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INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 993, L.D. 1352, Bill, “An Act To Implement the Requirements of the Federal Nonadmitted and Reinsurance Reform Act of 2010”

Amend the bill by striking out all of sections 1 to 4 and inserting the following:

Sec. 1. 24-A MRSA §2001-A is enacted to read:

§2001-A. Scope

This chapter applies exclusively to transactions when this State is the home state of the applicant or insured. Nothing in this chapter applies to the sale, solicitation, negotiation, placement or writing of contracts of insurance for any applicant or insured whose home state is in a jurisdiction other than in this State.

Sec. 2. 24-A MRSA §2002-A, sub-§3, as amended by PL 1997, c. 592, §48, is further amended to read:

3. Producers with surplus lines authority may procure the following kinds of insurance from eligible surplus lines insurers without adherence to the procedures set forth in section 2004 or any other requirement to determine whether the full amount or type of insurance sought can be obtained from admitted insurers:

- A. Wet marine and transportation insurance;
- B. Insurance on subjects located, resident or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State;
- C. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations; ~~or~~
- D. Insurance on aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability other than workers' compensation and employer's liability arising out of the ownership, maintenance or use of such aircraft; or

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1 E. Insurance placed by a producer with surplus lines authority for an exempt
2 commercial purchaser if:

3 (1) The producer has disclosed to the exempt commercial purchaser that such
4 insurance may or may not be available from the admitted market that provides
5 greater protection with more regulatory oversight; and

6 (2) The exempt commercial purchaser has subsequently requested in writing for
7 the producer to procure or place such insurance from a nonadmitted insurer.

8 **Sec. 3. 24-A MRSA §2003**, as amended by PL 1997, c. 592, §49, is further
9 amended to read:

10 **§2003. Definitions**

11 As used in this chapter, unless the context otherwise indicates, the following terms
12 have the following meanings.

13 1. ~~"Producer" as used in this chapter and unless context otherwise requires,~~ means a
14 producer with surplus lines authority duly licensed as such under this chapter.

15 2. To "export" means to place insurance in an unauthorized nonadmitted insurer
16 under this Surplus Lines Law ~~insurance covering a subject of insurance resident, located~~
17 ~~or to be performed in Maine.~~

18 3. "Admitted insurer" means an insurer licensed to engage in the business of
19 insurance in this State.

20 4. "Affiliate" means, with respect to an insured, any entity that controls, is controlled
21 by or is under common control with the insured.

22 5. "Affiliated group" means any group of affiliates.

23 6. "Exempt commercial purchaser" means an exempt commercial purchaser as
24 defined by the federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law
25 111-203, Section 527.

26 7. "Home state" means:

27 A. With respect to an insured:

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

30 (2) If 100% of the insured risk is located out of the state referred to in
31 subparagraph 1, the state to which the greatest percentage of the insured's taxable
32 premium for that insurance contract is allocated; or

33 B. With respect to an affiliated group, if more than one of the insureds from an
34 affiliated group are named insureds on a single nonadmitted insurance contract, the
35 home state, as determined pursuant to paragraph A, of the member of the affiliated
36 group that has the largest percentage of premium attributed to it under that insurance
37 contract.

1 8. "Nonadmitted insurance" means any property and casualty insurance permitted to
2 be placed through a surplus lines broker with a nonadmitted insurer eligible to accept that
3 insurance.

4 9. "Nonadmitted insurer" means an insurer not licensed to engage in the business of
5 insurance in this State. "Nonadmitted insurer" does not include a risk retention group, as
6 that term is defined in section 6093, subsection 13.

7 **Sec. 4. 24-A MRSA §2007**, as amended by PL 1997, c. 592, §54, is further
8 amended to read:

9 **§2007. Eligible surplus lines insurers**

10 1. A producer may not knowingly place surplus lines insurance with an insurer that
11 is unsound financially or that is ineligible under this section.

12 2. The superintendent shall from time to time publish a list of all surplus lines
13 insurers determined by the superintendent to be eligible currently, and shall mail a copy
14 of such list to each producer at the producer's office last of record with the
15 superintendent. This subsection may not be construed to cast upon the superintendent the
16 duty of determining the actual financial condition or claims practices of any unauthorized
17 insurer; and the status of eligibility, if granted by the superintendent, may indicate only
18 that the insurer appears to be sound financially and to have satisfactory claims practices,
19 and that the superintendent has no credible evidence to the contrary. While any such list
20 is in effect, the producer shall restrict to the insurers so listed all surplus lines business
21 placed by the producer.

22 3. The superintendent shall approve a United States insurer's request for eligibility
23 if the insurer:

24 A. Is authorized to write such insurance in its domiciliary jurisdiction;

25 B. Has established satisfactory evidence of good repute and financial integrity; and

26 C. Maintains capital and surplus, or its equivalent under the laws of its state of
27 domicile, in an amount at least equal to the greater of:

28 (1) The minimum capital and surplus that would be required if the insurer were
29 licensed in this State; and

30 (2) \$15,000,000.

31 4. The superintendent may list an insurer as eligible if it does not meet the
32 minimum capital and surplus requirements of subsection 3 upon an affirmative finding of
33 acceptability by the superintendent. The finding must be based upon such factors as
34 quality of management, capital and surplus of any parent company, company
35 underwriting profit and investment income trends, market availability and company
36 record and reputation within the industry. The superintendent may not make an
37 affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less
38 than \$4,500,000.

39 5. A non-United States insurer is considered eligible to write insurance on an
40 unauthorized basis in this State if it is listed on the quarterly listing of alien insurers
41 maintained by the National Association of Insurance Commissioners.'

1 Amend the bill in section 14 in §2531 in subsection 1 by striking out all of the first
2 sentence (page 3, lines 32 to 37 in L.D.) and inserting the following: 'All gross direct
3 insurance premiums and annuity considerations paid to insurers that do not have
4 certificates of authority to do business in this State issued by the Superintendent of
5 Insurance pursuant to Title 24-A are subject to taxation in accordance with this section if
6 this State is the insured's home state, as defined in the federal Nonadmitted and
7 Reinsurance Reform Act of 2010, Public Law 111-203, Section 527.'

8 Amend the bill by striking out all of section 15 and inserting the following:

9 '**Sec. 15. 36 MRSA §2532** is enacted to read:

10 **§2532. Authority to enter into multistate agreement**

11 **1. Authority; multistate agreement.** The State Tax Assessor may, after
12 consultation with the Department of Professional and Financial Regulation, Bureau of
13 Insurance, enter into a multistate agreement, in accordance with the federal Nonadmitted
14 and Reinsurance Reform Act of 2010, Public Law 111-203, Section 521, for the reporting
15 of nonadmitted insurance premiums and the collection and allocation of nonadmitted
16 insurance taxes. For any nonadmitted insurance premiums that are subject to taxation by
17 this State and interstate allocation of taxes in accordance with the federal Nonadmitted
18 and Reinsurance Reform Act of 2010, Public Law 111-203, Section 521, the rate of
19 taxation on each participating state's share of the premium must be that state's applicable
20 nonadmitted insurance premium tax rate.

21 **2. Fiscal analysis; consultation.** The State Tax Assessor may not enter into a
22 multistate agreement pursuant to subsection 1 unless the assessor has:

23 A. Completed a fiscal analysis of the impact of the agreement that examines the
24 expected effects on the State's gross receipt of premium tax; and

25 B. Concluded, after consultation with representatives of surplus lines insurers,
26 admitted insurers and surplus lines producers, that entering into the agreement:

27 (1) Is in this State's financial best interest;

28 (2) Does not significantly increase administrative burden and cost to the State,
29 surplus lines insurers and insureds; and

30 (3) Is consistent with the requirements of the federal Nonadmitted and
31 Reinsurance Reform Act of 2010, Public Law 111-203.'

32 **SUMMARY**

33 The amendment clarifies provisions in the bill by adopting explicit language from
34 federal law rather than incorporating the federal law through cross-reference. The
35 amendment clarifies that, in accordance with the federal Nonadmitted and Reinsurance
36 Reform Act of 2010, Maine's surplus lines law pertains to those transactions when Maine
37 is the home state of the applicant or the insured. The amendment clarifies that diligent
38 search requirements generally required before coverage can be placed in the nonadmitted
39 market do not apply to commercial purchasers defined as exempt from those
40 requirements under federal law. The amendment adds definitions of several terms used

1 within the surplus lines law. The amendment clarifies how United States insurers and
2 non-United States insurers may become eligible surplus lines insurers.

3 The amendment also requires that the Department of Administrative and Financial
4 Services, Maine Revenue Services consult with the Department of Professional and
5 Financial Regulation, Bureau of Insurance and complete a fiscal analysis of the impact on
6 the State's gross receipt of premium tax before entering into any multistate agreement
7 with respect to the reporting, allocation and collection of surplus lines premium taxes on
8 multistate risks. The amendment also requires that Maine Revenue Services consult with
9 representatives of surplus lines insurers, admitted insurers and surplus lines producers
10 when making a determination that entering into a multistate agreement is in the State's
11 financial best interest and consistent with the federal Nonadmitted and Reinsurance
12 Reform Act of 2010.

13 **FISCAL NOTE REQUIRED**

14 **(See attached)**