NRRA":

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

- ! Adds definitions of the terms "affiliate", "affiliated group", "control", "federal act", "home state", "independently procured insurance", "multistate risk", "nonadmitted insurance", and "person";
- ! Authorizes the division of insurance to collect insurance premium tax on surplus lines insurance more frequently than once per year;
- ! Subjects surplus lines insurance procured without a broker to taxation as the sale of this type of insurance rather than as unauthorized insurance, as is the case under current law; and
- ! Requires the collection of insurance premium tax on surplus lines insurance at the full rate except for multistate policies where the risk involves states with which Colorado has entered into a compact or multistate tax-sharing agreement to share the tax, in which case the premium tax rates will be determined according to the terms of those arrangements.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 10-5-101.2  
 3 as follows:

4 **10-5-101.2. Definitions.** As used in this article, unless the context  
 5 otherwise requires:

6 (1) "AFFILIATE" MEANS, WITH RESPECT TO AN INSURED, ANY  
 7 ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON  
 8 CONTROL WITH THE INSURED.

9 (2) "AFFILIATED GROUP" MEANS ANY GROUP OF ENTITIES THAT  
 10 ARE ALL AFFILIATED.

11 (†) (3) "Broker" means a surplus lines producer duly licensed to  
 12 export insurance under this article.

13 (4) "CONTROL" MEANS THAT AN ENTITY HAS CONTROL OVER  
 14 ANOTHER ENTITY IF THE CONTROLLING ENTITY:

15 (a) DIRECTLY OR INDIRECTLY OR ACTING THROUGH ONE OR MORE

1 OTHER PERSONS OWNS, CONTROLS, OR HAS THE POWER TO VOTE  
2 TWENTY-FIVE PERCENT OR MORE OF ANY CLASS OF VOTING SECURITIES OF  
3 THE CONTROLLED ENTITY; OR

4 (b) CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF  
5 THE DIRECTORS OR TRUSTEES OF THE CONTROLLED ENTITY.

6 ~~(2)~~ (5) "Export" means to place with an insurer under this article  
7 insurance covering a ~~subject of insurance that is resident, located, or to~~  
8 ~~be performed in~~ AN INSURED WHOSE HOME STATE IS Colorado.

9 (6) "FEDERAL ACT" MEANS THE "NONADMITTED AND  
10 REINSURANCE REFORM ACT OF 2010", 15 U.S.C. SEC. 8201 ET SEQ., AS  
11 AMENDED.

12 (7) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
13 SUBSECTION (7), "HOME STATE" MEANS, WITH RESPECT TO AN INSURED:

14 (I) THE STATE IN WHICH THE INSURED MAINTAINS ITS PRINCIPAL  
15 PLACE OF BUSINESS OR, IN THE CASE OF AN INDIVIDUAL, THE INDIVIDUAL'S  
16 PRINCIPAL RESIDENCE; OR

17 (II) IF ONE HUNDRED PERCENT OF THE INSURED RISK IS LOCATED  
18 OUT OF THE STATE REFERRED TO IN SUBPARAGRAPH (I) OF THIS  
19 PARAGRAPH (a), THE STATE TO WHICH THE GREATEST PERCENTAGE OF THE  
20 INSURED'S TAXABLE PREMIUM FOR THAT INSURANCE CONTRACT IS  
21 ALLOCATED.

22 (b) WITH RESPECT TO AFFILIATED GROUPS, IF MORE THAN ONE  
23 INSURED FROM AN AFFILIATED GROUP ARE NAMED INSUREDS ON A SINGLE  
24 SURPLUS LINES INSURANCE CONTRACT, "HOME STATE" MEANS THE HOME  
25 STATE, AS DETERMINED PURSUANT TO PARAGRAPH (a) OF THIS  
26 SUBSECTION (7), OF THE MEMBER OF THE AFFILIATED GROUP THAT HAS THE  
27 LARGEST PERCENTAGE OF PREMIUM ATTRIBUTED TO IT UNDER THE

1 INSURANCE CONTRACT.

2 (8) "INDEPENDENTLY PROCURED INSURANCE" MEANS INSURANCE  
3 PROCURED DIRECTLY BY A PERSON FROM A NONADMITTED INSURER.

4 (9) "MULTISTATE RISK" MEANS A RISK COVERED BY A  
5 NONADMITTED INSURER WITH INSURED EXPOSURES IN MORE THAN ONE  
6 STATE.

7 (10) "NONADMITTED INSURANCE" MEANS ANY PROPERTY OR  
8 CASUALTY INSURANCE PERMITTED IN A STATE TO BE PLACED DIRECTLY OR  
9 THROUGH A BROKER WITH A NONADMITTED INSURER ELIGIBLE TO ACCEPT  
10 SUCH INSURANCE. "NONADMITTED INSURANCE" INCLUDES  
11 INDEPENDENTLY PROCURED INSURANCE AND SURPLUS LINES INSURANCE.

12 (3) (11) "Nonadmitted insurers" means insurers not having a  
13 certificate of authority to transact business in this state.

14 (12) "PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION  
15 2-4-401, C.R.S.

16 (4) (13) "Surplus lines insurance" means coverage placed with an  
17 approved nonadmitted insurer as provided by section 10-5-108.

18 **SECTION 2.** In Colorado Revised Statutes, 10-5-108, **amend** (1)  
19 introductory portion, (1) (a), (1) (b) introductory portion, (1) (b) (I), (1)  
20 (c) (I), and (2) as follows:

21 **10-5-108. Placement of surplus lines insurance.** (1) ~~No~~ A  
22 broker shall NOT place any coverage with a nonadmitted insurer unless,  
23 at the time of placement, ~~such~~ THE nonadmitted insurer is included on the  
24 list of approved nonadmitted insurers prepared by the commissioner at  
25 least annually. ~~Nothing in this section shall require the commissioner to~~  
26 ~~place or maintain the name of any nonadmitted insurer on the list~~ MEETS  
27 ALL APPLICABLE ELIGIBILITY REQUIREMENTS CONTAINED IN THE FEDERAL

1 ACT OR IS AN INSURANCE EXCHANGE, LLOYDS PLAN, OR GROUP OF  
2 INCORPORATED INSURERS UNDER COMMON ADMINISTRATION THAT HAS  
3 BEEN APPROVED BY THE COMMISSIONER AND IS INCLUDED ON THE LIST OF  
4 APPROVED NONADMITTED INSURERS PREPARED BY THE COMMISSIONER AT  
5 LEAST ANNUALLY. To be placed ~~and remain~~ on ~~said~~ THE approved list,  
6 ~~such~~ THE nonadmitted insurer shall:

7 (a) ~~Establish and maintain satisfactory evidence of good repute~~  
8 ~~and financial integrity and~~ Submit a current year's application, fees as  
9 prescribed by sections 10-3-207 and 10-3-207.5, ~~a copy of its current~~  
10 ~~annual statement, an actuarial opinion,~~ and other information required by  
11 the commissioner. In the case of an insurance exchange, THE  
12 NONADMITTED INSURER SHALL SUBMIT an aggregate combined ANNUAL  
13 statement of all underwriting syndicates operating during the period  
14 reported, in addition to individual ANNUAL statements for each syndicate.  
15 ~~shall be submitted.~~

16 (b) (I) In the case of a foreign insurer, ~~have and maintain a deposit~~  
17 ~~in cash or marketable securities having a fair market value of at least two~~  
18 ~~million five hundred thousand dollars with the commissioner or the duly~~  
19 ~~authorized officer of some other state of the United States, to be held for~~  
20 ~~the benefit of all policyholders wherever located, and qualify under one~~  
21 ~~of the following:~~

22 (I) ~~Have and maintain capital and surplus or its equivalent at least~~  
23 ~~equal to fifteen million dollars, but not less than the amount that would~~  
24 ~~be required by section 10-3-201 for an admitted company writing the~~  
25 ~~same lines of insurance. Notwithstanding the provisions of this subsection~~  
26 ~~(I), MEET ALL APPLICABLE ELIGIBILITY REQUIREMENTS CONTAINED IN THE~~  
27 FEDERAL ACT. The commissioner may approve an insurer with less than

1 the required minimum REQUIREMENTS upon an affirmative finding of  
2 acceptability by the commissioner. The finding ~~shall~~ MUST be based upon  
3 such factors as ~~but not limited to~~, quality of management, capital and  
4 surplus of any parent company, company underwriting profit and  
5 investment income trends, market availability, and company record and  
6 reputation within the industry. ~~In no event shall~~ The commissioner SHALL  
7 NOT make an affirmative finding of acceptability when the insurer's  
8 capital and surplus is less than four million five hundred thousand dollars.

9 (c) (I) In the case of an alien insurer, as defined in section  
10 10-3-301 (1), ~~have and maintain in force in the United States an~~  
11 ~~irrevocable trust account in a qualified United States financial institution,~~  
12 ~~for the benefit of United States policyholders, that is in an amount not less~~  
13 ~~than two million five hundred thousand dollars or such greater amount as~~  
14 ~~may be determined by the commissioner and adopted by rule and that~~  
15 ~~consists of cash, securities, letters of credit, or investments of~~  
16 ~~substantially the same character and quality as those that are eligible~~  
17 ~~investments for the capital and statutory reserves of admitted insurers to~~  
18 ~~write like kinds of insurance in this state and maintain status on the~~  
19 current national association of insurance commissioners' international  
20 insurers department listing;

21 (2) ~~Any~~ A surplus line broker who places insurance with a  
22 nonadmitted insurance company that ~~has not been approved by the~~  
23 ~~commissioner~~ DOES NOT COMPLY WITH THIS ARTICLE is subject to a  
24 penalty of up to ten thousand dollars as determined by the commissioner  
25 and the surplus line broker's license may be revoked.

26 **SECTION 3.** In Colorado Revised Statutes, **amend** 10-5-110 as  
27 follows:

1           **10-5-110. Statement - rules.** (1) Each surplus line broker AND  
2 EVERY PERSON THAT ENTERS INTO AN INDEPENDENT PROCUREMENT FOR  
3 NONADMITTED INSURANCE shall ~~on or before the first day of March of~~  
4 ~~each year~~, file with the commissioner a verified statement of all ~~surplus~~  
5 ~~line~~ insurance transacted by ~~him~~ THE BROKER OR OTHER PERSON during  
6 the preceding ~~calendar year~~ REPORTING PERIOD. THE COMMISSIONER  
7 SHALL, BY RULE, DETERMINE THE REPORTING PERIOD.

8           (2) The statement ~~shall~~ MUST be on forms as prescribed and  
9 furnished by the commissioner, and ~~shall~~ MUST show: Gross amount of  
10 each kind of insurance transacted, aggregate gross premiums charged,  
11 aggregate of returned premiums paid to insureds, aggregate of net  
12 premiums, AND additional information as required by the commissioner

13           **SECTION 4.** In Colorado Revised Statutes, **amend** 10-5-111 as  
14 follows:

15           **10-5-111. Tax on premiums.** (1) ~~On or before the first day of~~  
16 ~~March of each year~~, Each surplus line broker AND EVERY PERSON THAT  
17 ENTERS INTO AN INDEPENDENT PROCUREMENT FOR NONADMITTED  
18 INSURANCE shall remit to the division of insurance a tax ~~of three percent~~  
19 on the net premiums, exclusive of sums collected to cover federal and  
20 other state taxes and examination fees, on ~~surplus line~~ NONADMITTED  
21 insurance subject to tax ~~transacted by him~~ UNDER THIS ARTICLE during the  
22 preceding ~~calendar year~~ REPORTING PERIOD as shown by ~~his annual~~ THE  
23 statement filed with the commissioner. THE NET PREMIUMS MUST BE  
24 TAXED AT THE RATES DESCRIBED IN SECTION 10-5-111.5.

25           (2) If a surplus line policy OR INDEPENDENTLY PROCURED POLICY  
26 covers AN INSURED WHOSE HOME STATE IS COLORADO, AND THAT POLICY  
27 COVERS risks or exposures ~~only partially in this state~~ LOCATED OUTSIDE

1 OF COLORADO, the tax so payable ~~shall be~~ IS computed ~~upon~~ USING the  
2 ~~proportion of the premium which is properly allocable to the risks or~~  
3 ~~exposures located in this state~~ ALLOCATION METHOD CONTAINED IN  
4 SECTION 10-5-111.5.

5 **SECTION 5.** In Colorado Revised Statutes, **add** 10-5-111.5 as  
6 follows:

7 **10-5-111.5. Allocation of premium tax.** (1) IN DETERMINING  
8 THE AMOUNT OF TAX PAYABLE TO COLORADO, THE ENTIRE AMOUNT OF  
9 TAX PAYABLE AT A RATE OF THREE PERCENT ON THE NET PREMIUMS IS  
10 PRESUMED TO BE OWED TO COLORADO; EXCEPT THAT, FOR THOSE  
11 MULTISTATE RISKS INVOLVING STATES THAT HAVE ENTERED INTO EITHER  
12 A COMPACT OR A TAX-SHARING AGREEMENT WITH COLORADO TO SHARE  
13 THE TAX, THE PREMIUM TAX RATE AND THE AMOUNTS ALLOCATED TO THE  
14 OTHER STATES ARE SUBJECT TO DETERMINATION ACCORDING TO THE  
15 TERMS OF THE COMPACT OR AGREEMENT.

16 (2) THE COMMISSIONER MAY PARTICIPATE IN TAX-SHARING  
17 AGREEMENTS TO COLLECT AND DISBURSE FUNDS IN ACCORDANCE WITH  
18 SUBSECTION (1) OF THIS SECTION, IF THE PURPOSES OF THE TAX-SHARING  
19 AGREEMENT ARE LIMITED TO:

20 (a) FACILITATING THE PAYMENT AND ALLOCATION OF PREMIUM  
21 TAXES ON NONADMITTED INSURANCE FOR MULTISTATE RISKS AMONG  
22 STATES PARTICIPATING IN THE AGREEMENT;

23 (b) ADOPTING UNIFORM REQUIREMENTS, FORMS, AND PROCEDURES  
24 THAT FACILITATE THE REPORTING, PAYMENT, COLLECTION, AND  
25 ALLOCATION OF PREMIUM TAXES FOR NONADMITTED INSURANCE FOR  
26 MULTISTATE RISKS;

27 (c) COORDINATING THE REPORTING OF PREMIUM TAXES AND

1 TRANSACTION DATA OF MULTISTATE RISKS AMONG THE STATES  
2 PARTICIPATING IN THE AGREEMENT; AND

3 (d) ESTABLISHING A MECHANISM TO FACILITATE THE RECEIPT AND  
4 DISTRIBUTION OF PREMIUM TAXES AND TRANSACTION DATA RELATED TO  
5 NONADMITTED INSURANCE OF MULTISTATE RISKS.

6 **SECTION 6.** In Colorado Revised Statutes, 10-3-909, **amend** (1)  
7 as follows:

8 **10-3-909. Unauthorized insurance premium tax.** (1) Except as  
9 to premiums ~~which~~ THAT are subject to a federal premium, excise, or  
10 stamp tax equal to or in excess of two and one-fourth percent of net  
11 premiums, and except as to premiums on ~~lawfully procured surplus lines~~  
12 ~~insurance and premiums on~~ independently procured insurance on which  
13 tax has been paid pursuant to section 10-3-209 OR 10-5-111, every  
14 insured under a contract procured from an unauthorized insurer shall pay  
15 to the division of insurance before March 1 next succeeding the calendar  
16 year in which the insurance was so effectuated, continued, or renewed a  
17 premium tax of two and one-quarter percent of net premiums charged for  
18 ~~such~~ THE insurance. Such insurance on subjects resident, located, or to be  
19 performed in this state procured through negotiations or an application,  
20 in whole or in part occurring or made within or from within or outside of  
21 this state, or for which premiums in whole or in part are remitted directly  
22 or indirectly from within or outside of this state, is deemed to be  
23 insurance procured, ~~or~~ continued, or renewed in this state. The term  
24 "premium" includes all premiums, membership fees, assessments, dues,  
25 and any other consideration for insurance. If the tax prescribed by this  
26 section is not paid within the time stated, the tax ~~shall be~~ IS increased by  
27 a penalty of twenty-five percent and by the amount of an additional

1 penalty computed at the rate of one percent per month or any part thereof  
2 from the date ~~such~~ THE payment was due to the date paid.

3           **SECTION 7. Act subject to petition - effective date.** This act  
4 takes effect at 12:01 a.m. on the day following the expiration of the  
5 ninety-day period after final adjournment of the general assembly (August  
6 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a  
7 referendum petition is filed pursuant to section 1 (3) of article V of the  
8 state constitution against this act or an item, section, or part of this act  
9 within such period, then the act, item, section, or part will not take effect  
10 unless approved by the people at the general election to be held in  
11 November 2012 and, in such case, will take effect on the date of the  
12 official declaration of the vote thereon by the governor.