

SENATE BILL NO. 289—SENATOR COPENING
(BY REQUEST)

MARCH 21, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes relating to insurance.
(BDR 57-521)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurance; revising provisions relating to nonadmitted insurance; authorizing the Commissioner of Insurance to enter into a multi-state agreement concerning nonadmitted insurance; revising provisions relating to the assessment and disbursement of taxes on nonadmitted insurance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, certain insurance coverages that cannot be procured from
2 authorized insurers in Nevada, known as surplus lines, may be obtained from
3 unauthorized insurers if certain conditions are met. (NRS 685A.040) Additionally,
4 a tax is assessed on the premiums charged for surplus lines coverages. (NRS
5 685A.175, 685A.180) On July 21, 2010, the Dodd-Frank Wall Street Reform and
6 Consumer Protection Act, of which the Nonadmitted and Reinsurance Reform Act
7 (NRRA) was a part, was signed into law. (Pub. L. No. 111-203, 124 Stat. 1376)
8 The NRRA authorizes the states to participate in a multi-state agreement to allocate
9 premium tax proceeds for nonadmitted insurance on multi-state risks amongst the
10 states and prohibits any state other than the insured's home state from collecting
11 premium taxes on nonadmitted insurance. The NRRA also prohibits any state other
12 than the insured's home state from regulating the placement of nonadmitted
13 insurance and from requiring a surplus lines broker to be licensed. (15 U.S.C. §§
14 8201 et seq.)

15 This bill makes various changes to existing law to conform to the NRRA.
16 **Sections 17, 32 and 33** of this bill authorize the Commissioner to enter into a
17 multi-state agreement concerning nonadmitted insurance and to provide for the
18 payment of premium tax to and disbursement of premium tax from the
19 clearinghouse established through the multi-state agreement.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 680B.040 is hereby amended to read as follows:

680B.040 1. Every insured ~~[in]~~ *for whom* this State *is the home state as defined in section 8 of this act* who procures or causes to be procured or continues or renews insurance in an unauthorized alien or foreign insurer, or any self-insurer in this State who ~~[so]~~ procures or continues excess loss, catastrophe or other insurance, ~~[upon a subject of insurance resident, located or to be performed within this State,]~~ other than insurance procured through a surplus line broker pursuant to chapter 685A of NRS or exempted from that chapter, shall within ~~[30]~~ *45* days after the ~~[date]~~ *end of each quarter in which* such insurance was so procured, continued or renewed, file a written report ~~[with the Department of Taxation on forms prescribed by the Executive Director of the Department of Taxation in cooperation with]~~ *as directed by* the Commissioner *pursuant to chapter 685A of NRS* and furnished to such an insured upon request. The report must show:

(a) The name and address of the insured or insureds.

(b) The name and address of the insurer.

(c) The subject of the insurance.

(d) A general description of the coverage.

(e) The premium currently charged therefor.

(f) Such additional pertinent information as is reasonably requested by the Commissioner or the ~~[Executive Director of the Department of Taxation,]~~ *designee of the Commissioner.*

➤ If any such insurance covers also a subject of insurance resident, located or to be performed outside of this State ~~[]~~ *for which this State is the home state of the insured as defined in section 8 of this act*, for the purposes of this section a proper pro rata portion of the entire premium payable for all such insurance must be allocated ~~[as to the subjects of insurance resident, located or to be performed in this State,]~~ *and disbursed pursuant to the provisions of chapter 685A of NRS.*

2. ~~[Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this State, or for which premiums in whole or in part are remitted directly or indirectly from within this State, shall be deemed to be insurance procured or continued or renewed in this State within the intent of subsection 1.~~

~~—3.]~~ For the general support of the government of this State there is levied upon the obligation, chose in action or right represented by the premium charged or payable for such insurance a



* S B 2 8 9 R 1 *

1 tax at the rate prescribed in NRS ~~[680B.027.]~~ *685A.175 and*
2 *685A.180*. The insured shall withhold the amount of the tax from
3 the amount of premium charged by and otherwise payable to the
4 insurer for such insurance, and within 30 days after the insurance
5 was so procured, continued or renewed, and coincidentally with the
6 filing of the report provided for in subsection 1, the insured shall
7 pay the amount of the tax ~~[to the State Treasurer through the~~
8 ~~Department of Taxation.~~
9 ~~—4.]~~ *as directed by the Commissioner.*

10 *3.* If the insured fails to withhold from the premium the amount
11 of tax levied in this section, the insured is liable for the amount of
12 the tax and shall pay it ~~[to the Department of Taxation]~~ *as directed*
13 *by the Commissioner* within the time stated in subsection ~~[3.~~
14 ~~—5.]~~ *2.*

15 *4.* If the insured fails to pay the tax imposed by this section, the
16 insured shall in addition to any other applicable penalty pay a
17 penalty of not more than 10 percent of the amount of the tax which
18 is owed, as determined by the Department of Taxation, in addition
19 to the tax, plus interest at the rate of 1.5 percent per month, or
20 fraction of a month, from the date on which the tax should have
21 been paid until the date of payment.

22 ~~[6.]~~ *5.* The tax is collectible from the insured by civil action
23 brought by the Department of Taxation, and by the seizure, distraint
24 and sale of any property of the insured situated in this State.

25 ~~[7.]~~ *6.* This section does not abrogate or modify any other
26 provision of this Code.

27 ~~[8.]~~ *7.* This section does not apply to life or disability
28 insurances.

29 ~~[9.]~~ *8.* The provisions of this section do not prohibit the
30 procurement of insurance from an unauthorized alien or foreign
31 insurer by a person in accordance with the requirements of
32 subsection 9 of NRS 680A.070.

33 ~~[10. The Department of Taxation shall report to the~~
34 ~~Commissioner concerning independently procured insurance~~
35 ~~transactions reported to the Department of Taxation pursuant to this~~
36 ~~section.]~~

37 **Sec. 2.** NRS 680C.110 is hereby amended to read as follows:
38 680C.110 1. In addition to any other fee or charge, the
39 Commissioner shall collect in advance and receipt for, and persons
40 so served must pay to the Commissioner, the fees required by this
41 section.

42 2. A fee required by this section must be:

43 (a) If an initial fee, paid at the time of an initial application or
44 issuance of a license, as applicable;

45 (b) If an annual fee, paid on or before March 1 of every year;



(c) If a triennial fee, paid on or before the time of continuation, renewal or other similar action in regard to a certificate, license, permit or other type of authorization, as applicable; and

(d) Deposited in the Fund for Insurance Administration and Enforcement created by NRS 680C.100.

3. The fees required pursuant to this section are not refundable.

4. The following fees must be paid by the following persons to the Commissioner:

(a) Associations of self-insured private employers, as defined in NRS 616A.050:

(1) Initial fee..... \$1,300

(2) Annual fee \$1,300

(b) Associations of self-insured public employers, as defined in NRS 616A.055:

(1) Initial fee..... \$1,300

(2) Annual fee \$1,300

(c) External review organizations, as provided for in NRS 616A.469 or 683A.371, or both:

(1) Initial fee..... \$60

(2) Annual fee \$60

(d) Insurers not otherwise provided for in this subsection:

(1) Initial fee..... \$1,300

(2) Annual fee \$1,300

(e) Producers of insurance, as defined in NRS 679A.117:

(1) Initial fee..... \$60

(2) Triennial fee..... \$60

(f) Accredited reinsurers, as provided for in NRS 681A.160:

(1) Initial fee..... \$1,300

(2) Annual fee \$1,300

(g) Intermediaries, as defined in NRS 681A.330:

(1) Initial fee..... \$60

(2) Triennial fee..... \$60

(h) Reinsurers, as defined in NRS 681A.370:

(1) Initial fee..... \$1,300

(2) Annual fee \$1,300

(i) Administrators, as defined in NRS 683A.025:

(1) Initial fee..... \$60

(2) Triennial fee..... \$60

(j) Managing general agents, as defined in NRS 683A.060:

(1) Initial fee..... \$60

(2) Triennial fee..... \$60



* S B 2 8 9 R 1 *

- 1 (k) Agents who perform utilization reviews, as defined
2 in NRS 683A.376:
- 3 (1) Initial fee..... \$60
4 (2) Annual fee \$60
- 5 (l) Insurance consultants, as defined in NRS 683C.010:
- 6 (1) Initial fee..... \$60
7 (2) Triennial fee..... \$60
- 8 (m) Independent adjusters, as defined in NRS 684A.030:
- 9 (1) Initial fee..... \$60
10 (2) Triennial fee..... \$60
- 11 (n) Public adjusters, as defined in NRS 684A.030:
- 12 (1) Initial fee..... \$60
13 (2) Triennial fee..... \$60
- 14 (o) Associate adjusters, as defined in NRS 684A.030:
- 15 (1) Initial fee..... \$60
16 (2) Triennial fee..... \$60
- 17 (p) Motor vehicle physical damage appraisers, as defined
18 in NRS 684B.010:
- 19 (1) Initial fee..... \$60
20 (2) Triennial fee..... \$60
- 21 (q) Brokers, as defined in ~~NRS 685A.030;~~ *section 5 of*
22 *this act:*
- 23 (1) Initial fee..... \$60
24 (2) Triennial fee..... \$60
- 25 (r) Eligible surplus line insurers, as provided for in
26 NRS 685A.070:
- 27 (1) Initial fee..... \$1,300
28 (2) Annual fee \$1,300
- 29 (s) Companies, as defined in NRS 686A.330:
- 30 (1) Initial fee..... \$1,300
31 (2) Annual fee \$1,300
- 32 (t) Rate service organizations, as defined in
33 NRS 686B.020:
- 34 (1) Initial fee..... \$1,300
35 (2) Annual fee \$1,300
- 36 (u) Brokers of viatical settlements, as defined in
37 NRS 688C.030:
- 38 (1) Initial fee..... \$60
39 (2) Annual fee \$60
- 40 (v) Providers of viatical settlements, as defined in
41 NRS 688C.080:
- 42 (1) Initial fee..... \$60
43 (2) Annual fee \$60
- 44 (w) Agents for prepaid burial contracts subject to the
45 provisions of chapter 689 of NRS:



1	(1) Initial fee.....	\$60
2	(2) Triennial fee.....	\$60
3	(x) Agents for prepaid funeral contracts subject to the	
4	provisions of chapter 689 of NRS:	
5	(1) Initial fee.....	\$60
6	(2) Triennial fee.....	\$60
7	(y) Sellers of prepaid burial contracts subject to the	
8	provisions of chapter 689 of NRS:	
9	(1) Initial fee.....	\$60
10	(2) Triennial fee.....	\$60
11	(z) Sellers of prepaid funeral contracts subject to the	
12	provisions of chapter 689 of NRS:	
13	(1) Initial fee.....	\$60
14	(2) Triennial fee.....	\$60
15	(aa) Providers, as defined in NRS 690C.070:	
16	(1) Initial fee.....	\$1,300
17	(2) Annual fee	\$1,300
18	(bb) Escrow officers, as defined in NRS 692A.028:	
19	(1) Initial fee.....	\$60
20	(2) Triennial fee.....	\$60
21	(cc) Title agents, as defined in NRS 692A.060:	
22	(1) Initial fee.....	\$60
23	(2) Triennial fee.....	\$60
24	(dd) Captive insurers, as defined in NRS 694C.060:	
25	(1) Initial fee.....	\$250
26	(2) Annual fee	\$250
27	(ee) Fraternal benefit societies, as defined in	
28	NRS 695A.010:	
29	(1) Initial fee.....	\$1,300
30	(2) Annual fee	\$1,300
31	(ff) Insurance agents for societies, as provided for in	
32	NRS 695A.330:	
33	(1) Initial fee.....	\$60
34	(2) Triennial fee.....	\$60
35	(gg) Corporations subject to the provisions of chapter	
36	695B of NRS:	
37	(1) Initial fee.....	\$1,300
38	(2) Annual fee	\$1,300
39	(hh) Health maintenance organizations, as defined in	
40	NRS 695C.030:	
41	(1) Initial fee.....	\$1,300
42	(2) Annual fee	\$1,300
43	(ii) Organizations for dental care, as defined in	
44	NRS 695D.060:	
45	(1) Initial fee.....	\$1,300



* S B 2 8 9 R 1 *

1	(2) Annual fee	\$1,300
2	(jj) Purchasing groups, as defined in NRS 695E.100:	
3	(1) Initial fee.....	\$250
4	(2) Annual fee	\$250
5	(kk) Risk retention groups, as defined in NRS 695E.110:	
6	(1) Initial fee.....	\$250
7	(2) Annual fee	\$250
8	(ll) Prepaid limited health service organizations, as	
9	defined in NRS 695F.050:	
10	(1) Initial fee.....	\$1,300
11	(2) Annual fee	\$1,300
12	(mm) Medical discount plans, as defined in	
13	NRS 695H.050:	
14	(1) Initial fee.....	\$1,300
15	(2) Annual fee	\$1,300
16	(nn) Club agents, as defined in NRS 696A.040:	
17	(1) Initial fee.....	\$60
18	(2) Triennial fee.....	\$60
19	(oo) Motor clubs, as defined in NRS 696A.050:	
20	(1) Initial fee.....	\$1,300
21	(2) Annual fee	\$1,300
22	(pp) Bail agents, as defined in NRS 697.040:	
23	(1) Initial fee.....	\$60
24	(2) Triennial fee.....	\$60
25	(qq) Bail enforcement agents, as defined in	
26	NRS 697.055:	
27	(1) Initial fee.....	\$60
28	(2) Triennial fee.....	\$60
29	(rr) Bail solicitors, as defined in NRS 697.060:	
30	(1) Initial fee.....	\$60
31	(2) Triennial fee.....	\$60
32	(ss) General agents, as defined in NRS 697.070:	
33	(1) Initial fee.....	\$60
34	(2) Triennial fee.....	\$60

Sec. 3. NRS 683A.321 is hereby amended to read as follows:

683A.321 1. A producer of insurance shall not act as an agent unless he or she is appointed as an agent by the insurer. A producer who is not acting as an agent is a broker who does not need to be appointed.

2. To appoint a producer of insurance as its agent, an insurer must file, in a form approved by the Commissioner, a notice of appointment within 15 days after the contract is executed or the first application for insurance is submitted. An insurer may appoint a producer to act as agent for all or some insurers within its holding



1 company or group by filing a single notice of appointment. A notice
2 of appointment may include several agents.

3 3. Upon receipt of a notice of appointment, the Commissioner
4 shall determine within 30 days whether the producer of insurance is
5 eligible for appointment. If the producer of insurance is not, the
6 Commissioner shall so notify the insurer within 5 days after the
7 determination is made.

8 4. An insurer shall pay an appointment fee and remit an annual
9 renewal fee for each producer of insurance appointed as its agent. A
10 payment or remittance may include fees for several agents.

11 5. A broker shall not place insurance, other than life insurance,
12 health insurance, annuity contracts or coverage written pursuant to
13 the ~~[Surplus Lines]~~ *Nonadmitted Insurance* Law set forth in
14 chapter 685A of NRS, that covers property or risks within this state
15 unless the broker does so with a licensed agent of an authorized
16 insurer.

17 6. A producer who is acting as an agent may also act as and be
18 a broker with regard to insurers for which he or she is not acting as
19 an agent. The sole relationship between an insurer and a broker who
20 is appointed as an agent by the insurer as to any transactions arising
21 during the period in which the broker is appointed as an agent is that
22 of insurer and agent, and not insurer and broker.

23 7. As used in this section:

24 (a) "Agent" means a producer of insurance who is compensated
25 by the insurer and sells, solicits or negotiates insurance for the
26 insurer.

27 (b) "Broker" means a producer of insurance who:

28 (1) Is not an agent of an insurer;

29 (2) Solicits, negotiates or procures insurance on behalf of an
30 insured or prospective insured; and

31 (3) Does not have the power, by his or her own actions as a
32 broker, to obligate an insurer upon any risk or with reference to any
33 transaction of insurance.

34 **Sec. 4.** Chapter 685A of NRS is hereby amended by adding
35 thereto the provisions set forth as sections 5 to 17, inclusive, of this
36 act.

37 **Sec. 5.** *"Broker" means a surplus lines broker duly licensed*
38 *as such under this chapter.*

39 **Sec. 6. 1.** *"Exempt commercial purchaser" means any*
40 *person or political subdivision of this State purchasing*
41 *commercial insurance:*

42 (a) *Who, at the time of placement, employs or retains a*
43 *qualified risk manager to negotiate insurance coverage;*

44 (b) *Who, at the time of placement, has paid aggregate*
45 *nationwide commercial property and casualty insurance premiums*



* S B 2 8 9 R 1 *

1 of more than \$100,000 in the immediately preceding 12 months;
2 and

3 (c) Who, at the time of placement, satisfies one of the
4 following conditions:

5 (1) Possesses a net worth of more than \$20,000,000;

6 (2) Generates annual revenues of more than \$50,000,000;

7 (3) Employs more than 500 full-time or full-time equivalent
8 employees or is a member of an affiliated group that employs more
9 than 1,000 employees in the aggregate;

10 (4) Is a nonprofit organization or public entity that
11 generates annual budgeted expenditures of \$30,000,000 or more;
12 or

13 (5) Is a city whose population is 25,000 or more or a county
14 whose population is 20,000 or more.

15 2. The amounts set forth in subparagraphs (1), (2) and (4) of
16 paragraph (c) of subsection 1 must be adjusted on or before
17 January 1, 2015, and every 5 years thereafter to reflect inflation,
18 as measured by the average percentage of increase or decrease in
19 the Consumer Price Index for All Urban Consumers of the United
20 States Department of Labor, Bureau of Labor Statistics for the
21 preceding 5 years. The Commissioner shall determine the amount
22 of the increase or decrease required by this subsection and
23 establish the adjusted amounts to take effect on January 1 of that
24 year.

25 Sec. 7. "Export" means to place insurance in an
26 unauthorized insurer under this chapter.

27 Sec. 8. "Home state" means:

28 1. For an insured:

29 (a) The state in which the insured maintains its principal place
30 of business or, in the case of an individual, the individual's
31 principal residence; or

32 (b) If 100 percent of the insured risk is located outside of the
33 state determined pursuant to paragraph (a), the state to which the
34 greatest percentage of the insured's taxable premium for that
35 insurance contract is allocated.

36 2. If more than one insured from an affiliated group is a
37 named insured on a single nonadmitted insurance contract, the
38 state determined pursuant to paragraph (a) of subsection 1 for the
39 member of the affiliated group that has the largest percentage of
40 premium attributed to it under the nonadmitted insurance
41 contract.

42 3. For a policy of group insurance:

43 (a) If the group policyholder pays 100 percent of the premium
44 from its own funds, the state determined pursuant to paragraph
45 (a) of subsection 1 for the group policyholder.



(b) If the group policyholder does not pay 100 percent of the premium from its own funds, the state determined pursuant to paragraph (a) of subsection 1 for the group member.

Sec. 9. “Independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

Sec. 10. “Multi-state risk” means a risk covered by a nonadmitted insurer to which the insured is exposed in more than one state.

Sec. 11. “Nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a broker with a nonadmitted insurer eligible to accept such insurance. The term includes both independently procured insurance and surplus lines insurance.

Sec. 12. “Nonadmitted insurer” means an insurer not authorized to engage in the business of insurance in this State. The term does not include a risk retention group as that term is defined in 15 U.S.C. § 3901(a)(4).

Sec. 13. “Principal place of business” means, for the purpose of determining the home state of the insured:

1. The state where the insured maintains its headquarters and where the insured’s high-level officers direct, control and coordinate its business activities;

2. If the insured’s high-level officers direct, control and coordinate its business activities in more than one state, the state in which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated; or

3. If the insured’s high-level officers direct, control and coordinate its business activities outside of any state, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

Sec. 14. “Principal residence” means, for the purpose of determining the home state of the insured:

1. The state where the insured resides for the greatest number of days during a calendar year; or

2. If the insured’s principal residence is located outside of any state, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

Sec. 15. “Surplus lines insurance” means insurance procured by an insured through a broker with a nonadmitted insurer eligible to accept such insurance.

Sec. 16. Except as otherwise provided in NRS 685A.020, this chapter applies to nonadmitted insurance.



1 **Sec. 17. 1. The Commissioner may, with the approval of**
2 **the State Board of Examiners, on behalf of the State enter into a**
3 **multi-state agreement to preserve the ability of this State to collect**
4 **premium tax on multi-state risks.**

5 **2. If, within 18 months after the Commissioner enters into a**
6 **multi-state agreement pursuant to subsection 1, the Commissioner**
7 **conducts a hearing pursuant to the provisions of chapter 233B of**
8 **NRS concerning participation in the multi-state agreement, the**
9 **Commissioner shall submit to the State Board of Examiners and**
10 **to the Director of the Legislative Counsel Bureau for transmittal**
11 **to the Legislature a report concerning the findings of the**
12 **Commissioner pursuant to the hearing.**

13 **3. The State Board of Examiners shall review and may accept**
14 **the findings of the Commissioner. If the Commissioner finds and**
15 **the State Board of Examiners accepts that because of the effect of**
16 **the multi-state agreement on the gross receipt of premiums**
17 **collected in this State:**

18 **(a) It is in the best interest of the State to continue to**
19 **participate in the multi-state agreement, the State Board of**
20 **Examiners may approve the State's continued participation in the**
21 **multi-state agreement.**

22 **(b) It is not in the best interest of the State to continue to**
23 **participate in the multi-state agreement, the State Board of**
24 **Examiners may approve the State's withdrawal from the multi-**
25 **state agreement.**

26 **Sec. 18. The Commissioner may adopt regulations as**
27 **necessary to ensure compliance with federal law relating to**
28 **nonadmitted insurance, including, without limitation, the**
29 **Nonadmitted and Reinsurance Reform Act, 15 U.S.C. §§ 8201,**
30 **et seq.**

31 **Sec. 19. NRS 685A.010 is hereby amended to read as follows:**

32 685A.010 This chapter constitutes and may be cited as the
33 ~~{Surplus Lines}~~ **Nonadmitted Insurance** Law.

34 **Sec. 20. NRS 685A.020 is hereby amended to read as follows:**

35 685A.020 The ~~{Surplus Lines}~~ **Nonadmitted Insurance** Law
36 shall not apply to reinsurance, or to the following insurances when
37 placed by general lines agents or general lines brokers or surplus
38 lines brokers licensed as such by this state ~~{;}~~ **or when procured**
39 **directly by an insured from a nonadmitted insurer:**

40 1. Wet marine and transportation insurance;

41 2. Insurance of subjects located, resident or to be performed
42 wholly outside of this state, or on vehicles or aircraft owned and
43 principally garaged outside this state;

44 3. Insurance of property and operations of railroads engaged in
45 interstate commerce;



4. Insurance of aircraft of common carriers, or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance or use of such aircraft; or

5. Insurance of automobile bodily injury and property damage liability risks when written in Mexican insurers and covering in Mexico and not in the United States of America.

Sec. 21. NRS 685A.030 is hereby amended to read as follows:

685A.030 As used in this chapter ~~[-]~~

~~1. Unless~~, *unless* the context otherwise requires, ~~["broker" means a surplus lines broker duly licensed as such under this chapter.~~

~~2. To "export" means to place in an unauthorized insurer under this chapter insurance covering a subject of insurance resident, located or to be performed in Nevada.]~~ *the words and terms defined in sections 5 to 15, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 22. NRS 685A.040 is hereby amended to read as follows:

685A.040 If *this State is the insured's home state* and certain insurance coverages cannot be procured from authorized insurers, such coverages, designated in this chapter as ~~["surplus lines,"]~~ *nonadmitted insurance*, may be procured from unauthorized insurers, subject to the following conditions:

1. The insurance must be procured through a ~~["surplus lines"]~~ broker licensed as such under this chapter ~~[-]~~ *or procured by an insured directly from a nonadmitted insurer as permitted by law.*

2. ~~["The"]~~ *Except as otherwise provided in subsection 5, the* full amount of insurance required must not be procurable ~~[-]~~ *from an insurer authorized to engage in the business of insurance in this State,* after diligent effort has been made to do so.

3. The insurance must not be so exported for the purpose of procuring it at a premium rate lower than would be accepted by any authorized insurer; difference in rates alone will not support the export of the insurance if any authorized insurer is able and willing to carry the risk.

4. Differences, bearing directly upon the cost of insurance, in the terms of policies which otherwise provide substantially the same coverage will not support the export of the insurance.

5. A broker is not required to make a diligent effort to determine whether the full amount or type of insurance can be obtained from admitted insurers when the broker is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser if:

(a) The broker procuring or placing the nonadmitted insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted



1 *market that may provide greater protection with more regulatory*
2 *oversight; and*

3 *(b) The exempt commercial purchaser has subsequently*
4 *requested in writing for the broker to procure or place such*
5 *insurance from a nonadmitted insurer.*

6 **Sec. 23.** NRS 685A.050 is hereby amended to read as follows:

7 685A.050 1. At the time of effecting any surplus lines
8 insurance *for which this State is the home state*, the broker shall
9 ~~execute an affidavit,~~ *, within 90 days after such insurance is so*
10 *effected, submit a report*, in the form prescribed or accepted by the
11 Commissioner, setting forth facts from which it can be determined
12 whether such insurance is eligible for export under NRS 685A.040.

13 2. The broker shall ~~file this affidavit~~ *keep in his or her office*
14 *the report prepared pursuant to subsection 1 along* with the report
15 of coverage and any other information the Commissioner requires .
16 ~~[within 90 days after the insurance is so effected, as required under~~
17 ~~regulations adopted pursuant to NRS 685A.210.]~~

18 3. *The report prepared pursuant to subsection 1 must not be*
19 *removed from the office of the broker and must be open to*
20 *examination by the Commissioner or a representative of the*
21 *Commissioner at all times within 5 years after issuance of the*
22 *coverage to which it relates.*

23 **Sec. 24.** NRS 685A.060 is hereby amended to read as follows:

24 685A.060 1. The Commissioner may by order declare
25 eligible for export generally and without compliance with
26 subsections 2, 3 and 4 of NRS 685A.040 and NRS 685A.050, any
27 class or classes of insurance coverage or risk for which the
28 Commissioner finds that there is not a reasonable or adequate
29 market among authorized insurers either as to acceptance of the risk,
30 contract terms, or premium or premium rate. Any such order shall
31 continue in effect during the existence of the conditions upon which
32 predicated, but subject to earlier termination by the Commissioner.

33 2. ~~[The]~~ *For surplus lines insurance, the* broker shall file with
34 or as directed by the Commissioner a memorandum as to each such
35 coverage placed by the broker in an unauthorized insurer, in such
36 form and context as the Commissioner may reasonably require for
37 the identification of the coverage and determination of the tax
38 payable to the State relative thereto.

39 3. The broker, or a licensed Nevada agent of the authorized
40 insurer or a general lines broker, may also place with authorized
41 insurers any insurance coverage made eligible for export generally
42 under subsection 1, and without regard to rate or form filings which
43 may otherwise be applicable to the authorized insurer. As to
44 coverages so placed in an authorized insurer the premium tax



* S B 2 8 9 R 1 *

thereon shall be reported and paid by the insurer as required generally under chapter 680B of NRS.

Sec. 25. NRS 685A.070 is hereby amended to read as follows:

685A.070 1. A broker shall not knowingly place surplus lines insurance with an insurer which is unsound financially or ineligible pursuant to this section.

2. ~~[Except]~~ *With respect to nonadmitted insurance for insureds for which this State is the home state, except* as otherwise provided in this section, an insurer is not eligible to accept surplus lines *or independently procured* risks pursuant to this chapter unless it has *capital and* surplus ~~[as to policyholders]~~ *or its equivalent* in an amount of not less than \$15,000,000 ~~[and, if]~~ *or the minimum capital and surplus requirements pursuant to NRS 680A.120, whichever is greater.*

3. *The requirements of subsection 2 may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding must 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. The Commissioner shall not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than \$4,500,000.*

4. *A broker shall not place surplus lines insurance with an alien insurer, unless the alien insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners or, if the alien insurer is not listed on the Quarterly Listing of Alien Insurers,* it has and maintains in a bank or trust company which is a member of the United States Federal Reserve System a trust fund established pursuant to terms that are reasonably adequate to protect all of its policyholders in the United States. Such a trust fund must not have an expiration date which is at any time less than 5 years in the future, on a continuing basis. In the case of:

(a) A single alien insurer, such a trust fund must not be less than the greater of \$5,400,000 or 30 percent of the gross liabilities of the alien insurer for surplus lines in the United States, excluding any liabilities for aviation, wet marine and transportation insurance, not to exceed \$60,000,000, to be determined annually on the basis of accounting practices and procedures that are substantially equivalent to the accounting practices and procedures applicable in this State as of December 31 of the year immediately preceding the date of the determination where:



(1) The liabilities are maintained in an irrevocable trust account in a qualified financial institution in the United States, on behalf of policyholders in the United States, consisting of cash, securities, letters of credit or any other investments of substantially the same character and quality as investments that are eligible investments pursuant to chapter 682A of NRS for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this State. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must comply with the requirements set forth in the Standard Trust Agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners;

(2) The alien insurer may request approval by the Commissioner to use the trust fund to pay any valid claim against a surplus line if the balance of the trust fund is not, during any period, less than \$5,400,000 or 30 percent of the alien insurer's current gross liabilities for surplus lines in the United States, excluding any liabilities for aviation, wet marine and transportation insurance; and

(3) In calculating the amount of the trust fund required by this subsection, credit must be given for any deposits for any surplus lines that are separately required and maintained within a state or territory of the United States, not to exceed the amount of the alien insurer's loss and loss adjustment reserves maintained in that state or territory.

(b) A group of insurers which includes individual unincorporated insurers, such a trust fund must not be less than \$100,000,000.

(c) A group of incorporated insurers under common administration, such a trust fund must not be less than \$100,000,000. Each insurer within the group must individually maintain capital and surplus of not less than \$25,000,000. The group of incorporated insurers must:

(1) Operate under the supervision of the Department of Trade and Industry of the United Kingdom;

(2) Possess aggregate policyholders surplus of \$10,000,000,000, which must consist of money in trust in an amount not less than the assuming insurers' liabilities attributable to insurance written in the United States; and

(3) Maintain a joint trustees surplus of which \$100,000,000 must be held jointly for the benefit of United States ceding insurers of any member of the group.

~~[(d) An insurance exchange created by the laws of a state, the insurance exchange shall have and maintain a trust fund in an amount of not less than \$75,000,000 or have a surplus as to policyholders in an amount of not less than \$75,000,000. If an~~



~~insurance exchange maintains money for the protection of all policyholders, each syndicate shall maintain minimum capital and surplus of not less than \$15,000,000 and must qualify separately to be eligible for the acceptance of surplus lines risks pursuant to this chapter.~~

~~➤ The Commissioner may require larger trust funds or surplus as to policyholders than those set forth in this section if, in the judgment of the Commissioner, the volume of business being transacted or proposed to be transacted warrants larger amounts.~~

~~3. An insurer is not eligible to write surplus lines of insurance unless it has established a reputation for financial integrity and satisfactory practices in underwriting and handling claims. In addition, a]~~

5. A foreign insurer must be authorized in the state of its domicile to write the kinds of insurance which it intends to write in Nevada [.

~~4. The Commissioner may from time to time compile or approve a list of all surplus lines insurers deemed by the Commissioner to be eligible currently, and may mail a copy of the list to each broker at his or her office last of record with the Commissioner. To be placed on the list, a surplus lines insurer must file an application with the Commissioner. The application must be accompanied by a nonrefundable fee of \$2,450 and, in addition to any other fee or charge, all applicable fees required pursuant to NRS 680C.110. To remain on the list, a surplus lines insurer must pay, in addition to any other fee or charge, all applicable fees required pursuant to NRS 680C.110. This subsection does not require the Commissioner to determine the actual financial condition or claims practices of any unauthorized insurer. The status of eligibility, if granted by the Commissioner, indicates only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the Commissioner has no credible evidence to the contrary. While any such list is in effect, the broker shall restrict to the insurers so listed all surplus lines business placed by the broker.] and for which this State is the home state of the insured.~~

Sec. 26. NRS 685A.090 is hereby amended to read as follows:
685A.090 Each insurance contract procured and delivered as a [surplus lines] *nonadmitted* coverage pursuant to this chapter must have conspicuously stamped upon it:

This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither licensed by nor under the supervision of the Division of Insurance of the Department of Business and Industry of the State of Nevada. If the insurer is



found insolvent, a claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.

Sec. 27. NRS 685A.100 is hereby amended to read as follows:

685A.100 Insurance contracts procured as ~~[surplus—lines]~~ *nonadmitted* coverage from unauthorized insurers in accordance with this chapter shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

Sec. 28. NRS 685A.110 is hereby amended to read as follows:

685A.110 1. As to a surplus lines risk which has been assumed by an unauthorized insurer pursuant to the ~~[Surplus Lines]~~ *Nonadmitted Insurance* Law, and if the premium thereon has been received by the surplus lines broker who placed such insurance, in all questions thereafter arising under the coverage between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured for losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the broker is indebted to the insurer with respect to such insurance or for any other cause.

2. Each unauthorized insurer assuming a surplus lines risk under the ~~[Surplus Lines]~~ *Nonadmitted Insurance* Law shall be deemed thereby to have subjected itself to the terms of this section.

Sec. 29. NRS 685A.120 is hereby amended to read as follows:

685A.120 1. No person may act as, hold himself or herself out as or be a surplus lines broker with respect to subjects of insurance ~~[resident, located or to be performed in this State or elsewhere]~~ *for which this State is the insured's home state* unless the person is licensed as such by the Commissioner pursuant to this chapter.

2. Any person who has been licensed by this State as a producer of insurance for general lines for at least 6 months, or has been licensed in another state as a surplus lines broker and continues to be licensed in that state, and who is deemed by the Commissioner to be competent and trustworthy with respect to the handling of surplus lines may be licensed as a surplus lines broker upon:

(a) Application for a license and payment of all applicable fees for a license and a fee established by the Commissioner of not more than \$15 for deposit in the Insurance Recovery Account created by NRS 679B.305;

(b) Submitting the statement required pursuant to NRS 685A.127; and

(c) Passing any examination prescribed by the Commissioner on the subject of surplus lines.



3. An application for a license must be submitted to the Commissioner on a form designated and furnished by the Commissioner. The application must include the social security number of the applicant.

4. A license issued pursuant to this chapter continues in force for 3 years unless it is suspended, revoked or otherwise terminated. The license may be renewed upon submission of the statement required pursuant to NRS 685A.127 and payment of all applicable fees for renewal and a fee established by the Commissioner of not more than \$15 for deposit in the Insurance Recovery Account created by NRS 679B.305 to the Commissioner on or before the last day of the month in which the license is renewable.

5. A license which is not renewed expires at midnight on the last day specified for its renewal. The Commissioner may accept a request for renewal received by the Commissioner within 30 days after the expiration of the license if the request is accompanied by:

(a) The statement required pursuant to NRS 685A.127;

(b) All applicable fees for renewal;

(c) A penalty in an amount that is equal to 50 percent of all applicable fees for renewal, except for any fee required pursuant to NRS 680C.110; and

(d) A fee established by the Commissioner of not more than \$15 for deposit in the Insurance Recovery Account created by NRS 679B.305.

Sec. 30. NRS 685A.140 is hereby amended to read as follows:

685A.140 1. In addition to other grounds therefor, the Commissioner may suspend or revoke any surplus lines broker's license:

(a) If the broker fails to file the ~~annual~~ *quarterly* statement or to remit the tax as required by NRS ~~685A.170~~ *685A.175* and 685A.180;

(b) If the broker fails to maintain an office in this state or in the state where the broker was issued a license as a resident broker, or to keep the records, or to allow the Commissioner to examine his or her records as required by this chapter, or if the broker removes his or her records from the state; or

(c) If *this State is the insured's home state and* the broker places a surplus lines coverage in an insurer other than as authorized under this chapter.

2. Upon suspending or revoking the broker's surplus lines license the Commissioner may also suspend or revoke all other licenses of or as to the same individual under this Code.

Sec. 31. NRS 685A.160 is hereby amended to read as follows:

685A.160 1. Each broker shall keep in his or her office a full and true record of each surplus lines coverage procured by the



broker ~~for~~ *for which this State is the insured's home state,* including a copy of each daily report, if any, a copy of each certificate of insurance issued by the broker, and such of the following items as may be applicable:

(a) The amount of the insurance;
(b) The gross premium charged;
(c) The return premium paid, if any;
(d) The rate of premium charged upon the several items of property;

(e) The effective date of the contract, and the terms thereof;
(f) The name and address of each insurer on the direct risk and the proportion of the entire risk assumed by that insurer if less than the entire risk;

(g) The name and address of the insured;

(h) A brief general description of the property or risk insured and where located or to be performed; and

(i) Any other information as may be required by the Commissioner.

2. The record must not be removed from the office of the broker and must be open to examination by the Commissioner or a representative of the Commissioner at all times within 5 years after issuance of the coverage to which it relates.

Sec. 32. NRS 685A.175 is hereby amended to read as follows:

685A.175 ~~[Within 45 days after the end of each calendar quarter, a]~~

1. A broker who has written coverage ~~[which will require the broker to pay more than \$1,000 in taxes for coverage written in that calendar quarter]~~ for which this State is the insured's home state shall pay , by the date described in subsection 2, the tax for ~~[the]~~ each calendar quarter ~~[to]~~ as directed by the Commissioner and shall file ~~[with]~~ as directed by the Commissioner ~~[, or with a nonprofit organization of brokers in accordance with regulations adopted by the Commissioner pursuant to NRS 685A.210,]~~ a copy of a quarterly report which includes an accounting of:

~~[1.]~~ (a) The aggregate gross premiums for the quarter;
~~[2.]~~ (b) The aggregate of the return premiums received;
~~[3.]~~ (c) The amount of tax remitted to the Commissioner;
and

~~[4.]~~ (d) The ~~[amount of aggregate tax remitted to each other state for which an allocation is made pursuant to NRS 680B.030.]~~ *distribution of the exposures of insureds by state in accordance with the requirements of any multi-state agreement entered into by the Commissioner pursuant to section 17 of this act.*

➔ The report must be on a form approved by the Commissioner.



2. *The tax filings and payments required by subsection 1 must be submitted by:*

(a) *February 15 for the calendar quarter ending the preceding December 31.*

(b) *May 15 for the calendar quarter ending the preceding March 31.*

(c) *August 15 for the calendar quarter ending the preceding June 30.*

(d) *November 15 for the calendar quarter ending the preceding September 30.*

Sec. 33. NRS 685A.180 is hereby amended to read as follows:

685A.180 1. ~~On~~ *Except as otherwise provided in subsection 6, on or before ~~March 1 of each year,~~ the date described in subsection 2 of NRS 685A.175 for each quarter,* each broker shall pay ~~to~~ *as directed by* the Commissioner a tax on surplus lines coverages *for which this State is the insured's home state* written by the broker in unauthorized insurers during the preceding calendar ~~year~~ *quarter* at the same rate of tax as imposed by law on the premiums of similar coverages written by authorized insurers ~~[If a broker has paid any taxes pursuant to NRS 685A.175, the broker shall deduct the total paid from the tax due and pay the remainder, if any.]~~ *, in addition to any fees imposed pursuant to NRS 685A.075.*

2. *Except as otherwise provided in subsection 6, on or before the date described in subsection 2 of NRS 685A.175 for each quarter, each insured for which this State is the home state shall pay as directed by the Commissioner a tax on independently procured insurance written for the insured by an unauthorized insurer during the preceding calendar quarter at the same rate of tax as imposed by law on the premiums of similar coverages written by authorized insurers, in addition to any fees imposed pursuant to NRS 685A.075.*

3. For the purposes of this section, the "premium" on surplus lines coverages includes:

(a) The gross amount charged by the insurer for the insurance, less any return premium;

(b) Any fee allowed by NRS 685A.155;

(c) Any policy fee;

(d) Any membership fee;

(e) Any inspection fee; and

(f) Any other fees or assessments charged by the insurer as consideration for the insurance.

➔ Premium does not include any additional amount charged for state or federal tax, or for ~~filing~~ *executing or completing* affidavits or reports of coverage.



* S B 2 8 9 R 1 *

~~[3. If a contract for surplus lines insurance covers risks or exposures only partially in this State, the tax so payable must be computed on that portion of the premium properly allocable to the risks or exposures located in this State. The Commissioner may adopt regulations which establish standards for allocating premiums for risks located in this State in the same manner as premiums are allocated pursuant to NRS 680B.030.]~~

4. ~~[The Commissioner shall promptly deposit all]~~ All taxes collected *as directed* by the Commissioner pursuant to this section *and not intended for disbursement to other states by a clearinghouse established through any multi-state agreement entered into by the Commissioner pursuant to section 17 of this act must be promptly deposited* with the State Treasurer, to the credit of the State General Fund.

5. A broker who receives a credit for tax paid shall refund to each insured the amount of the credit attributable to the insured when the insurer pays a return premium or within 30 days, whichever is earlier.

6. *If the Commissioner has entered into a multi-state agreement pursuant to section 17 of this act, the Commissioner may require that each broker who has written surplus line coverages for multi-state risks for which this State is the insured's home state and each insured for which this State is the home state who has obtained independently procured insurance for multi-state risks pay a premium tax:*

(a) *For the portion of the premium allocated to Nevada, at the tax rate applicable to nonadmitted insurance pursuant to this chapter;*

(b) *For the portion of the premium allocated to any other state that also participates in the multi-state agreement, at the tax rate applicable to nonadmitted insurance as established by that state; and*

(c) *For the portion of the premium allocated to any other state that does not participate in the multi-state agreement, at the tax rate applicable to nonadmitted insurance pursuant to this chapter. The tax for this portion of the premium must be deposited with the State Treasurer, to the credit of the State General Fund, after it is processed by the clearinghouse established through the multi-state agreement.*

Sec. 34. NRS 685A.190 is hereby amended to read as follows:

685A.190 1. A broker who fails to make and file the ~~[annual]~~ *quarterly* statement required pursuant to NRS ~~[685A.170 before April 1 after the due date of the statement,]~~ *685A.175* is liable for a penalty of \$500.



2. Except as otherwise provided in this subsection, a broker who fails to pay the tax required by NRS 685A.180 ~~[before April 1 after the date upon which the tax is due]~~ is liable:

(a) If the aggregate amount of the tax owed by the broker is more than \$50, for a penalty in the first year of delinquency in the amount of \$1,000 or 125 percent of the delinquent tax, whichever is larger; or

(b) If the aggregate amount of the tax owed by the broker is \$50 or less, for a penalty in the first year of delinquency in an amount equal to the amount of the delinquent tax.

3. Interest must be charged on all penalties imposed pursuant to subsection 2 in an amount equal to the prime rate at the largest bank in the State of Nevada, as ascertained by the Commissioner of Financial Institutions on January 1 of the year in which the tax became due, plus 2 percent. The rate must be adjusted on July 1 and January 1 thereafter. The interest charged must be compounded monthly and must continue to accrue until the penalty and interest are paid in full.

4. The tax may be collected by distraint, or the tax and penalty may be recovered by an action instituted by the Commissioner, in the name of the State, the Attorney General representing the Commissioner, in any court of competent jurisdiction. The penalty, when so collected, must be paid to the State Treasurer for credit to the State General Fund.

5. No proceeding to recover taxes, penalties or fines pursuant to this section may be maintained unless it is commenced by the giving of notice to the person against whom the proceeding is brought within 5 years after the occurrence of the charged act or omission. This limitation does not apply if the Commissioner finds fraudulent or willful evasion of taxes.

Sec. 35. NRS 685A.200 is hereby amended to read as follows:

685A.200 1. An unauthorized insurer effecting insurance under the provisions of the ~~[Surplus Lines]~~ **Nonadmitted Insurance** Law shall be deemed to be transacting insurance in this state as an unlicensed insurer and may be sued in a district court of this state upon any cause of action arising against it in this state under any insurance contract entered into by it under this chapter.

2. Service of legal process against the insurer may be made in any such action by service of two copies thereof upon the Commissioner or an authorized representative of the Commissioner and payment of the fee specified in NRS 680B.010. The Commissioner or an authorized representative of the Commissioner shall forthwith mail a copy of the process served to the person designated by the insurer in the policy for the purpose by prepaid registered or certified mail with return receipt requested. If no such



* S B 2 8 9 R 1 *

1 person is so designated in the policy, the Commissioner or an
2 authorized representative of the Commissioner shall in like manner
3 mail a copy of the process to the broker through whom the insurance
4 was procured, or to the insurer at its principal place of business,
5 addressed to the address of the broker or insurer, as the case may be,
6 last of record with the Commissioner. Upon service of process upon
7 the Commissioner or an authorized representative of the
8 Commissioner and its mailing in accordance with this subsection,
9 the court shall be deemed to have jurisdiction in personam of the
10 insurer.

11 3. The defendant insurer has 40 days from the date of service
12 of the summons and complaint upon the Commissioner or an
13 authorized representative of the Commissioner within which to
14 plead, answer or defend any such suit.

15 4. An unauthorized insurer entering into such an insurance
16 contract shall be deemed thereby to have authorized service of
17 process against it in the manner and to the effect provided in this
18 section. Any such contract, if issued, must contain a provision
19 stating the substance of this section and designating the person to
20 whom the Commissioner or an authorized representative of the
21 Commissioner shall mail process as provided in subsection 2.

22 5. For the purposes of this section, "process" includes only a
23 summons or the initial documents served in an action. The
24 Commissioner or an authorized representative of the Commissioner
25 is not required to serve any documents after the initial service of
26 process.

27 **Sec. 36.** NRS 685A.170 is hereby repealed.

28 **Sec. 37.** This act becomes effective upon passage and
29 approval.

TEXT OF REPEALED SECTION

685A.170 Annual statement of broker.

1. Each broker shall on or before March 1 of each year file with the Commissioner a statement verified by the broker of all surplus lines insurance transacted by the broker during the preceding calendar year. A statement must be filed whether or not the broker has transacted any business during the preceding year.

2. The statement must be on forms as prescribed and furnished by the Commissioner, and must contain such information as the Commissioner may reasonably require.



* S B 2 8 9 R 1 *

3. If a broker has filed any reports pursuant to NRS 685A.175, the annual statement must include any necessary reconciliation of the quarterly reports.

③

