

COLORADO REVISED STATUTES

TITLE 10. INSURANCE
NONADMITTED INSURANCE
ARTICLE 5. NONADMITTED INSURANCE

10-5-101. Short title

This article shall be known and may be cited as the "Nonadmitted Insurance Act".

HISTORY: Source: L. 49: p. 474, § 22.CSA: C. 87, § 334.CRS 53: § 72-14-17. C.R.S. 1963: § 72-13-17.L. 95: Entire section amended, p. 491, § 6, effective May 16.

10-5-101.1. Legislative declaration

(1) The general assembly finds and declares that property and casualty insurance transactions with nonadmitted insurers are so affected with a public interest as to require regulation, taxation, supervision, and control of such transactions and matters relating thereto, as provided in this article, in order to:

(a) Protect the insureds and claimants of this state in transactions involving the purchase of insurance from insurers not authorized to transact business in this state;

(b) Provide for the public, except for transactions related to the diligent effort requirements of this article for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section, to the extent that insurance is not procurable from admitted insurers, orderly, reasonable, and regulated access to such insurance from eligible nonadmitted insurers through qualified, licensed, and supervised surplus line agents and brokers;

(c) Protect the revenues of this state;

(d) Protect regulated, admitted insurers from unregulated and unfair competition by nonadmitted insurers;

(e) Regulate and supervise the effectuation of surplus lines insurance in accordance with the laws of this state and federal law, including the federal "McCarran-Ferguson Act"; and

(f) Maintain reliable insurance markets.

HISTORY: Source: L. 81: Entire section added, p. 537, § 1, effective January 1, 1982.L. 95: IP(1), (1)(b), and (1)(e) amended, p. 491, § 7, effective May 16.L. 99: (1)(b) amended, p. 388, § 9, effective January 15, 2000.L. 2012: (1)(b) amended, (HB 12-1215), ch. 104, p. 355, § 9, effective August 8.

10-5-101.2. Definitions

As used in this article, unless the context otherwise requires:

(1) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means any group of entities that are all affiliated.

(3) "Broker" means a surplus lines producer duly licensed to export insurance under this article.

(4) "Control" means that an entity has control over another entity if the controlling entity:

(a) Directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the controlled entity; or

(b) Controls in any manner the election of a majority of the directors or trustees of the controlled entity.

(5) "Export" means to place with an insurer under this article insurance covering an insured whose home state is Colorado.

(6) "Federal act" means the "Nonadmitted and Reinsurance Reform Act of 2010", 15 U.S.C. sec. 8201 et seq., as amended.

(7) (a) Except as provided in paragraph (b) of this subsection (7), "home state" means, with respect to an insured:

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

(II) If one hundred percent of the insured risk is located out of the state referred to in subparagraph (I) of this paragraph (a), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) With respect to affiliated groups, if more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, "home state" means the home state, as determined pursuant to paragraph (a) of this subsection (7), of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(8) "Independently procured insurance" means insurance procured directly by a person from a nonadmitted insurer.

(9) "Multistate risk" means a risk covered by a nonadmitted insurer with insured exposures in more than one state.

(10) "Nonadmitted insurance" means any property or casualty insurance permitted in a state to be placed directly or through a broker with a nonadmitted insurer eligible to accept such insurance. "Nonadmitted insurance" includes independently procured insurance and surplus lines insurance.

(11) "Nonadmitted insurers" means insurers not having a certificate of authority to transact business in this state.

(12) "Person" has the same meaning as set forth in section 2-4-401, C.R.S.

(13) "Surplus lines insurance" means coverage placed with an eligible nonadmitted insurer as provided by section 10-5-108.

HISTORY: Source: . L. 81: Entire section added, p. 538, § 1, effective January 1, 1982.L. 95: (1) and (2) amended and (4) added, p. 491, § 8, effective May 16.L. 2012: Entire section amended, (HB 12-1215), ch. 104, p. 350, § 1, effective August 8

10-5-101.5. Exemptions

(1) The provisions of this article controlling the placing of insurance with nonadmitted insurers shall not apply to reinsurance or, except as to subsection (2) of this section, to the following types of insurance when placed by licensed agents or brokers of this state:

(a) Insurance on vessels or crafts or their hulls or cargoes or on marine builders' risks or marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy;

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(c) Insurance on the operations of railroads engaged in transportation in interstate commerce and their property used in such operations;

(d) Insurance on aircraft owned or operated by manufacturers of aircraft or on aircraft operated in commercial scheduled interstate flight or the cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft;

(e) Insurance on satellites or other devices intended for launch beyond the earth's atmosphere.

(2) Brokers placing any insurance referred to in subsection (1) of this section shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this article. The record shall be preserved for not less than three years after the effective date of the insurance; shall be kept in the broker's office and open to the commissioner's examination and on forms designated and furnished by the commissioner; and shall contain a report of all such coverages so placed in a designated calendar year.

HISTORY: Source: . L. 81: Entire section added, p. 538, § 1, effective January 1, 1982.L. 2005: Entire section amended, p. 735, § 1, effective January 1, 2006.

10-5-102. Validity of certain contracts

A contract of insurance effectuated by a nonadmitted insurer in violation of the provisions of this article shall be voidable except at the instance of the insurer.

HISTORY: Source: L. 49: p. 467, § 1.CSA: C. 87, § 318.CRS 53: § 72-14-1. C.R.S. 1963: § 72-13-1.L. 95: Entire section amended, p. 492, § 9, effective May 16

10-5-103. Conditions for export

(1) If certain insurance coverages cannot be procured from admitted insurers, such coverages, designated in this article as "surplus lines", may be procured from nonadmitted insurers, subject to the following conditions:

(a) The insurance must be procured through a licensed broker.

(b) The full amount of insurance required shall not be procurable, after diligent effort has been made to do so, from among admitted insurers authorized to transact and actually transacting that kind of insurance in this state; and placing the insurance with a nonadmitted insurer shall not be for the purpose of securing a lower premium rate than that which would be accepted by an admitted insurer unless the premium rate quoted by the admitted insurer is more than ten percent higher than that quoted by the nonadmitted insurer.

(c) At the time of the procuring of any such insurance, an affidavit setting forth facts referred to in paragraph (b) of this subsection (1) must be executed by the broker. Such affidavit shall be filed with the commissioner within thirty days after the insurance is procured. In lieu thereof, the commissioner may provide for simplified monthly reporting of coverages procured pursuant to this article.

(2) The diligent effort requirements of this section shall not apply to transactions with exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

HISTORY: Source: L. 49: p. 467, § 2.CSA: C. 87, § 319.CRS 53: § 72-14-2. C.R.S. 1963: § 72-13-2.L. 81: Entire section R&RE, p. 538, § 2, effective January 1, 1982.L. 95: IP(1) and (1)(b) amended, p. 492, § 10, effective May 16.L. 99: (2) added, p. 388, § 10, effective January 15, 2000.

10-5-103.5. Producing broker's affidavit

Any broker exporting insurance under this article, at the request of any other licensed agent or broker, may accept an affidavit executed by such other agent or broker, in such form as may be prescribed or accepted by the commissioner, as evidence that such insurance was eligible for export under section 10-5-103. Except as the commissioner may otherwise provide, the broker shall file or cause to be filed such affidavit with the commissioner within thirty days after the insurance was so procured.

HISTORY: Source: L. 81: Entire section added, p. 539, § 3, effective January 1, 1982

