
THE FELDMAN LAW FIRM LLP
M E M O R A N D U M
ATTORNEYS & COUNSELORS AT LAW

TO: Clients with Captive Insurance Companies

FROM: Stewart A. Feldman, Steven D. Cohen, and Logan R. Gremillion

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RE: The Nonadmitted and Reinsurance Reform Act of 2010

Attorney/Client Privilege

As part of the 849-page Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress enacted the Nonadmitted and Reinsurance Reform Act (the "NRRRA"). The stated intent of the NRRRA was to unify premium tax reporting on surplus lines insurance; that is, the use of licensed brokers to place certain lines of insurance with approved but unlicensed insurance companies. The NRRRA gave sole authority to tax "nonadmitted insurance" to the "home-state" of the insured, which is generally defined as the principal place of business of the insured. A recently published White Paper commissioned by the Captive Insurance Company Association (CICA) and the Vermont Captive Insurance Association (VCIA) and authored by James T. McIntyre, former Director of the Office of Management and Budget, concludes that the NRRRA's nonadmitted insurance provisions did not change existing law as applied to captive insurance. The White Paper has been posted at www.feldlaw.com/articles.html under the heading "Nonadmitted and Reinsurance Reform Act."

As set forth in the White Paper, captive insurance arguably is not covered by the NRRRA's definition of nonadmitted insurance, nor was it the stated intent of Congress for the NRRRA to apply to captive insurance. However, the debate on this issue is ongoing as we speak; the issue is unsettled. Some states have taken the position that the purported NRRRA's nonadmitted insurance provisions apply to captive insurance when enacting their respective legislation implementing the NRRRA changes to their surplus lines insurance law. *Simply put, the impact of the NRRRA is that some states now take the position that they can tax 100% of "nonadmitted insurance premiums" as opposed to just taxing the premium which relates to the state at issue.* Thus, if a state has a 3% nonadmitted premium tax, a captive with \$500,000 in premiums would be subject to a \$15,000 annual state tax.

Several different positions have been taken by states in implementing the NRRRA. Some of the larger states, such as Texas and California, have concluded that the NRRRA grants them sole authority to tax independently procured insurance and will tax 100% of premiums on such insurance acquired by their home state insureds. Other states have implemented the NRRRA home-state regime only as applied to surplus lines insurance and have continued to tax only the portion of independently procured insurance premiums that relate to insurance coverage on risks resident to that state. Still other states have applied the NRRRA to independently procured insurance and have joined in a multi-state compact to apportion the premiums paid by their home-state insureds for purposes of collecting tax and forwarding collections to the other compacting states. Some states have taken no action with respect to the NRRRA.

This area of tax law is in a state of flux. We will continue to monitor for new developments.