

**OHIO DEPARTMENT OF INSURANCE  
STATE OF OHIO**

---

**BULLETIN 2011-08**

**NONADMITTED INSURANCE REFORM**

**Effective September 20, 2011**

---

The purpose of this bulletin is to outline nationwide regulatory changes that affect the placement of nonadmitted insurance in Ohio. The Nonadmitted and Reinsurance Reform Act of 2010 (“NRRA”), 15 U.S.C. § 8201 *et seq.*, provides that only an insured’s “Home State” may require the payment of premium tax for nonadmitted insurance. Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured’s Home State, and provides that only the insured’s Home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to such insured. 15 U.S.C. § 8202(a), (b). “Nonadmitted insurance,” as defined in 15 U.S.C. § 8206(9), applies only to property and casualty insurance (excluding workers’ compensation).

In response to the NRRA, Ohio enacted Am. Sub. H.B. 122, effective June 17, 2011 (“HB 122”), which amended §§ 3901.17, 3905.30, 3905.31, 3905.33, 3905.34, 3905.36, 3905.37 and 3905.38 and enacted § 3905.331 of the Ohio Revised Code (“R.C.”). This bulletin is intended as a summary of recent changes and is not intended as a substitute for a careful review of all of the above referenced statutes.

For nonadmitted insurance business, the following information is provided for the benefit of insurers, brokers and insureds:

**What is the scope of the NRRA?**

The NRRA states that “the placement of nonadmitted insurance is subject to the statutory and regulatory requirements solely of the insured’s home state” and that the NRRA “may 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.” 15 U.S.C. § 8202. The NRRA does not expand the scope of the kinds of insurance that an insurer may write in the nonadmitted insurance market and each state continues to determine which kinds of insurance an insurer may write in that state. Although the NRRA preempts certain state laws with respect to nonadmitted insurance, it does not have any impact on insurance offered by insurers licensed or authorized in this state.

**What is the insured’s Home State for purposes of a particular placement?**

In accordance with R.C. 3905.30, Ohio is the insured’s Home State if the insured maintains its principal place of business here or, in the case of an individual, the individual’s principal residence is here. If Ohio is considered the insured’s Home State, only Ohio’s requirements regarding the placement of such business will apply. If 100% of the insured risk is located outside of Ohio, then the insured’s Home State is the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated. “Principal place of business” is defined in R.C. 3905.30 as the state where the insured

maintains the insured's headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance placement, Ohio will be considered the Home State for that placement if Ohio is the Home State of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

### **How will these rules be applied?**

New and renewal policies with an effective date prior to June 17, 2011 will be subject to the laws and regulations of Ohio and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Ohio and other jurisdictions, as applicable, as of the effective date of such a policy will also apply to any modification to that policy during the policy period, such as all endorsements (including risk- and premium-bearing endorsements), installment payments and premium audits. New and renewal policies with an effective date on or after June 17, 2011, and any modifications thereto, are subject only to the laws and regulations of Ohio if Ohio is the Home State of the insured.

### **What are the requirements for premium tax allocation and payment in Ohio?**

As of June 17, 2011, HB 122 permits only the insured's Home State to require the payment of premium tax for nonadmitted insurance. Until June 17, 2011, the laws and regulations of Ohio and other jurisdictions, as applicable, apply to premium tax due on multi-state placements.

HB 122 became effective June 17, 2011 and NRRRA became effective July 21, 2011. Similar to Ohio, laws of other states may have become effective prior to NRRRA's effective date of July 21, 2011. For policies effective June 17, 2011 through July 21, 2011, where Ohio is the home state for a multi-state risk, it is not the intent for an insured to be taxed on an amount greater than 100% of the premium. If another state required premium to be allocated and taxes remitted to it for those policies written during the time period of June 17, 2011 through July 21, 2011, the allocated premium may be subtracted from the Ohio taxable premium.

It is the intent of the Department to issue additional bulletins if and when Ohio begins participating in a tax sharing arrangement. Until additional bulletins are issued, the Ohio tax rate should be applied to new and renewal policies with an effective date on or after June 17, 2011, when Ohio is the insured's Home State.

### **What are the license requirements for brokers?**

In accordance with HB 122, only the insured's Home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to a particular placement. If Ohio is the insured's Home State, the surplus lines broker must be licensed in Ohio. The NRRRA provides that Ohio may not collect licensing fees for surplus lines brokers as of July 21, 2012, unless Ohio participates in the NAIC's national insurance producer database or any other equivalent uniform national database. 15 U.S.C. § 8203. Ohio participates in the National Insurance Producer Registry (NIPR), which provides such a database.

### **What are the requirements for a “diligent search” and when is a diligent search not required?**

Diligent search requirements are set forth in R.C. 3905.33 (B) and (C). On or after June 17, 2011, a surplus lines broker seeking to procure or place nonadmitted insurance on behalf of an “exempt commercial purchaser” is not required to perform a diligent search if: 1) the broker has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 2) the exempt commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer. “Exempt commercial purchaser” is defined in R.C. 3905.331, which is consistent with the NRRA definition.

### **What are the eligibility requirements for nonadmitted insurers?**

R.C. 3905.33(A) sets forth the eligibility requirements for nonadmitted insurers, consistent with the NRRA’s restrictions. *See* 15 U.S.C. § 8204. For nonadmitted insurers domiciled in a U.S. jurisdiction, a broker is permitted to place nonadmitted insurance with such insurers provided they are authorized to write such business in their state of domicile and maintain minimum capital and surplus of \$15 million.

For nonadmitted insurers domiciled outside the U.S., a broker may place business with such insurers provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. Ohio maintains a listing of eligible nonadmitted insurers which is available at: <http://www.insurance.ohio.gov/Reports/SLCompanies.pdf>.

### **What are the key definitions from the NRRA?**

The NRRA includes several definitions relevant to Ohio’s implementation of its requirements, many of which have been codified in Ohio law. Key definitions include the following:

- “**Exempt commercial purchaser**”: The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C) (i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II),

and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. 15 U.S.C. § 8206(5); R.C. 3905.33.

- **“Home state”**:

(A) In General.—Except as provided in subparagraph (B), the term “home state” means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) Affiliated Groups.—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract. 15 U.S.C. § 8206(6); *also see* R.C. 3901.17 and 3905.30.

- **“Independently procured insurance”**: The phrase “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer. 15 U.S.C. § 8206(7).

- **“Nonadmitted insurance”**: The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance. 15 U.S.C. § 8206(9).

- **“Nonadmitted insurer”**: The term “nonadmitted insurer”—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) 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)). 15 U.S.C. § 8206(11).

- **“Premium tax”**: The term “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. 15 U.S.C. § 8206(12).

- **“Qualified risk manager”**: The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

- (i) (I) has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and
  - (II) (aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or
    - (bb) has—
      - (AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;
      - (BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;
      - (CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;
      - (DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or
      - (EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;
- (ii) (I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and
  - (II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);
- (iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or
- (iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management. 15 U.S.C. § 8206(13); *also see* R.C. 3905.331.

- **“Surplus lines broker”**: The term “surplus lines broker” means an individual, firm, or corporation 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. 15 U.S.C. § 8206(15).

- **“State”**: The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa. 15 U.S.C. § 8206(16).

**Did HB 122 make other changes to Ohio's surplus lines laws?**

HB 122 made other changes to Ohio surplus lines laws which are also effective June 17, 2011. These changes include:

The due dates in Ohio law for filing surplus lines premium tax payments and reporting have been reconciled and are due on or before March 31<sup>st</sup> each year for both direct procurement and agent or broker placed business. Prior to the enactment of HB 122 the deadline for direct procurement was on or before July 1<sup>st</sup>. *See* R.C. 3901.17, 3905.34 and 3905.36.

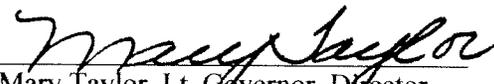
The exemption from the applicability of the surplus lines premium tax to political subdivisions and consortiums of two or more political subdivisions has been clarified. *See* R.C. 3905.36.

The Department's practice of considering a request for waiver of penalty and interest charges for first-time, inadvertent nonpayment of surplus lines premium tax has been codified. *See* R.C. 3905.36.

Clarification was provided as to the diligent search. Under R.C. 3905.33(B)(2), due diligence shall only be performed by an agent licensed in this state that holds an active property and casualty insurance agent license. Non-resident surplus line agents are only required to hold an active Ohio major line license with property & casualty line of authority if the non-resident surplus line agent personally performs the diligent search. However, all resident surplus line agents must hold an active Ohio major line license with property & casualty line of authority in addition to their surplus lines license. *See* R.C. 3905.30 and 3905.36.

Another area clarified by HB 122 is whether an underwriter issuing contracts of insurance to employer insureds or contracts issued to an employer insured are exempt from payment of surplus lines premium tax. Prior to June 30, 2005, employer insureds were specifically exempted from payment of the surplus lines premium tax in R.C. 3905.36 and 3901.17. The 126<sup>th</sup> General Assembly then enacted Am. Sub. H.B. 66, effective June 30, 2005, which removed the exemption for employer insureds from the enumerated exemptions contained in R.C. 3905.36. This same legislation also amended R.C. 3901.17 by adding language in subsection (I)(7) that employer insureds were subject to subsection (G), the taxation provision. H.B. 122 make it clearer that employer insureds are subject to payment of surplus lines premium tax by removing the employer insured language from R.C. 3901.17 and simplifying the language of R.C. 3901.17. *See* R.C. 3901.17 and R.C. 3905.36.

Any questions regarding this bulletin should be emailed to [surplus.lines@insurance.ohio.gov](mailto:surplus.lines@insurance.ohio.gov); you also may telephone the Property and Casualty Division at (614) 644-2635.

  
Mary Taylor, Lt. Governor, Director