



DELAWARE PASSES SURPLUS LINES LAW IMPLEMENTING NRRA

Dover, DE – Delaware Senate Bill 109, the “Delaware Nonadmitted Insurance Act” was recently signed into law by Delaware Governor Jack Markell. This new law amends Delaware’s previous surplus lines insurance law to accommodate the provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), while safeguarding the best interests of the State and its insurance consumers.

The one aspect of the NRRA that will have the most important impact on both state regulators and the surplus lines industry is the federal mandate of single-state regulatory and taxing authority. This change in federal law limits the regulation and taxation of nonadmitted insurance to the single “home state” of the insured as defined by the NRRA.

Under the new federal law, only the home state of the insured may assess a premium tax on surplus lines business. According to the NRRA, Congress intends that the states will work together and enter into a compact or establish other procedures to allocate among the states the premium tax amounts paid to the home state.

Currently there are two interstate agreements—NIMA and SLIMPACT-Lite—circulating among the states for consideration; however, Delaware Insurance Commissioner Karen Weldin Stewart feels that without necessary data pertinent to the new regulations under NRRA, it remains unclear which agreement, if either, would best suit the needs of her state.

For this reason, Commissioner Stewart has advocated gathering data before making a decision about joining any kind of interstate tax arrangement. This bill was drafted so that as far as the interstate agreement portion of the NRRA goes, Delaware will take a “wait and see” approach before making a choice. Delaware also hopes that the recent movement by the NAIC, NCOIL and NAPSLO to consolidate these two interstate agreements will gain momentum and a mutually acceptable arrangement that will suit the needs of all states will become available.

Senate Bill 109 was designed to clarify some parts of the previous surplus lines law and codify certain industry practices, and it incorporates the mandated portions of the NRRA directly, sometimes word for word. But it is the following changes that establish how Delaware will accommodate the NRRA provisions while considering the state’s interests, particularly revenue from premium tax on surplus lines business.

This new law:

- Emphasizes Single-state regulatory and taxing authority – limited to “home state” of insured. Removes the “based on location of risk” limitation in the existing law, and provides for Delaware to collect premium tax on 100% of all policy premiums for which DE is the home state of the insured.
- Establishes study group to do fiscal analysis and report findings to the Delaware General Assembly in January 2012, at which time the Commissioner will recommend which, if any, agreement DE should enter.
- Authorizes Commissioner to enter into interstate cooperative agreements for tax collection, allocation and distribution, as intended by NRRRA, but does not specify any particular agreement or terms. And in consideration of meeting the terms of a possible agreement, the Commissioner is given flexibility in other areas of surplus lines regulation.

Another important aspect of this new law is the establishment of a new category of insurance company – the “Delaware domestic surplus lines insurer.” This new insurer license category differs from others in that it allows this type of Delaware-domiciled insurer to be treated as nonadmitted in Delaware for certain coverage purposes. The insurance company will be domiciled and admitted in Delaware but, unlike all other Delaware-domiciled insurers, can write surplus lines policies in Delaware.

In the past, if a surplus lines insurer was admitted in Delaware, the company was not permitted to write coverage on the Delaware portion of a multi-state surplus lines policy, making it necessary to obtain that portion of the coverage from another insurer through separate policy. Under the new law, this new type of insurer must fulfill all the requirements of an admitted domestic company but will be considered nonadmitted for the writing of surplus lines business.

Commissioner Stewart explained, “In most states, a surplus lines company is licensed in its state of domicile and can only offer coverage for risks in that state on an admitted basis, subject to rate and form filing and other regulations, but it can offer it as surplus lines coverage in any other state. This new law makes Delaware one of a handful of states in which a domestic insurer may offer surplus lines coverage in all 50 states—including Delaware, its state of domicile.”

Companies applying to become Delaware domestic surplus lines insurers will have to prove adequate financial solvency, meet certain regulatory criteria, and specifically be approved by the Insurance Commissioner. Allowing these insurers to write surplus lines insurance in Delaware could attract new companies to become domiciled in Delaware, especially those that write surplus lines coverage on risks located in multiple states including Delaware. This change will also expand the market of surplus lines insurance for Delaware residents, which is particularly beneficial to those with property in the coastal areas of the state. And insurance consumers with risks that are difficult to insure can take heart in the fact that surplus lines coverage will be available from companies that are subject to the Department's regulation.

The Department has issued Surplus Lines Bulletin Number 9 containing more information about the NRRRA and the new law, available on the Department’s website www.delawareinsurance.gov. Surplus lines licensees and companies are advised to review SL Bulletin 9 and watch the website for updates on implementation of the new law, including requirements for filings to assist in the collection of data for the fiscal analysis.