

Chapter 521

(House Bill 959)

AN ACT concerning

Insurance – Surplus Lines

FOR the purpose of ~~authorizing a surplus lines broker to place certain surplus lines insurance with certain insurers under certain circumstances; authorizing a surplus lines broker to place coverage with certain nonadmitted insurers that meet certain qualifications; authorizing the Maryland Insurance Commissioner to make a certain finding concerning certain nonadmitted insurers based on certain criteria; authorizing~~ requiring the Maryland Insurance Commissioner to participate in a certain database; altering the authority of the Commissioner to allow a commercial insured to waive certain search requirements for surplus lines coverage for certain purposes; authorizing a surplus lines broker not to perform a diligent search when placing certain coverage with an exempt commercial purchaser under certain circumstances; providing that certain persons are not required to obtain a certificate of qualification to act as a surplus lines broker in the State under certain circumstances; prohibiting the Commissioner from approving an insurer as a surplus lines insurer unless the insurer meets certain requirements or the Commissioner makes a certain finding; altering the process for an insurer to be approved by the Commissioner as a surplus lines insurer; altering certain prohibitions against a surplus lines broker placing surplus lines insurance with an unauthorized insurer; altering the calculation and amount of the premium receipts tax on certain surplus lines insurance premiums that cover certain property, risks, and exposures that are wholly or partly located or to be performed entirely in the State or both in and outside the State; providing for the receipt and distribution of certain premium taxes in and for certain states; providing that, for policies effective on or after a certain date, only the home state of an insured shall may receive certain tax payments and reports for certain nonadmitted insurance; requiring the Commissioner to cooperate with certain other states to adopt and implement certain multistate uniform requirements for nonadmitted insurance in compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010; providing that, for policies effective on or after a certain date, the regulation and placement of certain nonadmitted insurance is subject to the statutory and regulatory requirements solely of certain home states; providing for the allocation, collection, and distribution of certain premium taxes and reports concerning certain insurance under certain circumstances; authorizing the Commissioner to enter into a certain agreement or compact or to establish certain procedures to implement a certain multistate system for certain purposes; authorizing the Commissioner to enter into an agreement with a certain clearinghouse or other entity for certain purposes; authorizing the

~~Commissioner to establish certain fees for certain purposes;~~ altering certain requirements for certain ~~insurers~~ surplus lines brokers and insureds to file certain statements and reports and pay certain taxes at certain times; ~~authorizing the Commissioner to prescribe certain forms for certain tax allocation reports;~~ requiring the Commissioner, by regulation, to determine the content and filing deadlines for the reports; making conforming and clarifying changes; defining certain terms; requiring the Commissioner to conduct a certain study and report the findings of the study to certain committees of the General Assembly on or before a certain date; requiring qualified surplus lines brokers to provide certain information to the Commissioner under certain circumstances; and generally relating to the Maryland Insurance Commissioner and surplus lines.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 3–301, 3–304, 3–306, 3–306.1, 3–310, 3–318, 3–319, 3–324, 3–325, ~~and 4–210~~ 4–209, 4–210, and 4–211

Annotated Code of Maryland

(2003 Replacement Volume and 2010 Supplement)

BY adding to

Article – Insurance

Section ~~3–324.1 and~~ 4–211.1

Annotated Code of Maryland

(2003 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

3–301.

(A) In this subtitle[, “qualified] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(B) **“ACT” MEANS THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010.**

(C) **“ADMITTED INSURER” MEANS AN INSURER THAT IS AUTHORIZED TO ENGAGE IN THE BUSINESS OF INSURANCE IN THE STATE.**

(D) **“EXEMPT COMMERCIAL PURCHASER” HAS THE MEANING STATED IN § 527 OF THE ACT.**

(E) **“HOME STATE” HAS THE MEANING STATED IN § 527 OF THE ACT.**

(F) **“NONADMITTED INSURANCE” MEANS PROPERTY AND CASUALTY INSURANCE THAT MAY BE PLACED DIRECTLY OR THROUGH A SURPLUS LINES BROKER WITH A NONADMITTED INSURER THAT IS ELIGIBLE TO ACCEPT THE INSURANCE.**

(G) (1) **“NONADMITTED INSURER” MEANS AN INSURER THAT IS NOT AUTHORIZED TO ENGAGE IN THE BUSINESS OF INSURANCE IN THE STATE.**

(2) **“NONADMITTED INSURER” DOES NOT INCLUDE A RISK RETENTION GROUP.**

(H) **“QUALIFIED surplus lines broker”** means a person that has obtained a certificate of qualification from the Commissioner to act as a surplus lines broker under this subtitle.

3–304.

The Commissioner may adopt reasonable regulations consistent with this subtitle to:

- (1) carry out this subtitle;
- (2) establish procedures for determining the eligibility of particular proposed coverages for placement with surplus lines insurers and maintain a list of the identified coverages;
- (3) [permit a] **ALLOW AN EXEMPT commercial [insured, as defined by the Commissioner,] PURCHASER** to waive the diligent search requirement under § 3–306 of this subtitle for the procurement of a surplus lines insurance policy:
 - (i) with an annual premium of not less than \$5,000; and
 - (ii) issued by an insurer with a financial rating of “A” or better by the A.M. Best Company or an equivalent rating from an independent rating organization approved by the Commissioner];
- (4) provide for the content and use of the written disclosure required under § 3–308 of this subtitle; and
- (5) provide for the periodic review, no less than annually, of information from surplus lines brokers, agents, and insurers and from other sources concerning the availability and affordability of insurance from authorized insurers in the State.

3-306.

(a) Surplus lines insurance may be procured from an unauthorized insurer if:

(1) for surplus lines insurance procured through a broker, the surplus lines insurance is procured through a qualified surplus lines broker;

(2) subject to the provisions of § 3-306.1 of this subtitle, a diligent search is made among the authorized insurers that are writing the particular kind and class of insurance in the State;

(3) except for insurance against liability of persons described in § 24-206(1) of this article, the amount of surplus lines insurance procured from an unauthorized insurer is only the excess over the amount that can be procured from authorized insurers;

(4) for insurance against liability of persons described in § 24-206(1) of this article, the insurance cannot be obtained from three or more authorized insurers that are writing on a broad basis that particular kind and class of insurance;

(5) except as provided in subsection (b) of this section, the surplus lines insurance is not procured:

(i) solely to obtain a lower premium rate than would be accepted by an authorized insurer;

(ii) solely to obtain more favorable terms of the insurance contract; or

(iii) to replace coverage on residential property which is insured by an authorized insurer and for which a renewal offer has been made on substantially the same terms and conditions as the current coverage; and

(6) there is compliance with other applicable provisions of this subtitle.

(b) This subtitle does not prohibit a lower premium rate or more favorable terms in the insurance contract of an unauthorized insurer if:

(1) the risk is eligible as surplus lines under subsection (a)(2), (3), and (4) of this section; or

(2) the applicant qualifies as **[a] AN EXEMPT commercial [insured] PURCHASER** who may waive, ~~as authorized by the Commissioner,~~ the diligent search that is otherwise required under this section.

(c) (1) This section does not prohibit a surplus lines broker from renewing a risk with a surplus lines insurer if the risk was initially written on a surplus lines basis when there were fewer than three authorized insurers actually writing on a broad basis the particular kind and class of insurance to provide coverage against liability of persons described in § 24-206(1) of this article in the State.

(2) However, even if on the date of renewal three or more authorized insurers are writing on a broad basis the particular kind and class of insurance required by the insured, a risk initially eligible for surplus lines insurance may be renewed on a surplus lines basis if the surplus lines insurer, licensed insurance producer, or surplus lines broker gives to the insured appropriate notice of the possible availability of comparable types of insurance being written by three or more authorized insurers:

(i) each year; and

(ii) sufficiently in advance of the renewal date to allow the insured to determine whether to renew the policy with the surplus lines insurer.

~~(D) A SURPLUS LINES BROKER MAY PLACE SURPLUS LINES INSURANCE IF EACH INSURER IS AUTHORIZED TO WRITE THE TYPE OF INSURANCE IN ITS DOMICILIARY JURISDICTION.~~

~~(E) (1) A SURPLUS LINES BROKER MAY NOT PLACE COVERAGE WITH A NONADMITTED INSURER UNLESS, AT THE TIME OF PLACEMENT, THE SURPLUS LINES BROKER DETERMINES THAT THE NONADMITTED INSURER:~~

~~(I) HAS ESTABLISHED SATISFACTORY EVIDENCE OF GOOD REPUTE AND FINANCIAL INTEGRITY;~~

~~(II) 1. HAS CAPITAL AND SURPLUS, OR THEIR EQUIVALENT UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION, EQUAL TO THE GREATER OF:~~

~~A. THE MINIMUM CAPITAL AND SURPLUS REQUIRED UNDER THE LAWS OF THE STATE; OR~~

~~B. \$15,000,000; OR~~

~~2. IS FOUND ACCEPTABLE BY THE COMMISSIONER UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND~~

~~(III) FOR AN INSURER NOT DOMICILED IN A STATE, HAS QUALIFIED IN ACCORDANCE WITH § 3-303 OF THIS SUBTITLE.~~

~~(2) (i) THE COMMISSIONER MAY AFFIRMATIVELY FIND THAT A NONADMITTED INSURER IS ACCEPTABLE UNDER THIS SUBSECTION.~~

~~(ii) THE COMMISSIONER SHALL MAKE THE FINDING BASED ON FACTORS INCLUDING QUALITY OF MANAGEMENT, CAPITAL AND SURPLUS OF THE PARENT COMPANY, UNDERWRITING PROFIT AND INVESTMENT INCOME TRENDS OF THE NONADMITTED INSURER, MARKET AVAILABILITY, AND THE RECORD AND REPUTATION OF THE NONADMITTED INSURER IN THE INDUSTRY.~~

~~(iii) THE COMMISSIONER MAY NOT FIND ACCEPTABLE A NONADMITTED INSURER THAT HAS CAPITAL AND SURPLUS OF LESS THAN \$4,500,000.~~

~~(F) (D)~~ THE COMMISSIONER ~~MAY~~ SHALL PARTICIPATE IN THE NATIONAL INSURANCE PRODUCER DATABASE MAINTAINED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND SUBSIDIARIES.

3-306.1.

(a) (1) A diligent search required by § 3-306 of this subtitle shall be deemed completed if:

(i) the insured or the surplus lines broker or insurance producer obtains declinations of a risk from three authorized insurers that are writing the particular kind and class of insurance in this State; and

(ii) the declinations are included in the affidavit required under § 3-307 of this subtitle.

(2) In addition to the requirement of paragraph (1)(i) of this subsection, an insurance producer shall obtain a declination from each insurer for which the insurance producer has been appointed that the insurance producer knows, or should know, is actually writing on a broad basis the particular kind and class of insurance sought.

(b) A diligent search may not be required:

(1) for any coverage on a list of eligible surplus lines coverages compiled by the Commissioner; or

(2) if the diligent search is waived by [a] AN EXEMPT commercial [insured] PURCHASER in accordance with the ~~process determined by the Commissioner~~ ACT.

(c) Notwithstanding the renewal provisions of § 3-306(c) of this subtitle, a diligent search shall be required for each renewal of a personal lines insurance policy written through a surplus lines insurer.

(D) NOTWITHSTANDING SUBSECTION (B)(2) OF THIS SECTION, A SURPLUS LINES BROKER IS NOT REQUIRED TO PERFORM A DILIGENT SEARCH TO DETERMINE WHETHER THE FULL AMOUNT OR TYPE OF INSURANCE CAN BE OBTAINED FROM ADMITTED INSURERS WHEN THE SURPLUS LINES BROKER IS SEEKING TO PROCURE OR PLACE NONADMITTED INSURANCE FOR AN EXEMPT COMMERCIAL PURCHASER IF:

(1) THE SURPLUS LINES BROKER HAS DISCLOSED TO THE EXEMPT COMMERCIAL PURCHASER THAT THE INSURANCE MAY OR MAY NOT BE AVAILABLE FROM ADMITTED INSURERS THAT MAY BE SUBJECT TO GREATER PROTECTION AND REGULATORY OVERSIGHT; AND

(2) THE EXEMPT COMMERCIAL PURCHASER SUBSEQUENTLY HAS REQUESTED THE SURPLUS LINES BROKER IN WRITING TO PROCURE NONADMITTED INSURANCE FROM OR PLACE THE NONADMITTED INSURANCE WITH A NONADMITTED INSURER.

3-310.

(A) [A] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A person must obtain a certificate of qualification to act as a surplus lines broker before the person acts as a surplus lines broker in the State.

(B) A PERSON IS NOT REQUIRED TO OBTAIN A CERTIFICATE OF QUALIFICATION TO ACT AS A SURPLUS LINES BROKER IN THE STATE IF:

(1) THE STATE IS NOT THE HOME STATE OF THE INSURED; AND

(2) THE SURPLUS LINES BROKER HAS OBTAINED A LICENSE OR OTHER AUTHORIZATION FROM THE HOME STATE OF THE INSURED.

3-318.

(A) THE COMMISSIONER MAY NOT APPROVE AN INSURER AS A SURPLUS LINES INSURER UNLESS THE INSURER:

(1) IS AUTHORIZED IN ITS DOMICILIARY JURISDICTION TO WRITE THE TYPE OF INSURANCE IT SEEKS TO WRITE;

(2) HAS CAPITAL AND SURPLUS, OR THEIR EQUIVALENT UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION, EQUAL TO THE GREATER OF:

(I) THE MINIMUM CAPITAL AND SURPLUS REQUIRED UNDER THE LAWS OF ITS DOMICILIARY JURISDICTION; AND

(II) \$15,000,000; AND

(3) FILES WITH THE COMMISSIONER THE INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION.

(B) (1) FOR A FOREIGN INSURER, THE REQUIREMENTS OF SUBSECTION (A)(2) OF THIS SECTION MAY BE SATISFIED BY THE INSURER'S POSSESSING LESS THAN THE MINIMUM CAPITAL AND SURPLUS IF THE COMMISSIONER MAKES AN AFFIRMATIVE FINDING OF ACCEPTABILITY.

(2) THE FINDING SHALL BE BASED ON THE FOLLOWING OR SIMILAR FACTORS:

(I) QUALITY OF MANAGEMENT;

(II) CAPITAL AND SURPLUS OF ANY PARENT COMPANY;

(III) COMPANY UNDERWRITING PROFIT AND INVESTMENT INCOME TRENDS;

(IV) MARKET AVAILABILITY; AND

(V) COMPANY RECORD AND REPUTATION OF THE FOREIGN INSURER IN THE INDUSTRY.

(3) THE COMMISSIONER MAY NOT MAKE AN AFFIRMATIVE FINDING OF ACCEPTABILITY IF THE FOREIGN INSURER'S CAPITAL AND SURPLUS IS LESS THAN \$4,500,000.

[(a)] (C) An insurer [may not be approved as a surplus lines insurer until the insurer files] THAT SEEKS APPROVAL UNDER SUBSECTION (A) OF THIS SECTION SHALL FILE each year with the Commissioner:

(1) a written request for approval as a surplus lines insurer [for those surplus lines authorized by the Commissioner] TO WRITE THE TYPE OF INSURANCE IT SEEKS TO WRITE;

(2) a certified copy of its annual statement, on convention form, that shows the amount by line of surplus lines business written on risks located in the State during the period covered by the annual statement; AND

(3) a certificate of compliance issued by the insurance department of the insurer's state of domicile; and

(4) a certificate evidencing a deposit issued by the official custodian of deposits of the insurer's state of domicile].

[(b)] (D) An unauthorized insurer shall appoint in writing the Commissioner as agent for the acceptance of service of process.

3-319.

(a) A surplus lines broker may not place surplus lines insurance with an unauthorized insurer that:

(1) has not been approved by the Commissioner as a surplus lines insurer IN ACCORDANCE WITH § 3-318 OF THIS SUBTITLE;

(2) FOR AN INSURER NOT DOMICILED IN THE STATE, HAS NOT QUALIFIED UNDER § 3-303 OF THIS SUBTITLE;

(3) has been determined by the Commissioner to be insolvent or unsafe financially under subsection (b) of this section; or

[(3)] (4) has been determined by the Commissioner to have refused to pay just claims.

(b) (1) The Commissioner shall direct that surplus lines insurance may not be placed with a surplus lines insurer that has been approved by the Commissioner if the Commissioner determines that the surplus lines insurer:

(i) is not in a safe or solvent financial condition; or

(ii) has refused to pay just claims.

(2) After written notice of a determination made by the Commissioner under paragraph (1) of this subsection is mailed by the Commissioner to qualified surplus lines brokers, surplus lines insurance may not be placed with the surplus lines insurer.

(c) Notwithstanding any other provision of this subtitle, a surplus lines broker may not place surplus lines insurance with an insurer if the broker knows, or

reasonably should know, that the insurer is in an unsafe or insolvent financial condition.

(d) A qualified surplus lines broker may not place a risk in an unauthorized insurer that has not previously appointed the Commissioner as agent for the acceptance of service of process.

3-324.

(a) This section does not apply to insurance of risks of the State or a political subdivision of the State.

(b) ~~(1)~~ The premiums charged for surplus lines insurance are subject to a premium receipts tax ~~[of 3%]~~ ~~IN ACCORDANCE WITH THIS SUBSECTION~~ on all gross premiums ~~ALLOCABLE TO THE STATE~~, less any returned premiums ~~ALLOCABLE TO THE STATE~~, charged for surplus lines insurance.

~~(2) THE AMOUNT OF THE PREMIUM RECEIPTS TAX IS:~~

~~(i) FOR SURPLUS LINES INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ONLY IN THE STATE, 3% OF THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE STATE; AND~~

~~(ii) FOR SURPLUS LINES INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE:~~

~~1. 3% OF THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE STATE; AND~~

~~2. THE AMOUNT OF TAXES AND FEES APPLICABLE TO THE PROPERTY, RISKS, AND EXPOSURES LOCATED OR TO BE PERFORMED IN EACH OTHER STATE, BASED ON THE RATES OF TAXES AND FEES IN THE OTHER STATE, CALCULATED ON THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE OTHER STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE OTHER STATE.~~

~~(3) (i) IF THE STATE IS THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE AND DISTRIBUTE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE AND TO OTHER APPLICABLE STATES.~~

~~(H) IF THE STATE IS NOT THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE FROM THE HOME STATE OF THE INSURED.~~

(C) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(1) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION; AND

(2) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(D) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (B) OF THIS SECTION.

~~(C)~~ **(E) ONLY FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.**

~~[(c)]~~ ~~(D)~~ **(F)** (1) On delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, a surplus lines broker shall charge the insured the amount of the **PREMIUM RECEIPTS** tax in addition to the full amount of the gross premium charged by the insurer for the surplus lines insurance.

(2) The surplus lines broker shall return to the insured the **PREMIUM RECEIPTS** tax on any unearned part of the premium.

~~[(d)]~~ ~~(E)~~ **(G)** The surplus lines broker may not:

(1) absorb the premium receipts tax; or

(2) rebate all or part of the premium receipts tax or the surplus lines broker's commission.

[(e)] If a surplus lines policy covers risks only partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risks located in the State.]

~~3-324.1.~~

~~(A)~~ (H) THE COMMISSIONER SHALL COOPERATE WITH OTHER STATES TO ADOPT AND IMPLEMENT ~~MULTISTATE~~ UNIFORM REQUIREMENTS FOR NONADMITTED INSURANCE IN COMPLIANCE WITH THE ACT.

~~(B)~~ (I) ~~THE~~ FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ~~THE~~ REGULATION OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE HOME STATE OF THE INSURED.

~~(C)~~ (1) ~~ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.~~

~~(2)~~ ~~IF THE NONADMITTED INSURANCE COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED ONLY IN THE STATE, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE.~~

~~(3)~~ ~~IF THE STATE IS THE HOME STATE OF AN INSURED, THE COMMISSIONER SHALL RECEIVE AND REDISTRIBUTE THE PREMIUM RECEIPTS TAX FOR NONADMITTED INSURANCE PAYABLE TO THE STATE AND TO OTHER APPLICABLE STATES.~~

~~(4)~~ ~~IF THE STATE IS NOT THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE FROM THE HOME STATE OF THE INSURED.~~

~~(D)~~ (1) ~~TO CARRY OUT THE ACT, THE COMMISSIONER MAY ENTER INTO AN AGREEMENT OR A COMPACT OR OTHERWISE ESTABLISH PROCEDURES TO IMPLEMENT THE MULTISTATE SYSTEM FOR THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF PREMIUM RECEIPTS TAX FOR NONADMITTED INSURANCE.~~

~~(2)~~ ~~WITH RESPECT TO AN AGREEMENT, A COMPACT, OR OTHER PROCEDURES UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER MAY:~~

~~(1)~~ ~~ENTER INTO AN AGREEMENT WITH A CLEARINGHOUSE OR OTHER ENTITY FOR THE PURPOSE OF COLLECTING AND DISBURSING TO THE STATE AND OTHER STATES ANY FUNDS COLLECTED THAT ARE APPLICABLE TO~~

~~PROPERTY, RISKS, AND EXPOSURES LOCATED OR TO BE PERFORMED WHOLLY OR PARTLY IN THE STATE; AND~~

~~(H) APPROVE AND USE AN ALLOCATION SCHEDULE TO ALLOCATE RISK AND COMPUTE PREMIUM RECEIPTS TAX DUE ON THE PORTION OF PREMIUM ATTRIBUTABLE TO EACH RISK CLASSIFICATION, TO THE STATE, AND TO EACH OTHER STATE IN WHICH PROPERTY, RISKS, OR EXPOSURES ARE LOCATED OR TO BE PERFORMED.~~

~~(E) THE COMMISSIONER MAY IMPOSE A REASONABLE FEE, TO BE PAID BY INSURED OR INSURERS, TO IMPLEMENT THE MULTISTATE SYSTEM FOR THE REPORTING, PAYMENT, COLLECTION, AND ALLOCATION OF PREMIUM RECEIPTS TAX FOR NONADMITTED INSURANCE.~~

3-325.

(a) ~~On or before March 15 and September 15 of each year, OR AT ANOTHER INTERVAL THAT THE COMMISSIONER DIRECTS, each] EACH surplus lines broker shall~~:

(1) ~~file with the Commissioner a semiannual statement that reports~~ REPORT, ON A FORM THE COMMISSIONER PRESCRIBES, on business subject to tax during the preceding half calendar year OR OTHER INTERVAL THAT THE COMMISSIONER DIRECTS; and

(2) pay to the Commissioner the total amount of tax ~~imposed by § 3-324 of this subtitle and appearing on the semiannual statement filed under this section] COMMISSIONER, ON A FORM THE COMMISSIONER PRESCRIBES, A VERIFIED TAX ALLOCATION REPORT THAT DETAILS THE PORTION OF NONADMITTED INSURANCE POLICY PREMIUMS ALLOCABLE TO PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED IN EACH STATE STATED IN THE REPORT.~~

[(b) The semiannual statement shall be verified in the manner that the Commissioner requires and contain the following information:

- (1) the gross amount of each kind of insurance business transacted and the total gross premiums charged;
- (2) the total returned premiums and taxes paid to insureds;
- (3) the total net premiums; and

(4) any additional information that the Commissioner reasonably requires.]

(B) BY REGULATION, THE COMMISSIONER SHALL DETERMINE THE REQUIRED CONTENT AND FILING DEADLINES OF THE ~~TAX ALLOCATION~~ REPORT.

(c) Each [semiannual statement] ~~TAX ALLOCATION~~ REPORT shall be open to public inspection.

(d) A **QUALIFIED** surplus lines broker may credit any examination expense paid or assessed under § 2-208 of this article against the premium receipts tax due **TO THE STATE**.

(e) With respect to [a penalty that has become final] **SURPLUS LINES PREMIUM RECEIPTS TAX DUE TO THE STATE**, a surplus lines broker is subject to the provisions of Title 6, Subtitle 1 of this article relating to penalties, interest, audits, assessments, limitations, appeals, and refunds.

4-209.

(a) This section does not apply to:

(1) premiums on lawfully procured surplus lines insurance;

(2) premiums on independently procured insurance on which a tax has been paid under § 4-211 of this subtitle; or

(3) wet marine and transportation insurance.

(b) (1) If an unauthorized insurer effects, continues, or renews insurance on a subject resident, located, or to be performed in the State, the unauthorized insurer shall pay to the Commissioner, before March 1 of the next calendar year, a premium receipts tax of 3% of gross premiums charged for the insurance.

(2) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(I) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION ONLY ON THAT PORTION OF THE

PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(3) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION.

[(2)] (4) Insurance that an unauthorized insurer effects, continues, or renews on a subject resident, located, or to be performed in the State that is procured through negotiations or an application wholly or partly occurring or made in or from within or outside of the State, or for which premiums wholly or partly are remitted directly or indirectly from in or outside of the State, is deemed to be insurance procured, continued, or renewed in the State.

(c) The premium receipts tax under this section is instead of all other State taxes.

(d) If an unauthorized insurer defaults on the payment of the tax under this section, the insured shall pay the tax.

(e) If the tax is not timely paid under subsection (b) of this section, the amount of the tax due shall be increased by a penalty of:

(1) 25% of the tax due; and

(2) an amount computed at the rate of 1% per month or any part of a month after the date the payment was due to the date the payment is made.

[(f) (1) If a policy covers a risk or exposure that is partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risk or exposure located in the State.

(2) Except for premiums that are properly allocated or apportioned and reported as taxable premiums of another state, in determining the amount of premiums taxable in this State, all premiums written, procured, or received in this State and all premiums on policies negotiated in this State shall be deemed written on property or risks located or resident in this State.]

4-210.

(a) In this section, "insured" includes an industrial insured who procures insurance of a risk through a full-time employee acting as a risk manager.

(b) (1) Each insured that procures or causes to be procured insurance with an unauthorized insurer, or an insured or self-insured that procures or continues

excess loss, catastrophe, or other insurance with an unauthorized insurer, on a subject of insurance resident, located, or to be performed in the State other than surplus lines insurance, shall file with the Commissioner a report under this section [within 60 days after the date that the insurance was procured].

(2) Insurance with an unauthorized insurer on a subject of insurance resident, located, or to be performed in the State that is procured through negotiations or an application wholly or partly occurring or made in or from within or outside of the State, or for which the premiums wholly or partly are remitted directly or indirectly from in or outside of the State, is deemed to be insurance procured in the State.

[(c) The report shall:

- (1) be in writing;
- (2) be on the form provided by the Commissioner to the insured on request; and
- (3) contain:
 - (i) the name and address of the insured;
 - (ii) the name and address of the insurer;
 - (iii) the subject of the insurance;
 - (iv) a general description of the coverage;
 - (v) the amount of the premium charged for the coverage; and
 - (vi) any other pertinent information that the Commissioner reasonably requests.]

~~(c) THE REPORT SHALL BE A VERIFIED TAX ALLOCATION REPORT, ON A FORM THE COMMISSIONER PRESCRIBES, THAT DETAILS THE PORTION OF NONADMITTED INSURANCE POLICY PREMIUMS ALLOCABLE TO PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED IN EACH STATE.~~

(c) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011, A REPORT UNDER THIS SECTION SHALL BE FILED WITHIN 60 DAYS AFTER THE DATE THAT THE INSURANCE WAS PROCURED.

(d) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ON OR BEFORE MARCH 15 AND SEPTEMBER 15 OF EACH YEAR, OR AT ANOTHER INTERVAL THAT THE COMMISSIONER DIRECTS, EACH INSURED SHALL:

(1) FILE WITH THE COMMISSIONER A REPORT, ON A FORM THE COMMISSIONER PRESCRIBES, ON BUSINESS SUBJECT TO TAX DURING THE PRECEDING HALF CALENDAR YEAR OR OTHER INTERVAL THAT THE COMMISSIONER DIRECTS; AND

(2) PAY TO THE COMMISSIONER THE TOTAL AMOUNT OF TAX STATED IN THE REPORT.

~~(D)~~ (E) BY REGULATION, THE COMMISSIONER SHALL DETERMINE THE REQUIRED CONTENT AND FILING DEADLINES OF THE ~~TAX ALLOCATION REPORT~~ REPORTS.

4-211.

(a) This section does not apply to wet marine and transportation insurance.

(b) (1) If an insured procures, continues, or renews insurance from an unauthorized insurer that is subject to a report under § 4-210 of this subtitle, a premium receipts tax of 3% of the gross premiums charged for the insurance is levied on the obligation, chose in action, or right represented by the premium charged for the insurance.

(2) [The insured shall pay the amount of the tax to the Commissioner before March 1 of the next calendar year after the insurance was procured, continued, or renewed.

(3) If an insurance contract subject to the tax is canceled and rewritten, the additional premium, for purposes of the premium receipts tax, is the premium in excess of the unearned premium of the canceled insurance contract.

(c) [(1) If a policy covers a risk or exposure that is only partly in the State, the tax payable shall be computed on the part of the premium that is properly allocable to the risk or exposure located in the State.

(2) Except for premiums that are properly allocated or apportioned and reported as taxable premiums in another state, in determining the amount of premiums taxable in this State, all premiums written, procured, or received in this State and all premiums on policies negotiated in this State shall be deemed written on property or risks located or resident in this State.

(d) If the insured fails to withhold from the premium the amount of the tax levied under this section, the insured is liable for the amount of the tax **IMPOSED UNDER SUBSECTION (B) OF THIS SECTION** and shall pay the tax to the Commissioner [in accordance with subsection (c) of this section].

~~[(e)] (D)~~ If the tax [required by] IMPOSED UNDER subsection [(d)] (B) of this section is not timely paid [under subsection (c) of this section], the amount of the tax due shall be increased by a penalty of:

- (1) 25% of the tax due; and
- (2) an amount computed at the rate of 1% per month or part of a month after the date the payment is due until the date the payment is made.

~~[(f)] (E)~~ If the tax is not timely paid under this section, on request of the Commissioner, the Attorney General shall proceed in a court of this State or another state or in a federal court or agency to recover the tax.

4-211.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ACT” HAS THE MEANING STATED IN § 3-301 OF THIS ARTICLE.

(3) “HOME STATE” HAS THE MEANING STATED IN § 3-301 OF THIS ARTICLE.

~~(3)~~ (4) “NONADMITTED INSURANCE” HAS THE MEANING STATED IN § 3-301 OF THIS ARTICLE.

(B) ~~THE~~ FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE PLACEMENT OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE INSURED’S HOME STATE.

(C) ~~(1)~~ THE PREMIUMS CHARGED FOR UNAUTHORIZED INSURANCE ARE SUBJECT TO A PREMIUM RECEIPTS TAX IN THE STATE ON ALL GROSS PREMIUMS ~~ALLOCABLE TO THE STATE~~, LESS ANY RETURNED PREMIUMS ~~ALLOCABLE TO THE STATE~~, CHARGED FOR ~~SURPLUS LINES~~ NONADMITTED INSURANCE AS SPECIFIED IN §§ 4-209 AND 4-211 OF THIS SUBTITLE.

~~(2)~~ ~~(1)~~ FOR INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ONLY IN THE STATE, THE PREMIUM RECEIPTS TAX IS COMPUTED BASED ON THE PORTION OF GROSS PREMIUMS ~~ALLOCABLE TO THE STATE~~, LESS ANY RETURNED PREMIUMS ~~ALLOCABLE TO THE STATE~~.

~~(H) BY REGULATION, THE COMMISSIONER MAY REQUIRE PAYMENT OF THE PREMIUM RECEIPTS TAX EITHER DIRECTLY TO THE COMMISSIONER OR THROUGH A CLEARINGHOUSE ESTABLISHED UNDER § 3-324.1(D) OF THIS ARTICLE.~~

~~(3) FOR SURPLUS LINES INSURANCE THAT COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE AMOUNT OF PREMIUM RECEIPTS TAX PAYABLE SHALL BE COMPUTED BASED ON:~~

~~(I) THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE STATE; AND~~

~~(II) THE AMOUNT OF TAXES AND FEES APPLICABLE TO THE PROPERTY, RISKS, AND EXPOSURES LOCATED OR TO BE PERFORMED IN EACH OTHER STATE, BASED ON THE RATES OF TAXES AND FEES IN THE OTHER STATE, CALCULATED ON THE PORTION OF GROSS PREMIUMS ALLOCABLE TO THE OTHER STATE, LESS ANY RETURNED PREMIUMS ALLOCABLE TO THE OTHER STATE.~~

~~(4) (I) 1. IF THE STATE IS THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE AND DISTRIBUTE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE AND TO OTHER APPLICABLE STATES.~~

~~2. BY REGULATION, THE COMMISSIONER MAY REQUIRE PAYMENT OF THE PREMIUM RECEIPTS TAX EITHER DIRECTLY TO THE COMMISSIONER OR THROUGH A CLEARINGHOUSE ESTABLISHED UNDER § 3-324.1(D) OF THIS ARTICLE.~~

~~(II) IF THE STATE IS NOT THE HOME STATE OF THE INSURED, THE COMMISSIONER SHALL RECEIVE THE PREMIUM RECEIPTS TAX PAYABLE TO THE STATE FROM THE HOME STATE OF THE INSURED.~~

(D) FOR POLICIES EFFECTIVE BEFORE JULY 21, 2011:

(1) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED ENTIRELY IN THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION; AND

(2) IF THE POLICY COVERS PROPERTY, RISKS, OR EXPOSURES LOCATED OR TO BE PERFORMED BOTH IN AND OUTSIDE THE STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED AT THE RATE SPECIFIED IN

SUBSECTION (C) OF THIS SECTION ONLY ON THAT PORTION OF THE PREMIUM THAT IS PROPERLY ALLOCABLE TO THE RISKS LOCATED IN THE STATE.

(E) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, IF THE STATE IS THE INSURED'S HOME STATE, THE PREMIUM RECEIPTS TAX SHALL BE COMPUTED ON THE ENTIRE PREMIUM AT THE RATE SPECIFIED IN SUBSECTION (C) OF THIS SECTION.

~~(D)~~ (F) ONLY FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY THE HOME STATE OF AN INSURED MAY RECEIVE PREMIUM RECEIPTS TAX PAYMENTS AND REPORTS FOR NONADMITTED INSURANCE.

(G) FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE REGULATION OF NONADMITTED INSURANCE IS SUBJECT TO THE STATUTORY AND REGULATORY REQUIREMENTS SOLELY OF THE HOME STATE OF THE INSURED.

(H) THE COMMISSIONER SHALL COOPERATE WITH OTHER STATES TO ADOPT AND IMPLEMENT UNIFORM REQUIREMENTS FOR NONADMITTED INSURANCE IN COMPLIANCE WITH THE ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before January 1, 2012, the Maryland Insurance Commissioner shall:

(1) study the various approaches taken by other states to implement the federal Nonadmitted and Reinsurance Reform Act of 2010, paying specific attention to the approaches taken by contiguous states; and

(2) report the findings of the study, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

(b) The study required under subsection (a)(1) of this section shall include a review of:

(1) the approaches taken by other states, including:

(i) legislative enactments;

(ii) the execution of agreements or compacts, if any;

(iii) the impact on nonadmitted premium receipts tax revenue experienced by other states based on the approach taken, if known; and

(iv) future plans for implementation, if known or ascertainable;

(2) the impact of Maryland's approach on its nonadmitted premium receipts tax revenue, if any;

(3) relevant congressional guidance;

(4) guidance provided by the National Council of Insurance Legislators, the Council of State Government, the National Council of State Legislators, and the National Association of Insurance Commissioners; and

(5) industry guidance, statistics, or information.

(c) On request of the Maryland Insurance Commissioner, qualified surplus lines brokers shall provide to the Commissioner, to the extent practicable, information regarding written premium on risks located in Maryland and multistate risks so as to provide more information regarding premium receipts tax revenue.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 19, 2011.