

Client Alert

U.S. House of Representatives Passes Nonadmitted and Reinsurance Reform Act, Encouraging Consistency in the Regulation of Surplus Lines Insurance and Reinsurance

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On September 9, 2009, the U.S. House of Representatives once again passed the Nonadmitted and Reinsurance Reform Act ("NRRA"). This legislation, if also passed by the Senate and adopted into law, would streamline and simplify certain aspects of the current state-by-state regulatory regime applicable to nonadmitted commercial surplus lines insurers and reinsurers.

Supported by a number of insurance industry groups, the NRRA sets out three notable legislative changes:

- First, the NRRA invests exclusive regulatory and taxing authority with respect to surplus lines and nonadmitted insurance policies in a policyholder's home state. Building on that exclusive authority, the NRRA also strongly encourages the formation of uniform standards among the states, or interstate compacts, to manage the reporting, payment, collection, and allocation of premium taxes remitted on surplus lines policies covering multistate risks. In addition, the NRRA would permit large commercial insurance purchasers that meet certain conditions to directly access the surplus lines insurance market.
- Second, the NRRA mandates that if a ceding insurer's domicile recognizes credit for reinsurance for the insurer's ceded risk, then no other state may deny such credit for reinsurance, so long as the domiciliary state is NAIC-accredited, or has solvency requirements which are substantially similar to those required for NAIC accreditation. Further, the NRRA declares that the laws and regulations of non-domiciliary states, except those relating to the taxation and assessment of insurance companies or insurance income, are preempted to the extent that such laws or regulations:
 - Restrict or eliminate the rights of the ceding insurer and assuming reinsurer to resolve disputes pursuant to contractual arbitration provisions consistent with Title 9;
 - Require that a certain state's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or other requirements of the reinsurance contract;
 - Attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract itself; or
 - Otherwise apply the laws of the state to the reinsurance agreements of ceding insurers not domiciled in that state.
- Third, the NRRA invests exclusive authority to regulate the financial solvency of a reinsurer in the reinsurer's domiciliary state, so long as the domiciliary state is NAIC-accredited, or has solvency requirements which are substantially similar to those required for NAIC accreditation. In addition, the NRRA provides that non-domiciliary states may not require a reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary state.

These legislative changes, if adopted by the Senate and entered into law, would appear to benefit surplus lines insurers and reinsurers alike by eliminating some of the challenges of the current state-by-state regulatory regime. Most notably, nonadmitted insurers and reinsurers would no longer be subject to a patchwork of regulatory and financial solvency authorities. Instead, they would be subject to a single state's authority, permitting consistency, efficiency, and familiarity. Also beneficial for ceding insurers and reinsurers is the certainty that if credit for reinsurance is accepted by a ceding insurer's domicile, it cannot be challenged by another state. Finally, the NRRRA's provisions protecting the ability of ceding insurers and reinsurers to negotiate enforceable arbitration and choice-of-law provisions within their reinsurance contracts minimize the threat of state insurance regulators attempting to interfere with the contractual arrangements of a ceding insurer or reinsurer domiciled in another state.

While the NRRRA is supported by a number of insurance and reinsurance groups, it is not currently supported by the National Association of Insurance Commissioners ("NAIC"), which is pushing for adoption of its own proposed reform legislation. According to reports, one of the NAIC's main objections to the NRRRA relates to the exclusive home-state regulatory approach for reinsurers. In a different vein, other insurance-related organizations have stated that while the NRRRA is meaningful, it should only be adopted as part of a comprehensive insurance reform plan for all lines of insurance.

Lastly, it is notable that the NRRRA previously passed the House of Representatives in 2006 and 2007, only to have the Senate decline to act. At this time, the prospects of Senate adoption of the NRRRA are unclear, although supportive House members have voiced optimism.

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