

# STATE OF NEBRASKA

## DEPARTMENT OF INSURANCE

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June 17, 2011  
CB-126

### **BULLETIN**

#### **SUBJECT: IMPLEMENTATION OF FEDERAL NONADMITTED AND REINSURANCE REFORM ACT IN NEBRASKA**

The purpose of this bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance in when Nebraska is the Home State of insured. The Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), 15 U.S.C. § 8201 *et seq.*, provides that only an insured's "Home State" may require the payment of premium tax for nonadmitted insurance. Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's Home State, and provides that only the insured's Home State may require a surplus lines licensee to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to such insured. 15 U.S.C. § 8202(a), (b). "Nonadmitted insurance," as defined in 15 U.S.C. § 8206(9), applies only to property and casualty insurance (excluding workers' compensation). Nebraska statutes use the term surplus lines "licensee" in the same way that other states' statutes refer to surplus lines agent or broker.

The NRRA becomes effective on July 21, 2011. For nonadmitted insurance business placed on or after July 21, 2011, the following information is provided for the benefit of insurers, licensees, and insureds.

#### **What is the scope of the NRRA?**

The NRRA states that "the placement of nonadmitted insurance is subject to the statutory and regulatory requirements solely of the insured's home state" and that the NRRA "may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer." 15 U.S.C. § 8202. The NRRA does not expand the scope of the kinds of insurance that an insurer may write in the nonadmitted insurance market and each state continues to determine which kinds of insurance an insurer may write in that state. Although the NRRA preempts certain state laws with respect to nonadmitted insurance, it does not have any impact on insurance offered by insurers licensed or authorized in this state.

### **What is the insured's Home State for purposes of a particular placement?**

Nebraska is the insured's Home State if the insured maintains its principal place of business here or, in the case of an individual, if the individual's principal residence is here. If Nebraska is considered the insured's Home State, only Nebraska's requirements regarding the placement of such business will apply. If 100% of the insured risk is located outside of Nebraska, then the insured's Home State is the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

If more than one insured from an affiliate group are named insureds on a single nonadmitted insurance placement, Nebraska will be considered the Home State for that placement if Nebraska is the Home State of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

### **How will these rules be applied?**

New and renewal policies with an effective date prior to July 21, 2011 will be subject to the laws and regulations of Nebraska and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Nebraska and other jurisdictions, as applicable, as of the effective date of such a policy will also apply to any modification to that policy during the policy period, such as all endorsements—including risk- and premium-bearing endorsements—installment payments and premium audits. New and renewal policies with an effective date on or after July 21, 2011, and any modifications thereto, will be subject only to the laws and regulations of Nebraska if Nebraska is the Home State of the insured.

Nebraska will treat amendments, endorsements and cancellations as occurring at the tax rate and in accordance with filing requirements as were in existence at the date of issuance or renewal of the most recent surplus policy term.

Any necessary surplus lines filings as a result of amendments, endorsements or cancellations on policies originally issued prior to July 21, 2011 should be submitted to Nebraska on a quarterly basis in accordance with timeframes as now specified in Nebraska statutes.

Surplus lines licensees must submit quarterly tax information for policies written during the period prior to July 21, 2011 in accordance with the standards that were in effect at the time of the most recent surplus lines policy issuance or

renewal. Nebraska will require an annual report for 2011 on business not otherwise submitted to the Clearinghouse after July 21, 2011. The filing date requirement for the annual report and payment of taxes will be as before, namely by **February 15, 2012**. The filing date requirement for business written in the third quarter of 2011 should be filed with Nebraska by **November 15, 2011**.

**What are the requirements for premium tax allocation and payment in Nebraska?**

As of July 21, 2011, the NRRA permits only the insured's Home State to require the payment of premium tax for nonadmitted insurance. Until July 21, 2011, the laws and regulations of Nebraska and other jurisdictions, as applicable, will continue to apply to premium tax due on multi-state placements.

On and after July 21, 2011, the following premium tax rate will apply to multi-state placements pursuant to the terms of Neb.Rev.Stat. §44-5506(4) as amended by LB 70 passed by this session of the Nebraska Legislature:

- (4) (c) When the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on:
  - (i) For purposes of the portion that is attributable to instate risks, an amount and rate equal to that set forth in subdivision (4)(b) of this section; plus
  - (ii) For purposes of the portion that is attributable to out-of-state risks, an amount equal to the portion of the premiums allocated to each of the other states or territories and at a rate as established by each state or territory as being applicable to the properties, risks, or exposures located or performed outside of this state. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing licensee, if any. The surplus lines licensee is prohibited from rebating, for any reason, any portion of the tax.

Payments shall be made to Nebraska using the current Nebraska allocation rules until Nebraska begins participating in a tax sharing arrangement. It is the intent of the Department to issue additional bulletins when Nebraska begins participating in a tax sharing arrangement.

### **What are the license requirements for licensees?**

Only the insured's Home State may require a surplus lines licensee to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to a particular placement. If Nebraska is the insured's Home State, the surplus lines licensee must be licensed in Nebraska. The NRRA provides that Nebraska may not collect licensing fees for surplus lines licensees as of July 21, 2012, unless Nebraska participates in the NAIC's national insurance producer database or any other equivalent uniform national database. 15 U.S.C. §8203. Nebraska participates in the National Insurance Producer Registry (NIPR), which provides such a database.

### **When are the requirements for a diligent search and when is a diligent search not required?**

On or after July 21, 2011, a surplus lines licensee seeking to procure or place nonadmitted insurance on behalf of an "exempt commercial purchaser" is not required to perform a diligent search if: 1) the licensee has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 2) the exempt commercial purchaser has subsequently requested in writing for the licensee to procure or place such insurance from a nonadmitted insurer. "Exempt commercial purchaser" is defined in Neb.Rev.Stat. §44-5502(5).

### **What are the eligibility requirements for nonadmitted insurers?**

The NRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. See 15 U.S.C. §8204. For nonadmitted insurers domiciled in a U.S. jurisdiction, a licensee is permitted to place nonadmitted insurance with such insurers provided they are authorized to write such business in their state of domicile and maintain minimum capital and surplus of \$15 million or the minimum capital and surplus amount required in Nebraska, whichever is greater.

For nonadmitted insurers domiciled outside the U.S., a licensee may place business with such insurers provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

### **What are the key definitions from the NRRA?**

The NRRA includes several definitions relevant to Nebraska's implementation of its requirements. Key definitions include the following:

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

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

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

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

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

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

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

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

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

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. 15 U.S.C. §8206(5).

**“Home State”:** “Home State” means—

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

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

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

(B) **Affiliated Groups**—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “Home State” means the Home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract. 15 U.S.C. §8206(6).

**“Independently procured insurance”**: “Independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer. 15 U.S.C. §8206(7).

**“Nonadmitted insurance”**: “Nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance. 15 U.S.C. §8206(9).

**“Nonadmitted insurer”**: “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 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)). 15 U.S.C. §8206(11).

**“Premium tax”**: “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. 15 U.S.C. §8206(12).

**“Qualified risk manager”**: “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. 15 U.S.C. §8206(13).

**“Surplus lines broker”:** “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. 15 U.S.C. §8206(15).

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**“State”:** “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. 15 U.S.C. §8206(16).

The effective date of this bulletin shall be effective June 17, 2011.



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