

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Insurance-surplus lines.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

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

6

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

8

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

10

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

13

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

14

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

19

20 (c) The insured shall pay interest on the amount of
21 any delinquent tax due, at the rate of nine percent (9%)
22 per year, compounded annually, beginning the day the amount
23 becomes delinquent.

1

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

5

6 **Section 2.** W.S. 26-3-102(a)(iii), 26-9-201, 26-9-
7 207(g), 26-9-230(a), 26-11-101, 26-11-102,
8 26-11-103(a)(iii), (iv), (v) and by creating new paragraphs
9 (viii) through (xxiii), 26-11-104(a)(intro), (ii) and by
10 creating new paragraphs ((iv) through (vi), 26-11-105,
11 26-11-106(a) and (b), 26-11-107(d) and by creating new
12 subsections (e) through (g), 26-11-108(a), (b)(intro), (c),
13 (e) and by creating a new subsection (f), 26-11-109,
14 26-11-110, 26-11-111(a) and (b), 26-11-112 by creating new
15 subsections (f) through (q), 26-11-113(a)(intro) and by
16 creating new paragraphs (iii) through (x),
17 26-11-116(a)(intro), (i) and by creating new paragraphs (x)
18 through (xiii) and (b), 26-11-117, 26-11-118(c) through (f)
19 and by creating a new subsection (h), 26-11-119,
20 26-11-120(a) and 26-11-122 are amended to read:

21

22 **26-3-102. When certificate not required.**

23

1

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

4

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

7

8 **26-9-201. Purpose and scope.**

9

10 This chapter governs the qualifications and procedures for
11 the licensing of insurance producers. This chapter does
12 not apply to excess and surplus lines brokers licensed
13 pursuant to W.S. 26-11-112 except as provided in W.S. 26-9-
14 207(b), 26-9-207(c) ~~and~~, 26-9-207(g), 26-9-208 and 26-9-
15 230 or as expressly provided in chapter 11 of this code.

16

17 **26-9-207. License.**

18

19 (g) The commissioner may contract with
20 nongovernmental entities, including the National
21 Association of Insurance Commissioners or any affiliates or
22 subsidiaries that association oversees, to perform any
23 ministerial functions, including the collection of fees,

1 related to producer or surplus lines broker licensing that
2 the commissioner and the nongovernmental entity may deem
3 appropriate.

4
5 **26-9-230. Service of process on nonresident**
6 **producers.**

7
8 (a) Application for and acceptance of a license as a
9 nonresident insurance producer or surplus lines broker
10 constitutes irrevocable appointment of the commissioner as
11 the attorney of the licensee for the acceptance of service
12 of process issued in this state in any action or proceeding
13 against the licensee arising out of the licensing or any
14 transactions under the license.

15
16 CHAPTER 11

17 NONADMITTED INSURANCE

18
19 **26-11-101. Short title.**

20
21 This chapter constitutes and may be cited as the "Surplus
22 Line-Nonadmitted Insurance Law".

1 **26-11-102. Home state regulation of nonadmitted**
2 **insurance; exemptions.**

3
4 (a) This chapter does not apply to reinsurance or to
5 the following insurances when placed by licensed agents or
6 surplus line brokers of this state or when procured
7 directly by an insured from a nonadmitted insurer:

8
9 (b) The placement of nonadmitted insurance shall be
10 subject to the statutory and regulatory requirements solely
11 of the insured's home state.

12
13 (c) This section shall not be construed to preempt
14 any state law, rule or regulation that restricts the
15 placement of workers' compensation insurance or excess
16 insurance for self-funded workers' compensation plans with
17 a nonadmitted insurer.

18
19 **26-11-103. Definitions.**

20
21 (a) As used in this chapter:

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

6
7 (iv) "Home state" means as follows:

8
9 (A) Except as provided in ~~subparagraph~~
10 subparagraphs (B) and (C) of this paragraph, "home state"
11 means, with respect to an insured:

12
13 (B) If more than one (1) insured from an
14 affiliated group are named insureds on a single nonadmitted
15 insurance contract, the term "home state" means the home
16 state, as determined pursuant to subparagraph (A) of this
17 paragraph, of the member of the affiliated group that has
18 the largest percentage of premium attributed to it under
19 the insurance contract;~~:-~~

20
21 (C) When a group policyholder pays one
22 hundred percent (100%) of the premium from its own funds,
23 the term "home state" means the home state, as determined

1 pursuant to subparagraph (A) of this paragraph, of the
2 group policyholder. When a group policyholder does not pay
3 one hundred percent (100%) of the premium from its own
4 funds, the term "home state" means the home state, as
5 determined pursuant to subparagraph (A) of this paragraph,
6 of the group member.

7
8 (v) "Nonadmitted insurance" means any property
9 and casualty insurance ~~not licensed to do the business of~~
10 ~~insurance in this state~~ permitted to be placed directly or
11 through a surplus lines broker with a nonadmitted insurer
12 eligible to accept the insurance;

13
14 (viii) "Affiliate" means with respect to an
15 insured, any entity that controls, is controlled by or is
16 under common control with the insured;

17
18 (ix) "Affiliate group" means any group of
19 entities that are all affiliated;

20
21 (x) "Business entity" means a corporation,
22 association, partnership, limited liability company,
23 limited liability partnership or any other legal entity;

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

1 (xiv) "Nonadmitted insurer" means with respect
2 to a state, an insurer not licensed to engage in the
3 business of insurance in the state, but does not include a
4 risk retention group as that term is defined in section
5 2(a)(4) of the Liability Risk Retention Act of 1986, 15
6 U.S.C. 3901(a)(4);

7
8 (xv) "Premium tax" means with respect to surplus
9 lines or independently procured insurance coverage, any
10 tax, fee, assessment or other charge imposed by a
11 government entity directly or indirectly based on any
12 payment made as consideration for an insurance contract for
13 such insurance, including premium deposits, assessments,
14 registration fees and any other compensation given in
15 consideration for a contract of insurance;

16
17 (xvi) "Principal place of business" means with
18 respect to determining the home state of the insured:

19
20 (A) The state where the insured resides for
21 the greatest number of days during a calendar year; or
22

1 (B) If the insured's principal residence is
2 located outside any state, the state to which the greatest
3 percentage of the insured's taxable premium for that
4 insurance contract is allocated.

5
6 (xvii) "Qualified risk manager" means with
7 respect to a policyholder of commercial insurance, a person
8 who meets all of the requirements set forth by department
9 rule and regulation, which requirements shall be in
10 compliance with the nonadmitted and reinsurance reform act
11 of 2010.

12
13 (xix) "Surplus lines broker" means an individual
14 or business entity which is licensed in a state to sell,
15 solicit or negotiate insurance on properties, risks or
16 exposures located or to be performed in a state with
17 nonadmitted insurers;

18
19 (xx) "Type of insurance" means coverage afforded
20 under the particular policy that is being placed;

21
22 (xxi) "Wet marine and transportation insurance"
23 means:

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(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

1 interests therein shall not be considered wet marine and
2 transportation insurance if the property has:

3
4 (I) Been transported solely by land;

5
6 (II) Reached its final destination as
7 specified in the bill of lading or other shipping document;
8 or

9
10 (III) The insured no longer has an
11 insurable interest in the property.

12
13 **26-11-104. Conditions for export.**

14
15 (a) If certain insurance coverages cannot be procured
16 from authorized insurers, those coverages, designated in
17 this chapter as "surplus lines", may be procured from
18 ~~unauthorized~~ nonadmitted insurers, subject to the following
19 conditions:

20
21 (ii) The full amount of insurance required is
22 not procurable, after diligent effort has been made to do
23 so, from among the insurers authorized to transact and

1 actually writing that kind and class of insurance in this
2 state, and the amount of insurance exported shall be only
3 the excess over the amount procurable from authorized
4 insurers. The surplus lines broker shall verify that a
5 properly conducted diligent effort search was performed and
6 documented as prescribed by the commissioner;

7
8 (iv) The insurer is an eligible nonadmitted
9 insurer;

10
11 (v) The insurer is authorized to write the type
12 of insurance in its domiciliary jurisdiction;

13
14 (vi) All other requirements of this chapter are
15 met.

16
17 (b) A surplus lines broker is not required to make a
18 diligent effort search to determine whether the full amount
19 or type of insurance can be obtained from admitted insurers
20 when the broker is seeking to procure or place nonadmitted
21 insurance for an exempt commercial purchaser provided:

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

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

10
11 (c) For purposes of this section, the term "exempt
12 commercial purchaser" means any person purchasing
13 commercial insurance that, at the time of placement, meets
14 the following requirements:

15
16 (i) The person employs or retains a qualified
17 risk manager to negotiate insurance coverage;

18
19 (ii) The person has paid aggregate nationwide
20 commercial property and casualty insurance premiums in
21 excess of one hundred thousand dollars (\$100,000.00) in the
22 immediately preceding twelve (12) months;

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

3
4 (A) The person possesses a net worth in
5 excess of twenty million dollars (\$20,000,000.00) as
6 adjusted pursuant to paragraph (iv) of this subsection;

7
8 (B) The person generates annual revenues
9 in excess of fifty million dollars (\$50,000,000.00) as
10 adjusted pursuant to paragraph (iv) of this subsection;

11
12 (C) The person employs more than five
13 hundred (500) full-time or full-time equivalent employees
14 per individual insured or is a member of an affiliated
15 group employing more than one thousand (1,000) employees in
16 the aggregate;

17
18 (D) The person is a not-for-profit
19 organization or public entity generating annual budgeted
20 expenditures of at least thirty million dollars
21 (\$30,000,000.00) as adjusted pursuant to paragraph (iv) of
22 this subsection;

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

4
5 (iv) Effective on January 1, 2015 and every five
6 (5) years thereafter, the amounts in subparagraphs (A), (B)
7 and (D) of paragraph (c)(iii) of this section shall be
8 adjusted to reflect the percentage change for such five
9 (5) year period in the consumer price index for all urban
10 consumers published by the Bureau of Labor Statistics of
11 the United States Department of Labor.

12
13 **26-11-105. Surplus lines transaction report.**

14
15 (a) ~~At the time of effecting~~ Within forty-five days
16 after placing any surplus line insurance ~~the~~ for an insured
17 whose home state is this state, each surplus lines broker
18 shall execute ~~an affidavit in a form the commissioner~~
19 ~~prescribes or accepts, setting forth facts from which it~~
20 ~~can be determined whether the insurance is eligible for~~
21 ~~export under W.S. 26-11-104. The broker shall file this~~
22 ~~affidavit with the commissioner within thirty (30) days~~
23 ~~after the insurance is effected.~~ and file a report

1 regarding the insurance which shall be kept confidential by
2 the commissioner, including the following:

3
4 (i) The name and address of the insured;

5
6 (ii) The identity of the insurer or insurers;

7
8 (iii) A description of the subject and location
9 of the risk;

10
11 (iv) The amount of premium charged for the
12 insurance;

13
14 (v) Tax allocation information detailing the
15 portion of the premium attributable to properties, risks or
16 exposures located in each state; and

17
18 (vi) Any other information as may be required by
19 the commissioner.

20
21 (b) The report shall be on forms prescribed by the
22 commissioner.

1 **26-11-106. Open lines for export.**

2

3 (a) The commissioner, by order, may declare eligible
4 for export generally and without compliance with W.S.
5 ~~26-11-104(a)(i)~~ 26-11-104(a)(iii) and 26-11-105, any class
6 of insurance coverage or risk for which he finds, after a
7 hearing of which notice is given to each insurer authorized
8 to transact those classes in this state, that there is not
9 a reasonable or adequate market among authorized insurers
10 either as to acceptance of the risk, contract terms,
11 premium or premium rate. The order shall continue in effect
12 during the existence of the conditions upon which
13 predicated, but subject to the commissioner's earlier
14 termination.

15

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

22

1 **26-11-107. Requirements for eligible nonadmitted**
2 **insurers; publication of eligible insurers.**

3
4 (d) The commissioner from time to time may publish a
5 list of all surplus lines insurers he deems eligible
6 currently and shall mail a copy of the list to each broker
7 at his office last of record with the commissioner. This
8 subsection does not obligate the commissioner to determine
9 the actual financial condition or claims practices of any
10 ~~unauthorized~~nonadmitted insurer. The status of
11 eligibility, if granted by the commissioner, indicates only
12 that the insurer appears to be sound financially and to
13 have satisfactory claims practices, and that the
14 commissioner has no credible evidence to the contrary.
15 While any such list is in effect the broker shall restrict
16 to the insurers listed all surplus line business he places.

17
18 (e) A surplus lines broker shall not place coverage
19 with a nonadmitted insurer unless, at the time of
20 placement, the surplus lines broker has determined that the
21 nonadmitted insurer is eligible under this section.

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

3
4 (i) Be authorized to write the kind of insurance
5 in its domiciliary jurisdiction;

6
7 (ii) Have established satisfactory evidence of
8 good repute and financial integrity; and

9
10 (iii) Be qualified under one (1) of the
11 following subparagraphs:

12
13 (A) Have capital and surplus or its
14 equivalent under the laws of its domiciliary jurisdiction
15 which equals the greater of:

16
17 (I) The minimum capital and surplus
18 requirements under the law of this state; or

19
20 (II) Fifteen million dollars
21 (\$15,000,000.00).

1 (B) The requirements of subparagraph (A) of
2 this paragraph may be satisfied by an insurer's possessing
3 less than the minimum capital and surplus upon an
4 affirmative finding of acceptability by the commissioner.
5 The finding shall be based upon such factors as quality of
6 management, capital and surplus of any parent company,
7 company underwriting profit and investment income trends,
8 market availability and company record and reputation
9 within the industry. In no event shall the commissioner
10 make an affirmative finding of acceptability when the
11 nonadmitted insurer's capital and surplus is less than four
12 million five hundred thousand dollars (\$4,500,000.00);

13
14 (iv) For an insurer not domiciled in the United
15 States or its territories, the insurer is listed on the
16 quarterly listing of alien insurers maintained by the NAIC
17 international insurers department.

18
19 (g) The commissioner is authorized to enter into a
20 cooperative agreement or interstate agreement or compact to
21 establish additional and alternative nationwide uniform
22 eligibility requirements that shall be applicable to

1 nonadmitted insurers domiciled in another state or
2 territory of the United States.

4 **26-11-108. Evidence of surplus lines insurance.**

6 (a) Upon placing ~~a surplus line coverage~~ lines
7 insurance, the surplus lines broker shall promptly issue
8 and deliver to the insured or the producer the policy, or
9 if the policy is not then available, a certificate as
10 described in subsection (f) of this section, cover note,
11 binder or other evidence of the insurance. ~~consisting~~
12 ~~either of the policy as issued by the insurer, or, if the~~
13 ~~policy is not then available, the surplus line broker's~~
14 ~~certificate.~~ The certificate described in subsection (f) of
15 this section, cover note, binder or other evidence of
16 insurance shall be executed by the broker and shall show
17 the description and location of the subject of the
18 insurance, ~~coverage~~ coverages including any material
19 limitations other than those in standard forms, conditions
20 ~~and term~~ a general description of the coverages of the
21 insurance, the premium and rate charged, taxes to be
22 collected from the insured, ~~and~~ the name and address of the
23 insured and surplus lines insurer. ~~If more than one (1)~~

1 ~~insurer assumes the direct risk, the certificate shall~~
2 ~~state the name and address of each insurer and the~~ or
3 insurers and the proportion of the entire ~~direct risk each~~
4 ~~assumes~~ assumed by each and the name and license number of
5 the surplus lines broker.

6
7 (b) No broker shall issue or deliver any ~~certificate~~
8 ~~or any cover note~~ evidence of insurance or purport to
9 insure or represent that insurance will be or has been
10 ~~granted~~ written by any ~~unauthorized~~ nonadmitted insurer,
11 unless ~~he~~ the broker has:

12
13 (c) If after the issuance and delivery of any
14 ~~certificate~~ evidence of insurance there is any change as to
15 the insurer's identity, or the proportion of the ~~direct~~
16 risk ~~an~~ assumed by any insurer ~~assumes as stated in the~~
17 ~~broker's original certificate,~~ or ~~in~~ any other material
18 ~~respect~~ change in coverage as ~~to~~ stated in the surplus
19 lines broker's original evidence of insurance ~~evidenced by~~
20 ~~the certificate,~~ the surplus lines broker shall promptly
21 issue and deliver to the insured ~~a~~ or the original producer
22 an appropriate substitute ~~certificate for, or endorsement~~
23 of the original document, accurately showing the current

1 status of the coverage and the insurers responsible
2 ~~thereunder~~ for the coverage.

3
4 (e) Any surplus ~~line~~ lines broker who knowingly or
5 negligently issues a false certificate or other evidence
6 of insurance, or who fails promptly to notify the insured
7 of any material change with respect to the insurance by
8 delivery to the insured of a substitute certificate, cover
9 note, binder or other evidence of insurance as provided in
10 subsection (c) of this section, upon conviction, is subject
11 to the penalty provided by W.S. 26-1-107 or to any greater
12 applicable penalty otherwise provided by law.

13
14 (f) As soon as reasonably possible after the
15 placement of the insurance, the surplus lines broker shall
16 deliver a copy of the policy or, if not available, a
17 certificate of insurance to the insured or producer to
18 replace any evidence of insurance previously issued. Each
19 certificate or policy of insurance shall contain or have
20 attached a complete record of all policy insuring
21 agreements, conditions, exclusions, clauses, endorsements
22 or any other material facts that would regularly be
23 included in the policy.

1
2 **26-11-109. Endorsement of contract; duty to notify**
3 **insured.**

4
5 (a) Any insurance contract procured and delivered as
6 a surplus ~~line~~lines coverage pursuant to this chapter
7 shall have stamped or printed upon it, ~~initialed by or~~
8 ~~bearing the name~~ in at least ten (10) point bold type font,
9 the name and address of the surplus line broker who
10 procured ~~it~~the coverage, and the following: "This
11 insurance contract is issued pursuant to the Wyoming
12 Insurance Laws by an insurer neither licensed by nor under
13 the jurisdiction of the Wyoming Insurance Department. In
14 the event of insolvency of the surplus lines insurer,
15 losses will not be paid by the Wyoming Insurance Guaranty
16 Association."

17
18 (b) No contract of insurance placed by a surplus
19 lines broker under this chapter shall be binding upon the
20 insured and no premium charged shall be due and payable
21 until the surplus lines broker shall have notified the
22 insured in writing, in a form acceptable to the
23 commissioner, a copy of which shall be maintained by the

1 surplus lines broker with the records of the contract and
2 available for possible examination, that:

3
4 (i) The insurer with which the surplus lines
5 broker places the insurance is not licensed by this state
6 and is not subject to its supervision; and

7
8 (ii) In the event of the insolvency of the
9 surplus lines insurer, losses will not be paid by the state
10 insurance guaranty association.

11
12 (c) Nothing herein contained shall nullify any
13 agreement by any insurer to provide insurance.

14
15 **26-11-110. Enforceability and validity of nonadmitted**
16 **insurance.**

17
18 Insurance contracts procured as ~~surplus line~~ coverage from
19 unauthorized insurers in accordance with this chapter are
20 fully valid and enforceable as to all parties and shall be
21 given recognition in all matters and respects to the same
22 effect as like contracts issued by authorized insurers.

1 **26-11-111. Liability of insurer as to losses and**
2 **unearned premiums; applicability of section to insurers.**

3
4 (a) As to a surplus line risk which is assumed by ~~an~~
5 ~~unauthorized~~ a nonadmitted insurer pursuant to this
6 chapter, and if the premium thereon is received by the
7 surplus line broker who placed the insurance, in all
8 questions thereafter arising under the coverage as between
9 the insurer and the insured the insurer is deemed to have
10 received the premium due to it for that coverage. The
11 insurer is liable to the insured for losses covered by the
12 insurance and for unearned premiums which are payable to
13 the insured upon cancellation of the insurance, whether or
14 not the broker is indebted to the insurer with respect to
15 the insurance or for any other cause.

16
17 (b) Each ~~unauthorized~~ nonadmitted insurer assuming a
18 surplus line risk under this chapter subjects itself to the
19 terms of this section.

20
21 **26-11-112. Surplus lines broker's license; authority**
22 **for issuance; application; fee; applicable law.**

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

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

7
8 (ii) The person has submitted or transmitted to
9 the commissioner a completed uniform application;

10
11 (iii) The individual has taken and passed a
12 written examination in a form prescribed by the
13 commissioner; and

14
15 (iv) The person has established and continues to
16 maintain an office in this state.

17
18 (g) A nonresident person shall receive a nonresident
19 surplus lines broker license pursuant to the requirements
20 of W.S. 26-9-208.

21
22 (h) A business entity acting as a surplus lines
23 broker is required to obtain a surplus lines broker

1 license. In addition to the requirements for licensure set
2 forth in subsections (f) and (g) of this section; before
3 approving the application the commissioner shall find that
4 the business entity has designated a licensed surplus lines
5 broker responsible for the business entity's compliance
6 with the insurance laws, rules and regulations of this
7 state.

8
9 (j) The commissioner may require any documents
10 reasonably necessary to verify the information contained in
11 an application.

12
13 (k) The commissioner shall waive any requirements for
14 a nonresident surplus lines license applicant with a valid
15 license from his home state, except the requirements
16 imposed by this section, if the applicant's home state
17 awards nonresident surplus lines licenses to residents of
18 this state on the same basis.

19
20 (m) A business entity surplus lines broker license
21 shall expire on March 31 in the second year following the
22 issuance or renewal of the license, and an application for
23 renewal shall be filed on or before the license expiration

1 date upon payment of the continuation fee and compliance
2 with other provisions of this section.

3
4 (n) The license and licensee are subject to chapter 9
5 of this title as provided in W.S. 26-9-201.

6
7 **26-11-113. Surplus lines broker's license; suspension**
8 **or revocation; grounds; procedure.**

9
10 (a) The commissioner may, after appropriate notice
11 and opportunity for hearing pursuant to the Wyoming
12 administrative procedure act and in accordance with W.S.
13 26-2-125 through 26-2-129, place on probation, suspend, ~~or~~
14 revoke or refuse to issue or renew any surplus line
15 broker's license or other license issued under this title,
16 or may levy a civil penalty in accordance with W.S. 26-1-
17 107 or any combination of actions for any one (1) or more
18 of the following causes:

19
20 (iii) Removal of the resident surplus lines
21 broker's office from this state;

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

5
6 (v) Failure to make and file required reports
7 when due;

8
9 (vi) Failure to remit the tax on surplus lines
10 premiums as provided in this chapter;

11
12 (vii) Failure to maintain a bond as required
13 by W.S. 26-11-114;

14
15 (viii) Violation of any provision of this
16 chapter; or

17
18 (ix) For any cause for which an insurance
19 license could be denied, revoked, suspended or renewal
20 refused under chapter 9 of this title.

21
22 **26-11-116. Records of broker; contents; examination.**
23

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

9
10 (i) Amount of the insurance, risks and perils
11 insured;

12
13 (x) Amount of tax and other sums to be collected
14 from the insured;

15
16 (xi) Allocation of taxes by state as referred to
17 in W.S. 26-11-118;

18
19 (xii) Identity of the producer, any
20 confirming correspondence from the insurer or its
21 representative, and the application; and

22

1 (xiii) Any other information the commissioner
2 requires.

3
4 (b) The record of each contract shall be kept open at
5 all reasonable times to examination by the commissioner ~~at~~
6 ~~all times within~~ without notice for a period of not less
7 than five (5) years ~~after issuance of the coverage to which~~
8 ~~it relates~~ following termination of the contract. In lieu
9 of maintaining offices in this state, each nonresident
10 surplus lines broker shall make available to the
11 commissioner any and all records that the commissioner
12 deems necessary for examination.

13
14 **26-11-117. Annual report; summary of exported**
15 **business.**

16
17 (a) Each surplus lines broker, annually, on or before
18 March 1, shall file with the commissioner a verified
19 ~~statement~~ report of all surplus line insurance he
20 transacted during the preceding calendar year.

21
22 (b) The ~~statement~~ report shall be on forms the
23 commissioner prescribes ~~and furnishes~~ and shall show:

1

2

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

3

4

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

5

6

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

8

9

(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.

12

13

(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.

17

18

(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 of each
effort.

22

23

26-11-118. Tax on surplus lines.

1

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

13

14 (d) The tax on any portion of the premium unearned at
15 termination of insurance having been credited by the state
16 to the surplus lines ~~producer~~broker shall be returned to
17 the policyholder directly by the surplus lines ~~producer~~
18 broker. The surplus lines ~~producer~~broker is prohibited
19 from rebating, for any reason, any part of the tax.

20

21 (e) Annually, on or before March 1, each surplus
22 lines broker shall pay the premium tax due for the policies
23 written during the preceding calendar year as shown by his

1 annual ~~statement~~report filed with the commissioner unless
2 more frequent reporting and payment is required by
3 participation in a multistate compact, reciprocal agreement
4 or clearinghouse pursuant to subsection (g) of this
5 section.

6
7 (f) If a surplus lines policy procured through a
8 surplus lines ~~producer~~broker covers properties, risks or
9 exposures only partially located or to be performed in
10 Wyoming, the tax due shall be computed on the portions of
11 the premiums which are attributable to the properties,
12 risks or exposures located or to be performed in this
13 state. In determining the amount of premiums taxable in
14 Wyoming, all premiums written, procured or received in
15 Wyoming shall be considered written on properties, risks or
16 exposures located or to be performed in Wyoming, except
17 premiums which are properly allocated or apportioned and
18 reported as taxable premiums of a reciprocal state.

19
20 (h) The commissioner is authorized to utilize the
21 allocation schedule included in the nonadmitted insurance
22 multistate agreement for the purpose of allocating risk and
23 computing the tax due on the portion of premium

1 attributable to each risk classification and to each state
2 where properties, risks or exposures are located.

3
4 **26-11-119. Failure to file report or pay tax;**
5 **penalty.**

6
7 ~~If~~ Any licensed surplus lines broker or insured who
8 independently procures insurance, who fails to file ~~his~~
9 ~~annual statement, or fails to remit the tax provided by~~
10 ~~W.S. 26-11-118, prior to April 1 after the tax is due, and~~
11 ~~if in the commissioner's opinion the failure is without~~
12 ~~just cause, the broker is liable for a twenty-five dollar~~
13 ~~(\$25.00) fine~~ a report in the form and within the time
14 required or provided for in W.S. 26-11-117 or W.S. 26-11-
15 124 may be fined up to twenty-five dollars (\$25.00) per day
16 for each day ~~of the~~ delinquency ~~commencing with April 1~~
17 continues, beginning the day after the report was due until
18 the date the report is received. ~~The tax may be collected~~
19 ~~by distraint, or the tax and fine may be recovered by an~~
20 ~~action the commissioner institutes in any court of~~
21 ~~competent jurisdiction.~~ The surplus lines broker or
22 insured who independently procures insurance shall pay

1 interest on the amount of any delinquent tax due as
2 required by W.S. 26-11-118(e) or W.S. 26-11-124(d).

3
4 **26-11-120. Service of process against nonadmitted**
5 **insurer.**

6
7 (a) ~~An unauthorized~~ A nonadmitted insurer shall be
8 sued, upon any cause of action arising in this state under
9 any contract it issues as a ~~surplus line~~ nonadmitted
10 insurance contract pursuant to this chapter, in the
11 district court of the county in which the cause of action
12 arises.

13
14 **26-11-122. Disclosure to commissioner of insurance**
15 **placed with nonadmitted insurer.**

16
17 Any person for whom insurance is placed with an
18 ~~unauthorized~~ nonadmitted insurer, upon the commissioner's
19 order, shall produce for his examination all policies and
20 other documents evidencing the insurance and shall disclose
21 to the commissioner the amount of gross premiums paid or
22 agreed to be paid for the insurance. If the person refuses

1 to obey the commissioner's order, he is subject to the
2 penalties provided by W.S. 26-1-107 for each refusal.

3

4 **Section 3.** W.S. 26-11-107(a) and (b), 26-11-108(d),
5 26-11-112(a) through (d), 26-11-113(a)(i) and (ii) and
6 26-11-116(a)(ix) are repealed.

7

8 **Section 2.** This act is effective immediately upon
9 completion of all acts necessary for a bill to become law
10 as provided by Article 4, Section 8 of the Wyoming
11 Constitution.

12

13

(END)