Nebraska withdraws from Nonadmitted Insurance Multi-State Agreement

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LINCOLN, Neb.—The Nebraska Department of Insurance has withdrawn from one of the clearinghouse arrangements for the payment and allocation of surplus lines premium taxes, which could signal a delay in the clearinghouse's launch.

In a notice dated Jan. 5, Nebraska Insurance Director Bruce R. Ramge said the state was withdrawing as a participant from the Nonadmitted Insurance Multi-State Agreement, effective March 5.“While the proposed plan of operation for the clearinghouse allowed for the collection and allocation of nonadmitted insurance premium taxes, the time frame offered to surplus lines brokers and insureds independently procuring nonadmitted insurance to report all such business transacted during a designated quarter directly conflicted with Nebraska statutory provisions,” said Mr. Ramge.Mr. Ramge said, “The agreement itself with NIMA was fine, but what happened is, when we got down to the actual administration of the project, the administrator was unable to accommodate” Nebraska law. “We didn't' have the authority to waive the timing requirements,” he said.Mr. Ramge said, “I still remain very supportive of NIMA, and in the event they're able to update the administrative system in the future, we'll certainly reconsider joining.”

SLIMPACT competition

NIMA, which is supported by the National Assn. of Insurance Commissioners, has been in competition with the Surplus Lines Insurance Multi-State Compliance Compact, the clearinghouse backed by the National Assn. of Professional Lines Insurers.The clearinghouses are being developed in response to the Nonadmitted and Reinsurance Reform Act, which became part of the Dodd-Frank Wall Street Reform and Consumer Protection Act and took effect July 21. The law stipulates, among other things, that only the home state of a policyholder can collect premium taxes. It requires state legislatures to approve a method to allocate the taxes.NIMA announced last month that the operational starting date of the clearinghouse had been moved from Jan. 1 to July 1.

NAPSLO, CIAB comment

Commenting on the Nebraska withdrawal, NAPSLO executive director Brad Kelley said in a statement, “NAPSLO's goal has been the uniform, clear and efficient implementation of the NRRA among the states, consistent with the intent of the NRRA, and we have been working hard with the states in this regard. “Most recently, we have outlined our concerns to the NIMA states regarding unworkable tax-sharing requirements and inconsistency in their interim guidance regarding compliance between July 2011 and NIMA's effective date, which is now July 1, 2012, at the earliest—nearly a year from the NRRA's effective date. Nebraska's withdrawal may indicate further delays in NIMA's operations.”Joel Wood, senior vp of the Council of Insurance Agents & Brokers in Washington, said in a statement: “Many state regulators, operating in the best of faith, have struggled to develop a mechanism for multistate allocation of surplus lines premium taxes. Considering the fact that we are now in the second year after the passage of Dodd-Frank, those efforts have not achieved success in a majority of jurisdictions, particularly in large states.“The morass of competing interpretations and disjointed interstate agreements are overwhelmed by the simplicity of the alternative approach: namely, that states should collect premium taxes for coverage for insureds that are headquartered in their states. At this point in time, we believe the regulatory simplicity and compliance goals will be best achieved with the 100% approach. The huge majority of states, we believe, would be net winners in that scenario. The promise of the NRRA provisions of Dodd-Frank could thus be realized by risk managers, brokers and insurers.”

Will other states withdraw?

Mark R. Goodman, a partner with law firm Freeborn & Peters L.L.P. in Chicago, said the Nebraska Insurance Department announcement “raises the question of the statutory legislative authority that Nebraska had, and other states have or don't have, to enter into the compact in the first place."Mr. Goodman said the department's reason for withdrawing "reflects the inherent issue" that, with any compact, the states will be essentially ceding rulemaking authority to an out-of-state, unelected body—the clearinghouse.Nebraska's withdrawal also raises the issue of whether other states will withdraw as well, Mr. Goodman said.According to NAPSLO, Nebraska was among 11 states, plus Puerto Rico, that had signed onto NIMA.

Home

Home | Email Us | Mobile App

Jump to top ^