

Chapter 37

INSURANCE-SURPLUS LINES

Original House Bill No. 15

AN ACT relating to insurance; providing for regulation of surplus lines; providing for independently procured insurance; imposing a premium tax on such insurance; providing definitions; repealing inconsistent provisions; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 26-11-124 is created to read:

**26-11-124. Independently procured insurance; duty to report and pay tax.**

(a) Each insured in this state who procures, continues or renews insurance with a nonadmitted insurer on properties, risks or exposures located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines broker, shall, within forty-five (45) days after the date the insurance was so procured, continued or renewed, file a report with the commissioner, upon forms prescribed by the commissioner, showing the name and address of the insured or insureds, name and address of the insurer, the subject of insurance, a general description of the coverage, the amount of premium currently charged and additional pertinent information requested by the commissioner.

(b) At the time of filing the report required in subsection (a) of this section, the insured is subject to the same tax payment requirements as apply to a surplus lines broker in W.S. 26-11-118.

(c) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify any other provision of this chapter.

**Section 2.** W.S. 26-3-102(a)(iii), 26-9-201, 26-9-207(g), 26-9-230(a), 26-11-102(a)(intro) and by creating new subsections (b) and (c), 26-11-103(a)(iii), (iv)(A)(intro), by creating a new subparagraph (C), (v) and by creating new paragraphs (viii) through (xxi), 26-11-104(a)(intro), (ii), by creating new paragraphs (iv) through (vi) and by creating new subsections (b) and (c), 26-11-105, 26-11-106(a) and (b), 26-11-107(d) and by creating new

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subsections (e) through (g), 26-11-108(a), (b)(intro), (c), (e) and by creating a new subsection (f), 26-11-109, 26-11-110, 26-11-111, 26-11-112 by creating new subsections (f) through (n), 26-11-113(a)(intro) and by creating new paragraphs (iii) through (ix), 26-11-116(a)(intro), (i), by creating new paragraphs (x) through (xiii) and (b), 26-11-117(a), (b)(intro), (ii), (iv), by creating new paragraphs (vi) and (vii) and by creating new subsections (c) and (d), 26-11-118(c)(intro), (d) through (f) and by creating a new subsection (h), 26-11-119, 26-11-120(a) and 26-11-122 are amended to read:

### **26-3-102. When certificate not required.**

(a) A certificate of authority is not required of an insurer for:

(iii) Transactions pursuant to ~~surplus lines~~ coverages lawfully written under chapter 11 of this code;

### **26-9-201. Purpose and scope.**

This chapter governs the qualifications and procedures for the licensing of insurance producers. This chapter does not apply to excess and surplus lines brokers licensed pursuant to W.S. 26-11-112 except as provided in W.S. 26-9-207(b), 26-9-207(c), ~~and 26-9-207(g)~~, 26-9-208 and 26-9-230 or as expressly provided in chapter 11 of this code.

### **26-9-207. License.**

(g) The commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that association oversees, to perform any ministerial functions, including the collection of fees, related to producer or surplus lines broker licensing that the commissioner and the nongovernmental entity may deem appropriate.

### **26-9-230. Service of process on nonresident producers.**

(a) Application for and acceptance of a license as a nonresident insurance producer or surplus lines broker constitutes irrevocable appointment of the

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commissioner as the attorney of the licensee for the acceptance of service of process issued in this state in any action or proceeding against the licensee arising out of the licensing or any transactions under the license.

### CHAPTER 11 NONADMITTED INSURANCE

#### **26-11-101. Short title.**

This chapter constitutes and may be cited as the “Surplus Line Nonadmitted Insurance Law”.

#### **26-11-102. Home state regulation of nonadmitted insurance; exemptions.**

(a) This chapter does not apply to reinsurance or to the following insurances when placed by licensed agents or surplus line brokers of this state or when procured directly by an insured from a nonadmitted insurer:

(b)The placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured’s home state.

(c)This section shall 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.

#### **26-11-103. Definitions.**

(a) As used in this chapter:

(iii) “Export” means to place ~~in an unauthorized insurer under this surplus line law insurance covering a subject of insurance resident, located or to be performed in Wyoming surplus lines insurance with a nonadmitted insurer;~~

(iv) “Home state” means as follows:

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(A) Except as provided in ~~subparagraph~~ subparagraphs (B) and (C) of this paragraph, “home state” means, with respect to an insured:

(C) When a group policyholder pays one hundred percent (100%) of the premium from its own funds, the term “home state” means the home state, as determined pursuant to subparagraph (A) of this paragraph, of the group policyholder. When a group policyholder does not pay one hundred percent (100%) of the premium from its own funds, the term “home state” means the home state, as determined pursuant to subparagraph (A) of this paragraph, of the group member.

(v) “Nonadmitted insurance” means any property and casualty insurance not licensed to do the business of insurance in this state permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept the insurance;

(viii) “Affiliate” means with respect to an insured, any entity that controls, is controlled by or is under common control with the insured;

(ix) “Affiliated group” means any group of entities that are all affiliated; (x) “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or any other legal entity;

(xi) “Control” means an entity has “control” over another entity if:

(A) The entity directly or indirectly or acting through one (1) or more other persons owns, controls or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the entity; or

(B) The entity controls in any manner the election of a majority of directors or trustees of the other entity.

(xii) “Independently procured insurance” means insurance procured directly by an insured from an eligible nonadmitted insurer;

(xiii) “Kind of insurance” means one (1) of the types of insurance

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required to be reported in the annual statement which is filed with the commissioner by admitted insurers;

(xiv) “Nonadmitted insurer” means with respect to a state, an insurer not licensed to engage in the business of insurance in the state, but 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);

(xv) “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;

(xvi) “Principal place of business” means with respect to determining the home state of the insured:

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

(B) If the insured’s high-level officers direct, control and coordinate the business’ activities in more than one (1) state, the state in which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated; or

(C) If the insured maintains its headquarters or the insured’s high-level officers direct, control and coordinate the 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.

(xvii) “Principal place of residence” means with respect to determining the home state of the insured:

(A)The state where the insured resides for the greatest number of days during a calendar year; or

(B) If the insured’s principal residence is located outside any state,

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the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(xviii) “Qualified risk manager” means with respect to a policyholder of commercial insurance, a person who meets all of the requirements set forth by department rule and regulation, which requirements shall be in compliance with the Nonadmitted and Reinsurance Reform Act of 2010;

(xix) “Surplus lines broker” means an individual or business entity 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;

(xx) “Type of insurance” means coverage afforded under the particular policy that is being placed;

(xxi) “Wet marine and transportation insurance” means:

(A)Insurance upon vessels, crafts, hulls and other interests in them or with relation to them;

(B) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

(C)Insurance of freight and disbursements pertaining to a subject of insurance within the scope of this subsection; and

(D)Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any incidental delays, transshipment or reshipment, provided, however, that insurance of personal property and interests therein shall not be considered wet marine and transportation insurance if the property has:

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(I) Been transported solely by land;

(II) Reached its final destination as specified in the bill of lading or other shipping document; or

(iii) The insured no longer has an insurable interest in the property.

**26-11-104. Conditions for export.**

(a) If certain insurance coverages cannot be procured from authorized insurers, those coverages, designated in this chapter as “surplus lines”, may be procured from ~~unauthorized~~ nonadmitted insurers, subject to the following conditions:

(ii) The full amount of insurance required is not procurable, after diligent effort has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount procurable from authorized insurers. The surplus lines broker shall verify that a properly conducted diligent effort search was performed and documented as prescribed by the commissioner;

(iv) The insurer is an eligible nonadmitted insurer;

(v) The insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;

(vi) All other requirements of this chapter are met.

(b) A surplus lines broker is not required to make a diligent effort search 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 provided:

(i) The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

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

(c)For purposes of this section, the term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i)The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii)The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000.00) in the immediately preceding twelve (12) months;

(iii)The person meets at least one (1) of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars (\$20,000,000.00) as adjusted pursuant to paragraph (iv) of this subsection;

(B) The person generates annual revenues in excess of fifty million dollars (\$50,000,000.00) as adjusted pursuant to paragraph (iv) of this subsection;

(C)The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate;

(D)The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000.00) as adjusted pursuant to paragraph (iv) of this subsection;

(E) The person is a municipality with a population in excess of fifty thousand (50,000) individuals.

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(iv) Effective on January 1, 2015 and every five (5) years thereafter, the amounts in subparagraphs (A), (B) and (D) of paragraph (iii) of this subsection shall be adjusted to reflect the percentage change for such five (5) year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

### **26-11-105. Surplus lines transaction report.**

~~(a) At the time of effecting~~ Within forty-five (45) days after placing any surplus line insurance the for an insured whose home state is this state, each surplus lines broker shall execute an affidavit in a form the commissioner prescribes or accepts, setting forth facts from which it can be determined whether the insurance is eligible for export under W.S. 26-11-104. The broker shall file this affidavit with the commissioner within thirty (30) days after the insurance is effected, and file a report regarding the insurance coverage which shall be kept confidential by the commissioner, including the following:

(i) The name and address of the insured;

(ii) The identity of the insurer or insurers;

(iii) A description of the subject and location of the risk;

(iv) The amount of premium charged for the insurance;

(v) Tax allocation information detailing the portion of the premium attributable to properties, risks or exposures located in each state; and

(vi) Any other information as may be required by the commissioner.

(b) The report shall be on forms prescribed by the commissioner.

### **26-11-106. Open lines for export.**

(a) The commissioner, by order, may declare eligible for export generally and without compliance with W.S. ~~26-11-104(a)(i) and 26-11-105-26-11-104(a)(ii)~~ and (iii), any class of insurance coverage or risk for which he finds, after a hearing of which notice is given to each insurer authorized to transact those classes in this state, that there is not a reasonable or adequate market among authorized insurers either as to acceptance of the risk, contract terms, premium or premium rate. The order shall continue in effect during the existence of the conditions upon which predicated, but subject to the commissioner's earlier termination.

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(b) The broker shall file with or as directed by the commissioner a ~~memorandum report~~ as to each coverage he places in an ~~unauthorized~~ a nonadmitted insurer, in such form and context as the commissioner requires for the identification of the coverage and determination of the tax payable to the state. ~~relative thereto.~~

**26-11-107. Requirements for eligible nonadmitted insurers; publication of eligible insurers.**

(d) The commissioner from time to time may publish a list of all surplus lines insurers he deems eligible currently and shall mail a copy of the list to each broker at his office last of record with the commissioner. This subsection does not obligate the commissioner to determine the actual financial condition or claims practices of any ~~unauthorized nonadmitted~~ 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 listed all surplus line business he places.

(e) A surplus lines broker shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines broker has determined that the nonadmitted insurer is eligible under this section.

(f) A nonadmitted insurer eligible to place surplus lines insurance or independently procured insurance shall:

(i) Be authorized to write the kind of insurance in its domiciliary jurisdiction;

(ii) Have established satisfactory evidence of good repute and financial integrity; and

(i) Be qualified under one (1) of the following subparagraphs:

(A) Have capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

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(D) The minimum capital and surplus requirements under the law of this state; or

(II) Fifteen million dollars (\$15,000,000.00).

(B) The requirements of subparagraph (A) of this paragraph may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding shall 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. In no event shall the commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000.00);

(ii) For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the NAIC international insurers department.

(g) The commissioner is authorized to enter into a cooperative agreement or interstate agreement or compact to establish additional and alternative nationwide uniform eligibility requirements that shall be applicable to nonadmitted insurers domiciled in another state or territory of the United States.

### **26-11-108. Evidence of surplus lines insurance.**

(a) Upon placing a surplus line coverage lines insurance coverage, the surplus lines broker shall promptly issue and deliver to the insured or the producer the policy, or if the policy is not then available, a certificate as described in subsection (f) of this section, cover note, binder or other evidence of the insurance. ~~consisting either of the policy as issued by the insurer, or, if the policy is not then available, the surplus line broker's certificate.~~ The certificate described in subsection (f) of this section, cover note, binder or other evidence of insurance shall be executed by the broker and shall show the description and location of the subject of the insurance, ~~coverage coverages including any material limitations other than those in standard forms, conditions and term a general description of the coverages of the insurance,~~ the premium and rate charged, taxes to be collected from the insured, ~~and~~ the name and address of the insured and surplus lines insurer. ~~If more than one (1) insurer assumes the direct risk, the certificate shall state the name and~~

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~~address of each insurer and the or insurers and the proportion of the entire direct-risk each assumes assumed by each and the name and license number of the surplus lines broker.~~

(b) No broker shall ~~issue or deliver any certificate or any cover note evidence of insurance~~ or purport to insure or represent that insurance will be or has been ~~granted-written~~ by any ~~unauthorized-nonadmitted~~ insurer, unless ~~he-the~~ broker has:

(c) If after the issuance and delivery of any ~~certificate-evidence of insurance~~ there is any change as to the insurer's identity, or the proportion of the ~~direct risk an-assumed by any insurer assumes as stated in the broker's original certificate,~~ or in any other material ~~respect-change in coverage as to-stated in the surplus lines broker's original evidence of insurance evidenced by the certificate~~ or in any other material as to the insurance coverage so evidenced, the surplus lines broker shall promptly issue and deliver to the insured ~~a-or~~ the original producer an appropriate substitute ~~certificate-for,~~ or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible ~~thereunder-for the coverage.~~

(e) Any surplus ~~line-lines~~ broker who knowingly or negligently issues a false certificate ~~or other evidence of insurance,~~ or who fails promptly to notify the insured of any material change with respect to the insurance by delivery to the insured of a substitute certificate, cover note, binder ~~or other evidence of insurance~~ as provided in subsection (c) of this section, upon conviction, is subject to the penalty provided by W.S. 26-1-107 or to any greater applicable penalty otherwise provided by law.

(f) ~~As soon as reasonably possible after the placement of the insurance, the surplus lines broker shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured or producer to replace any evidence of insurance previously issued. Each certificate or policy of insurance shall contain or have attached a complete record of all policy insuring agreements, conditions, exclusions, clauses, endorsements or any other material facts that would regularly be included in the policy.~~

### **26-11-109. Endorsement of contract; duty to notify insured.**

(a) Any insurance contract procured and delivered as a surplus ~~line-lines~~

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coverage pursuant to this chapter shall have stamped or printed upon it, ~~initialed by or bearing the name in~~ at least ten (10) point bold type font, the name and address of the surplus line broker who procured ~~it~~ the coverage, and the following: “This insurance contract is issued pursuant to the Wyoming Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Wyoming Insurance Department. In the event of insolvency of the surplus lines insurer, losses will not be paid by the Wyoming Insurance Guaranty Association.”

(b)No contract of insurance placed by a surplus lines broker under this chapter shall be binding upon the insured and no premium charged shall be due and payable until the surplus lines broker shall have notified the insured in writing, in a form acceptable to the commissioner, a copy of which shall be maintained by the surplus lines broker with the records of the contract and available for possible examination, that:

(i)The insurer with which the surplus lines broker places the insurance is not licensed by this state and is not subject to its supervision; and

(ii)In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty association.

(c)Nothing herein contained shall nullify any agreement by any insurer to provide insurance.

### **26-11-110. Enforceability and validity of nonadmitted insurance.**

Insurance contracts procured ~~as surplus line coverage~~ from unauthorized insurers in accordance with this chapter are 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.

### **26-11-111. Liability of insurer as to losses and unearned premiums; applicability of section to insurers.**

(a) As to a surplus line risk which is assumed by ~~an unauthorized a~~ nonadmitted insurer pursuant to this chapter, and if the premium thereon is received by the surplus line broker who placed the insurance, in all questions

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thereafter arising under the coverage as between the insurer and the insured the insurer is deemed to have received the premium due to it for that coverage. The insurer is liable to the insured for losses covered by the insurance and for unearned premiums which are payable to the insured upon cancellation of the insurance, whether or not the broker is indebted to the insurer with respect to the insurance or for any other cause.

(b) Each ~~unauthorized~~ nonadmitted insurer assuming a surplus line risk under this chapter subjects itself to the terms of this section.

### **26-11-112. Surplus lines broker's license; authority for issuance; application; fee; applicable law.**

(f) The commissioner may issue a resident surplus lines broker license to a qualified holder of a current property and casualty producer license if:

(i) The person has paid the fees set forth in W.S. 26-4-101(a);

(ii) The person has submitted or transmitted to the commissioner a completed uniform application;

(iii) The individual has taken and passed a written examination in a form prescribed by the commissioner; and

(iv) The person has established and continues to maintain an office in this state.

(g) A nonresident person shall receive a nonresident surplus lines broker license pursuant to the requirements of W.S. 26-9-208.

(h) A business entity acting as a surplus lines broker is required to obtain a surplus lines broker license. In addition to the requirements for licensure set forth in subsections (f) and (g) of this section; before approving the application the commissioner shall find that the business entity has designated a licensed surplus lines broker responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

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(j)The commissioner may require any documents reasonably necessary to verify the information contained in an application.

(k)The commissioner shall waive any requirements for a nonresident surplus lines license applicant with a valid license from his home state, except the requirements imposed by this section, if the applicant's home state awards nonresident surplus lines licenses to residents of this state on the same basis.

(m) A business entity surplus lines broker license shall expire on March 31 in the second year following the issuance or renewal of the license, and an application for renewal shall be filed on or before the license expiration date upon payment of the continuation fee and compliance with other provisions of this section.

(n)The license and licensee are subject to chapter 9 of this title as provided in W.S. 26-9-201.

### **26-11-113. Surplus lines broker's license; suspension or revocation; grounds; procedure.**

(a) The commissioner may, after appropriate notice and opportunity for hearing pursuant to the Wyoming Administrative Procedure Act and in accordance with W.S. 26-2-125 through 26-2-129, place on probation, suspend, ~~or~~ revoke or refuse to issue or renew any surplus ~~line~~-lines broker's license or other license issued under this title, or may levy a civil penalty in accordance with W.S. 26-1-107 or any combination of actions for any one (1) or more of the following causes:

(iii) Removal of the resident surplus lines broker's office from this state;

(iv) Removal of the resident surplus lines broker's office accounts and records from this state during the period during which the accounts and records are required to be maintained under W.S. 26-11-116;

(v) Failure to make and file required reports when due;

(vi) Failure to remit the tax on surplus lines premiums as provided in this chapter;

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(vii) Failure to maintain a bond as required by W.S. 26-11-114; (viii) Violation of any provision of this chapter; or

(ix) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under chapter 9 of this title.

### **26-11-116. Records of broker; contents; examination.**

(a) Each surplus lines broker shall keep in his office a full and true record of each surplus line coverage he procures, including a copy of each daily report, if any, lines insurance contract placed by or through the broker for which this state is the home state of the insured, including a copy of each the policy, certificate, cover note or other evidence of insurance he issues and any showing each of the following applicable items:

(i) Amount of the insurance, risks and perils insured;

(x) Amount of tax and other sums to be collected from the insured;

(xi) Allocation of taxes by state as referred to in W.S. 26-11-118;

(xii) Identity of the producer, any confirming correspondence from the insurer or its representative, and the application; and

(xiii) Any other information the commissioner requires.

(b) The record of each contract shall be kept open at all reasonable times to examination by the commissioner at all times within without notice for a period of not less than five (5) years after issuance of the coverage to which it relates following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines broker shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

### **26-11-117. Annual report; summary of exported business.**

(a) Each surplus lines broker, annually, on or before March 1, shall file with

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the commissioner a verified ~~statement-report~~ of all surplus line insurance he transacted during the preceding calendar year.

(b) The ~~statement-report~~ shall be on forms the commissioner prescribes ~~and furnishes~~ and shall show:

(ii) Aggregate gross premiums ~~charged~~ written;

(iv) Aggregate of net premiums; ~~and~~

(vi) Amount of aggregate tax remitted to this state; and

(vii) Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to W.S. 26-11-118.

(c) More frequent reporting and tax payment may be required by participation in a multistate compact, reciprocal agreement or clearinghouse pursuant to W.S. 26-11-123.

(d) The report shall include the surplus lines broker's affidavit as to the diligent effort to place coverages with admitted insurers and the results thereof.

### **26-11-118. Tax on surplus lines.**

(c) In addition to the full amount of gross premiums charged by the insurer for the insurance, every surplus lines ~~producer-broker~~ shall collect and pay to the commissioner a sum equal to three percent (3%) of the gross premiums charged, ~~assessments, membership fees, subscriber fees, policy fees and service fees~~ less any return premiums, for surplus lines insurance provided by the surplus lines ~~producer-broker~~. Where the insurance covers properties, risks or exposures located or to be performed both in and out of Wyoming, the sum payable shall be computed based on:

(d) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines ~~producer-broker~~ shall be returned to the policyholder directly by the surplus lines ~~producer-broker~~.

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The surplus lines ~~producer-broker~~ is prohibited from rebating, for any reason, any part of the tax.

(e) Annually, on or before March 1, each surplus lines broker shall pay the premium tax due for the policies written during the preceding calendar year as shown by his annual ~~statement-report~~ filed with the commissioner unless more frequent reporting and payment is required by participation in a multistate compact, reciprocal agreement or clearinghouse pursuant to subsection (g) of this section. The surplus lines broker shall pay interest on the amount of any delinquent tax due, at the rate of nine percent (9%) per year, compounded annually, beginning the day the amount becomes delinquent.

(f) If a surplus lines policy procured through a surplus lines ~~producer-broker~~ covers properties, risks or exposures only partially located or to be performed in Wyoming, the tax due shall be computed on the portions of the premiums which are attributable to the properties, risks or exposures located or to be performed in this state. In determining the amount of premiums taxable in Wyoming, all premiums written, procured or received in Wyoming shall be considered written on proper- ties, risks or exposures located or to be performed in Wyoming, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state.

(h) The commissioner is authorized to utilize the allocation schedule included in the nonadmitted insurance multistate agreement for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks or exposures are located.

### **26-11-119. Failure to file report or pay tax; penalty.**

~~If Any licensed surplus lines broker or insured who independently procures insurance, who fails to file his annual statement, or fails to remit the tax provided by W.S. 26-11-118, prior to April 1 after the tax is due, and if in the commissioner's opinion the failure is without just cause, the broker is liable for a twenty five dollar (\$25.00) fine-a report in the form and within the time required or provided for in W.S. 26-11-117 or 26-11-124 may be fined up to twenty-five dollars (\$25.00) per day for each day of the delinquency commencing with April 1-continues, beginning the day after the report was due until the date the report is received. The tax may be collected by distraint, or the tax and fine may be recovered by an action the commissioner institutes in any court of competent jurisdiction. The surplus lines broker or insured~~

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who independently procures insurance shall pay interest on the amount of any delinquent tax due as required by W.S. 26-11-118(e).

### **26-11-120. Service of process against nonadmitted insurer.**

(a) ~~An unauthorized~~ A nonadmitted insurer shall be sued, upon any cause of action arising in this state under any contract it issues as a ~~surplus line nonadmitted insurance~~ contract pursuant to this chapter, in the district court of the county in which the cause of action arises.

### **26-11-122. Disclosure to commissioner of insurance placed with nonadmitted insurer.**

Any person for whom insurance is placed with an ~~unauthorized nonadmitted~~ insurer, upon the commissioner's order, shall produce for his examination all policies and other documents evidencing the insurance and shall disclose to the commissioner the amount of gross premiums paid or agreed to be paid for the insurance. If the person refuses to obey the commissioner's order, he is subject to the penalties provided by W.S. 26-1-107 for each refusal.

**Section 3.** W.S. 26-11-107(a) and (b), 26-11-108(d), 26-11-112(a) through (d), 26-11-113(a)(i) and (ii) and 26-11-116(a)(ix) are repealed.

**Section 4.** This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

Approved March 8, 2012.