

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 959  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “authorizing” in line 3 down through “criteria;” in line 8; in line 8, strike “authorizing” and substitute “requiring”; in the same line, after “the” insert “Maryland Insurance”; in line 15, after “circumstances;” insert “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;”; in the same line, strike “and amount”; in line 17, strike “wholly or partly”; in line 18, after “performed” insert “entirely in the State or both in and”; strike beginning with “providing” in line 18 down through “states;” in line 19; in line 19, after “that” insert “, for policies effective on or after a certain date, only”; in line 20, strike “shall” and substitute “may”; in lines 21 and 22, in each instance, strike “certain”; in line 22, strike “multistate”; in line 24, after “that” insert “, for policies effective on or after a certain date.”; and in the same line, after “regulation” insert “and placement”.

On pages 1 and 2, strike beginning with “providing” in line 26 on page 1 down through “purposes;” in line 1 on page 2.

On page 2, in line 2, strike “insurers” and substitute “surplus lines brokers and insureds”; in line 3, after “reports” insert “and pay certain taxes”; strike beginning with “authorizing” in line 3 down through “reports;” in line 4; in line 6, after “terms;” insert “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;”; in line 10, after “3-310,” insert “3-318, 3-

(Over)

319.”; in the same line, strike “and 4-210” and substitute “4-209, 4-210, and 4-211”; and in line 15, strike “3-324.1 and”.

AMENDMENT NO. 2

On page 4, in line 27, strike “, as authorized by the Commissioner,”.

On pages 5 and 6, strike in their entirety the lines beginning with line 9 on page 5 through line 3 on page 6, inclusive.

On page 6, in line 4, strike “(F)” and substitute “(D)”; in the same line, strike “MAY” and substitute “SHALL”; and strike beginning with “process” in line 25 down through “Commissioner” in line 26 and substitute “ACT”.

On page 7, after line 19, insert:

“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:

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(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.”.

AMENDMENT NO. 3

On page 7, in line 23, strike “(1)”; in line 24, strike the brackets; in the same line, strike “IN ACCORDANCE WITH THIS SUBSECTION”; and in lines 25 and 25 and 26, in each instance, strike “ALLOCABLE TO THE STATE”.

(Over)

On pages 7 and 8, strike in their entirety the lines beginning with line 27 on page 7 through line 18 on page 8, inclusive, and substitute:

**“(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.”**

On page 8, in lines 19, 21, and 27, strike “(C)”, “(D)”, and “(E)”, respectively, and substitute “(E)”, “(F)”, and “(G)”, respectively; and in line 19, strike “ONLY” and substitute “**FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY**”.

On page 9, strike line 1 in its entirety; in lines 2 and 5, strike “(A)” and “(B)”, respectively, and substitute “(H)” and “(I)”, respectively; in line 3, strike “MULTISTATE”; and in line 5, strike “THE” and substitute “**FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE**”.

On pages 9 and 10, strike in their entirety the lines beginning with line 8 on page 9 through line 9 on page 10, inclusive.

On page 10, in lines 11, 12, and 13, in each instance, strike the bracket; in line 11, after “year” insert “, OR AT ANOTHER INTERVAL THAT THE COMMISSIONER DIRECTS”; in the same line, strike “EACH”; in line 13, strike “semiannual statement that reports” and substitute “REPORT, ON A FORM THE COMMISSIONER PRESCRIBES,”; in line 14, after “year” insert “OR OTHER INTERVAL THAT THE COMMISSIONER DIRECTS”; strike beginning with “imposed” in line 15 down through “STATE” in line 20 and substitute “STATED IN THE REPORT”; and in lines 30 and 31, in each instance, strike “TAX ALLOCATION”.

AMENDMENT NO. 4

On page 11, after line 7, insert:

“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.

(Over)

**(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.]”.

On page 12, strike in their entirety lines 3 through 6, inclusive, and substitute:

**“(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:**

(Over)

(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.”;

in line 7, strike “(D)” and substitute “(E)”; in line 8, strike “TAX ALLOCATION REPORT” and substitute “REPORTS”; and after line 8, insert:

“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.”;

in line 12, after “(2)” insert “**ACT**” HAS THE MEANING STATED IN § 3-301 OF THIS ARTICLE.

**(3)**;

in line 14, strike “**(3)**” and substitute “**(4)**”; in line 16, strike “**THE**” and substitute “**FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, THE**”; in line 19, strike “**(1)**”; in lines 21 and 22, in each instance, strike “**ALLOCABLE TO THE STATE**”; and in line 22, strike “**SURPLUS LINES**” and substitute “**NONADMITTED**”.

On pages 12 and 13, strike in their entirety the lines beginning with line 24 on page 12 through line 22 on page 13, inclusive, and substitute:

**(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.”.**

On page 13, in line 23, strike “(D)” and substitute “(F)”; in the same line, strike “ONLY” and substitute “FOR POLICIES EFFECTIVE ON OR AFTER JULY 21, 2011, ONLY”; after line 24, insert:

“(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.”;

and in line 25, after “2.” insert “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:

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- (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."