

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0715.01 Bart Miller x2173

HOUSE BILL 12-1215

HOUSE SPONSORSHIP

Gerou, Becker, Levy

SENATE SPONSORSHIP

Hodge, Steadman, Lambert

House Committees

Finance
Appropriations

Senate Committees

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".**

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.

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~~ ELIGIBLE 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 ELIGIBLE NONADMITTED INSURERS PREPARED BY THE COMMISSIONER AT
5 LEAST ANNUALLY. To be placed ~~and remain~~ on said approved THE
6 ELIGIBLE list, ~~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, 10-5-111, OR 10-5-111.5,
14 every insured under a contract procured from an unauthorized insurer
15 shall pay to the division of insurance before March 1 next succeeding the
16 calendar year in which the insurance was so effectuated, continued, or
17 renewed a premium tax of two and one-quarter percent of net premiums
18 charged for ~~such~~ THE insurance. Such insurance on subjects resident,
19 located, or to be performed in this state procured through negotiations or
20 an application, in whole or in part occurring or made within or from
21 within or outside of this state, or for which premiums in whole or in part
22 are remitted directly or indirectly from within or outside of this state, is
23 deemed to be insurance procured, ~~or~~ continued, or renewed in this state.
24 The term "premium" includes all premiums, membership fees,
25 assessments, dues, and any other consideration for insurance. If the tax
26 prescribed by this section is not paid within the time stated, the tax ~~shall~~
27 ~~be~~ IS increased by a penalty of twenty-five percent and by the amount of

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

3 **SECTION 7.** In Colorado Revised Statutes, 10-1-203, **amend** (1)
4 as follows:

5 **10-1-203. Authority, scope, and scheduling of examinations.**

6 (1) The commissioner or the commissioner's designee may conduct an
7 examination or investigation of any company as often as the
8 commissioner, in the commissioner's sole discretion, deems appropriate
9 but shall, at a minimum, conduct a formal financial examination of every
10 insurer licensed in this state not less frequently than once every five years;
11 except that this does not include ~~approved~~ ELIGIBLE nonadmitted insurers
12 regulated in accordance with article 5 of this title. In scheduling financial
13 or market conduct examinations and in determining their nature, scope,
14 and frequency, the commissioner shall consider such matters as the results
15 of financial statement analyses and ratios, changes in management or
16 ownership, actuarial opinions, reports of independent certified public
17 accountants, complaint analyses, underwriting and claims practices,
18 pricing, product solicitation, policy form compliance, market share
19 analyses, and other criteria as set forth in the most recent available edition
20 of the examiners' handbook adopted by the national association of
21 insurance commissioners.

22 **SECTION 8.** In Colorado Revised Statutes, 10-3-1004, **amend**
23 (1) (b) as follows:

24 **10-3-1004. Defense of action by unauthorized insurer.**

25 (1) Before any unauthorized foreign or alien insurer files or causes to be
26 filed any pleading in any action, suit, or proceeding instituted against it,
27 such unauthorized insurer shall either deposit, with the clerk of the court

1 in which such action, suit, or proceeding is pending, cash or securities, or
2 file with such clerk a bond with good and sufficient sureties, to be
3 approved by the court, in an amount to be fixed by the court sufficient to
4 secure the payment of any final judgment which may be rendered in such
5 action, or procure a certificate of authority to transact the business of
6 insurance in this state, unless one or more of the following is applicable:

7 (b) At the time the insurer files any pleading in any action, suit, or
8 proceeding instituted against it, the insurer is listed on the ~~approved~~
9 ELIGIBLE nonadmitted insurers list prepared by the commissioner pursuant
10 to subsection (1) of section 10-5-108;

11 **SECTION 9.** In Colorado Revised Statutes, 10-5-101.1, **amend**
12 (1) (b) as follows:

13 **10-5-101.1. Legislative declaration.** (1) The general assembly
14 finds and declares that property and casualty insurance transactions with
15 nonadmitted insurers are so affected with a public interest as to require
16 regulation, taxation, supervision, and control of such transactions and
17 matters relating thereto, as provided in this article, in order to:

18 (b) Provide for the public, except for transactions related to the
19 diligent effort requirements of this article for exempt commercial
20 policyholders, as defined pursuant to section 10-4-1402 and rules adopted
21 by the commissioner pursuant to that section, to the extent that insurance
22 is not procurable from admitted insurers, orderly, reasonable, and
23 regulated access to such insurance from ~~approved~~ ELIGIBLE nonadmitted
24 insurers through qualified, licensed, and supervised surplus line agents
25 and brokers;

26 **SECTION 10.** In Colorado Revised Statutes, **amend** 10-5-104 as
27 follows:

1 **10-5-104. Endorsement of contract.** Every insurance contract
2 procured and delivered as a surplus line coverage pursuant to this article
3 shall be initialed by or bear the name of the surplus line broker who
4 procured it and shall have stamped upon it the following: "This contract
5 is delivered as a surplus line coverage under the 'Nonadmitted Insurance
6 Act'. The insurer issuing this contract is not licensed in Colorado but is
7 an ~~approved~~ ELIGIBLE nonadmitted insurer. There is no protection under
8 the provisions of the 'Colorado Insurance Guaranty Association Act'."

9 **SECTION 11.** In Colorado Revised Statutes, 13-64-301, **amend**
10 (1) (a) (I), (1) (a.5) (I), and (1) (b) as follows:

11 **13-64-301. Financial responsibility.** (1) As a condition of active
12 licensure or authority to practice in this state, every physician or dentist,
13 and every health care institution as defined in section 13-64-202, except
14 as provided in section 13-64-303.5, that provides health care services
15 shall establish financial responsibility, as follows:

16 (a) (I) If a dentist, by maintaining commercial professional
17 liability insurance coverage with an insurance company authorized to do
18 business in this state or an ~~approved~~ ELIGIBLE nonadmitted insurer
19 allowed to insure in Colorado pursuant to article 5 of title 10, C.R.S., in
20 a minimum indemnity amount of five hundred thousand dollars per
21 incident and one million five hundred thousand dollars annual aggregate
22 per year; except that this requirement is not applicable to a dentist who is
23 a public employee under the "Colorado Governmental Immunity Act",
24 article 10 of title 24, C.R.S.

25 (a.5) (I) If a physician, by maintaining commercial professional
26 liability insurance coverage with an insurance company authorized to do
27 business in this state or an ~~approved~~ ELIGIBLE nonadmitted insurer

1 allowed to insure in Colorado pursuant to article 5 of title 10, C.R.S., in
2 a minimum indemnity amount of one million dollars per incident and
3 three million dollars annual aggregate per year; except that this
4 requirement is not applicable to a physician who is a public employee
5 under the "Colorado Governmental Immunity Act", article 10 of title 24,
6 C.R.S.

7 (b) If a health care institution, by maintaining, as a condition of
8 licensure, certification, or other authority to render health care services in
9 this state, commercial professional liability insurance coverage with an
10 insurance company authorized to do business in this state or an ~~approved~~
11 ELIGIBLE nonadmitted insurer allowed to insure in Colorado pursuant to
12 article 5 of title 10, C.R.S., in a minimum indemnity amount of five
13 hundred thousand dollars per incident and three million dollars annual
14 aggregate per year; except that this requirement is not applicable to a
15 certified health care institution that is a public entity under the "Colorado
16 Governmental Immunity Act". In the event a health care institution does
17 not have a commercial professional liability insurance policy in
18 compliance with this paragraph (b), or the limits of professional liability
19 insurance coverage are in excess of any self-insured retention amount, or
20 there is a deductible other than zero dollars, the health care institution
21 shall procure evidence that the commissioner of insurance has accepted
22 and approved an alternative form of establishing financial responsibility
23 in compliance with paragraph (c), (d), or (e) of this subsection (1), in
24 accordance with applicable rules promulgated by the division of
25 insurance. The health care institution shall furnish evidence of alternative
26 financial responsibility compliance to the department of public health and
27 environment as part of the health care institution's application for an

1 initial or renewal license, certification, or other authority.

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