

Surplus Lines

How the California Bill Implements Federal NRRA Surplus Lines Reform



By Richard Brown

The Nonadmitted and Reinsurance Reform Act (NRRA), Subtitle B, Part I, Dodd-Frank Wall Street Reform and Consumer Protection Act, reaches out and touches California on July 21, 2011. In anticipation of its effective date, the California Department of Insurance (CDI) has crafted Assembly Bill No. 315 (AB 315).

In general, AB 315 superimposes the NRRA on the existing

immediately as an urgency statute” before the NRRA becomes effective on July 21, 2011.

No federal agency enforces implementation of the NRRA. Each state is left to interpret the NRRA and revise its existing laws accordingly. AB 315 represents the CDI’s view of how the NRRA should apply in California.

Other states have their own versions, and the courts doubtless will have their own interpretations.

lines brokers authorized to issue policies on behalf of the nonadmitted insurer, as well as other information.

The commissioner may require submission of yet additional information and documentation “that pertains to the requirements of [§ 1765.1] or the NAIC review of the insurer....” § 1765.1(d). The commissioner may require annual updates of records and statements to ensure continued surplus lines insurer eligibility.

Notably, there is no list of “eligible” surplus lines insurers under § 1765.1. The surplus lines broker must determine whether the nonadmitted insurer satisfies the surplus lines insurer eligibility requirements of § 1765.1.

Approved Surplus Lines Insurers — Under § 1765.2, California will continue to maintain a “list of approved surplus lines insurers” (LASLI) that replicates the “list of eligible surplus lines insurers” (LESLI) under today’s § 1765.1. Nonadmitted insurers on LESLI as of July 21, 2011, are grandfathered on LASLI “until the subsequent expiration of the policies of that insurer in effect on July 21, 2011.” All LESLI-listed insurers therefore will be deemed LASLI-listed the day the NRRA goes into effect. Surplus lines brokers may rely on LASLI to determine whether a nonadmitted insurer enjoys the commissioner’s official blessing, no different from the current LESLI.

Unlike LESLI, LASLI is voluntary. There is no requirement that a nonadmitted insurer be LASLI-

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California Insurance Code (CIC) while retaining the substance of California’s pre-NRRA surplus lines regulatory structure. The CDI has asked that AB 315 “take effect

Surplus Lines Insurer Eligibility

Surplus lines insurer eligibility is addressed by AB 315 in two new provisions. Unless otherwise indicated, sections cited are to the CIC as amended by AB 315.

Eligible Surplus Line Insurers — § 1765.1 incorporates the NRRA “Uniform Surplus Lines Insurer Eligibility” criteria verbatim. “Foreign” nonadmitted insurers that satisfy California’s minimum capital and surplus requirement of \$45 million and “alien” nonadmitted insurers listed on the NAIC’s Quarterly List of Alien Insurers are eligible to accept placements of California risks from surplus lines brokers.

Eligibility must, however, first be established by providing the commissioner with specified documentation (e.g., certificate of capital and surplus, license, and certificate of good standing from the surplus line insurer’s domiciliary jurisdiction), the insurer’s agent for service of process in California, and a list of all California surplus

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approved to be eligible to accept placements from surplus lines brokers.

To be “approved” for LASLI under § 1765.2, the nonadmitted insurer must comply with documentation, information, procedures, and other requirements that are mandatory under § 1765.1 as in effect prior to July 21, 2011.

The commissioner will publish a master list of “approved” surplus line insurers semiannually. New admittees will be added by addendum. Absent notice to the contrary, the surplus lines broker may rely on the most recent master list.

Given that LESLI-approved nonadmitted insurers are automatically LASLI-approved on July 21, 2011, an official state-approved list of surplus lines insurers has obvious benefit of clarity for surplus lines brokers and direct-procurement insurance buyers.

GAP Exemption — The so-called “GAP”

exemption is retained in § 1765.1(i), (§ 1765.1(k) prior to July 21, 2011). Surplus lines insurers therefore may place risks with a non-approved surplus lines insurer where additional insurers are needed for up to 20 percent of the risk and other criteria are met.

Commercial Insured —

Except for the title, § 1760.1 incorporates verbatim the NRRA definition of Exempt Commercial Insured (\$20 million net worth, \$50 million annual revenues, 500 full-time employees, \$30 million annual budgeted expenditures for non-profits, municipality with 50,000 population), plus special

statutory broker disclosure requirements. To save paper, California shortens the NRRA title to “commercial insured.” For a commercial insured, the surplus lines broker is exempt from diligent search requirements.

California retains its separate “industrial insured” exemption under § 1764.1, a much lower diligent search threshold. Many small

businesses would qualify as an “industrial insured” (e.g., 25 or more employees over the last 12 months).

Nationwide Uniformity

The open question is whether the surplus lines insurer eligibility criteria under AB 315 conform to NRRA Sec. 524.

A state may not:

1. Impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(3)(a) of the Nonadmitted Insurance Model Act, unless that state has adopted nationwide uniform requirements, forms, and procedures developed in accordance with [the interstate compact or other procedures] that include alternative nationwide uniform eligibility requirements; or

2. Prohibit a surplus lines broker from placing non-admitted insurance with ... a nonadmitted insurer ... that is listed on the Quarterly listing of Alien Insurers maintained [by the NAIC].

Whether AB 315’s surplus line insurer eligibility requirements and related procedures, if challenged, pass muster under the NRRA’s “uniformity” requirement ultimately must be resolved by the courts.

In the meantime, surplus lines brokers are best served by complying with the Home State’s version of the NRRA. ■

Richard Brown is an insurance regulatory attorney who regularly represents surplus lines insurers, surplus lines brokers, and industry organizations in a variety of regulatory and other surplus lines matters. This is one of several articles he has authored about the NRRA and its implementation. He can be contacted at RAB@InsuRegulatory.com. Additional information is available on his Web site: www.InsuRegulatory.com.

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To read more about the NRRA surplus line requirements, visit <http://www.insurancejournal.com/news/national/2011/02/10/185673.htm>