

**WSIA SB572 Testimony 2-16-22.pdf**

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Position: FAV



**SENATE BILL 572**

**Insurance – Surplus Lines Brokers – Policy Fees**

**Position: Favorable**

Dear Chair Kelley and Members of the Senate Finance Committee,

Thank you for the opportunity to provide testimony in support of SB572. My name is John Meetz and I am the Senior State Relations Manager for the Wholesale & Specialty Insurance Association (“WSIA”). WSIA is the trade association for the surplus lines industry.

Often called the “safety valve” of the insurance industry, surplus lines insurers fill the need for coverage in the marketplace by insuring those risks that are declined by the standard underwriting and pricing processes of admitted insurance carriers. With the ability to accommodate a wide variety of risks, the wholesale, specialty and surplus lines market acts as an effective supplement to the admitted market. The surplus lines market plays an important role in providing insurance for hard-to-place, unique or high capacity (i.e., high limit) risks. Surplus lines insurers are able to cover unique and hard-to-place risks because, as non-admitted insurers, they are exempt from rate and form which allows them to react to market changes and accommodate the unique needs of insureds who are unable to obtain coverage from admitted carriers. This results in cost-effective solutions for consumers that are not “one size fits all,” but are skillfully tailored to meet specific needs for non-standard risks.

SB572, with the sponsors amendments, would allow a surplus lines brokers to either charge a commercial insured a flat of up to \$250 fee or 10% of the surplus lines premium, whichever is greater. It has been over 20 years since the maximum fees charged were changed in Maryland. To give further context, 45 states have no monetary restrictions on fees that may be charged by surplus lines brokers. Please see the attached document providing more detail.

This legislation would allow surplus lines brokers to charge a fee that is proportionate to the work required when binding these hard-to-place risks, but still be reasonably related to the cost of underwriting, issuing, processing and servicing the policy. Additionally, SB572 would codify the current understanding that for commercial exempt policies, a surplus lines broker may charge a reasonable policy fee.

We respectfully urge a favorable report on SB 572 with the sponsors amendments.

Sincerely,

John H. Meetz  
Senior State Relations Manager  
Wholesale and Specialty Insurance Association (WSIA)  
[john@wsia.org](mailto:john@wsia.org)  
816.799.0863

# MARYLAND POLICY FEES

## What is a Policy Fee?

- The policy fee is designed to cover services performed as part of securing a surplus lines policy from a nonadmitted carrier that are unique to the surplus lines transaction.
- Maryland Insurance Code § 27-216-(d) prohibits surplus lines policy fees in excess of \$100 for personal lines and in excess of \$250 for commercial lines.

## Why is a Policy Fee Charged?

In situations involving complex risk, a wholesale or surplus lines broker is often engaged to seek out and craft effective insurance solutions in the nonadmitted market. The surplus lines broker performs traditional agent duties and manages additional tasks that are unique to surplus lines transactions, including but not limited to:

- Property inspections
- Risk selection analyses
- Capturing and modeling additional catastrophe data
- Premium tax reporting and filing
- Quarterly affidavits that include diligent effort reporting requirements
- Regular required audits (compliance, reconciliation, etc.)

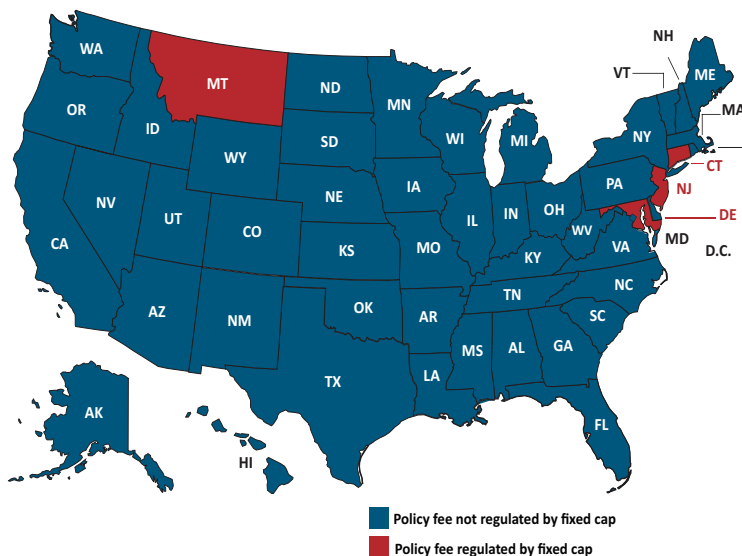
## Maryland Policy Fee History

**1997** - Maryland authorizes policy fee up to \$75 to compensate brokers for their additional work involved in placing a surplus lines insurance

**2001** - Fee cap increased to \$100 for personal lines policies and \$250 for commercial lines policies

## How Maryland Policy Fees Compare

Maryland is one of only four states that caps surplus lines policy fees.



## Important Takeaways

Maryland is one of only a few states that continues to set a cap on surplus lines policy fees. This is especially a problem for commercial lines policies where insureds are likely to be sophisticated customers fully capable of negotiating terms and price of their insurance contracts, including surplus lines policy fees. Our proposal will allow the free market to dictate the fee but still be reasonably related to the cost of underwriting, issuing, processing and servicing the policy as well as clearly disclosed to the potential policyholders.

## WHAT IS SURPLUS LINES INSURANCE?

Often called the “safety valve” of the insurance industry, surplus lines - or nonadmitted insurance - fills the need for coverage in the marketplace by insuring those risks that the standard - or admitted - market cannot or will not accept.

Surplus lines brokers can provide hard-to-place risks because they have freedom from rate and form filing, unlike the admitted market.

## HOW DOES MARYLAND COMPARE?

Since Michigan eliminated its commercial fee cap in 2020, Maryland has one of the most restrictive broker fee caps on commercial surplus lines policies in the nation. Florida also recently eliminated their \$35 cap on both personal and commercial lines policies.

In addition to Maryland, Connecticut, Montana and New Jersey also possess static fee caps and Michigan maintains a cap on personal lines policies of \$100 or 10%, whichever is greater. The other 45 states have no monetary restrictions on fees that may be charged by surplus lines brokers.



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AMENDMENTS  
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BY THE  
DEPT. OF LEGISLATIVE  
SERVICES

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16:31:46

BY: Senator Klausmeier  
(To be offered in the Finance Committee)

AMENDMENTS TO SENATE BILL 572  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, strike “repealing” and substitute “authorizing a surplus lines broker that holds a certificate of qualification under certain provisions of law to charge a reasonable policy fee on a policy issued by a surplus lines insurer to an exempt commercial policy holder; altering”.

AMENDMENT NO. 2

On page 2, in line 1, after “(1)” insert “NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A SURPLUS LINES BROKER THAT HOLDS A CERTIFICATE OF QUALIFICATION UNDER TITLE 3, SUBTITLE 3 OF THIS ARTICLE MAY CHARGE A REASONABLE POLICY FEE ON A POLICY ISSUED BY A SURPLUS LINES INSURER TO AN EXEMPT COMMERCIAL POLICYHOLDER AS DEFINED IN § 11-206 OF THIS ARTICLE.”

(2)”;

in lines 3, 9, and 13, in each instance, strike the bracket; in lines 7 and 13, in each instance, after “\$250” insert “OR 10% OF THE POLICY PREMIUM, WHICHEVER IS GREATER,”; and in lines 10, 16, 19, and 27, strike “(2)”, “(3)”, “(4)”, and “(5)”, respectively, and substitute “(3)”, “(4)”, “(5)”, and “(6)”, respectively.

On page 3, in lines 1, 7, and 14, strike “(6)”, “(7)”, and “(8)”, respectively, and substitute “(7)”, “(8)”, and “(9)”, respectively.

**SB 572\_IAB\_FWA.pdf**

Uploaded by: Bryson Popham

Position: FWA

## Bryson F. Popham, P.A.

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February 16, 2022

The Honorable Delores G. Kelley  
Chair, Senate Finance Committee  
3 East, Miller Senate Office Building  
Annapolis, MD 21401

RE: Senate Bill 572- Insurance - Surplus Lines Brokers - Policy Fees - FWA

Our client, the Insurance Agents and Brokers of Maryland (IA&B), is a trade association comprised of nearly 200 independent agencies, employing between 1,000 and 2,000 licensed Maryland insurance producers, which are located in and doing business throughout the State of Maryland and surrounding states. IA&B wishes to offer amendments to Senate Bill 572.

For those Committee members who may be unfamiliar with the surplus lines insurance market, it exists to provide access to Marylanders to insurance that, typically, cannot be obtained from a standard insurer doing business in Maryland. For example, a commercial building that may not qualify for coverage in the standard because of its age, its construction, its condition, its location etc. may need to procure such coverage in the surplus lines market. Common examples would include coastal properties in Ocean City, or perhaps even a historic building such as the Maryland Inn in Annapolis. Thus the surplus lines insurance market plays a small, but important role in meeting the needs of our citizens.

Approximately 25 years ago I was involved in legislation that created the language that is the subject of Senate Bill 572. That legislation permitted surplus lines brokers to charge policy fees, limited to \$100 for individuals and \$250 for commercial insureds, when issuing a surplus lines policy. A surplus lines broker is essentially an insurance wholesaler, and often is responsible for services that a standard insurer would provide without charge. The Insurance Commissioner understood that some surplus lines broker services do justify the charging of additional fees, hence the passage of the original legislation authorizing such fees.

Today, this bill is before you to increase those fees. To be clear, my clients, who procure insurance for their clients through surplus lines brokers every day, do not object to the charging of fees under the current law. In addition, they do not object to a reasonable increase in such fees, as long as there is some measure of regulatory oversight.

Our problem with Senate Bill 572 is that it eliminates the \$250 cap on fees without a suitable replacement. Instead, surplus lines brokers are permitted the imposition of a 10% charge, based on the policy premium, for policy fees to commercial insureds. Under the bill, there is no cap on a commercial policy fee – only the 10% rate. Because surplus lines insurance is frequently more expensive than similar insurance from a standard insurer, the additional cost to the insured can be quite substantial.

Other problems may also occur. For example, there is no provision in the bill (or the existing law) requiring that policy fees be identical for similar policies. In other words, a surplus lines broker could charge one policy fee on a commercial risk, but acting within the 10% fee range, charge a quite different fee for another, similar policy. Because IA&B members often procure surplus lines insurance for their clients, they naturally wish to ensure that the application of policy fees is fair and equitable. While the Insurance Commissioner can review the practices of a surplus lines broker, any increase in permitted policy fees should include a clear standard by which they are regulated.

Although there is a standard in the law today, its language at Section 27-216(d)(3) is highly detailed and provides no clear guidance that can be applied by the regulator in a compliance action.

These and other problems can be avoided if the General Assembly simply takes the appropriate incremental step of increasing the existing cap on commercial surplus lines policy fees. My client believes that an appropriate policy fee cap is \$500, which would represent a 100% increase over the current cap of \$250. This increase should serve to defray additional costs incurred by surplus lines brokers that are intended to be covered by an increase in the policy fee.

Proponents have argued that the market should be permitted to establish a cap on commercial policy fees, and that the only necessary statutory limit is the 10% limitation in Senate Bill 572. The fallacy of this argument is that surplus lines insurance is, by definition, insurance not available in the broader market. In other words, there are fewer choices – often only choice – that can be presented to a prospective insured. Under Senate Bill 572 as drafted it would be a simple matter to charge the maximum 10% fee. For example, a surplus lines policy, covering commercial property, with an annual premium of \$50,000 – a not uncommon amount – could easily incur a \$5,000 policy fee. That is a very substantial increase in cost to the consumer.

Finally, it is worth noting that policy fees are in addition to the commission that a surplus lines broker may earn from a surplus lines insurer. Often that commission is shared with a retail agent, such as the agents comprising my client trade association. There is no express prohibition in the bill about sharing a portion of a policy fee with a retail agent, although clearly it is not intended by the surplus lines law, either current or proposed in Senate Bill 572. If this Committee wishes to increase the policy fees that are the subject of this bill, the issues set forth above should be considered. The amendment that IA&B recommends – an increase in the current maximum fee to \$500 – would mitigate if not eliminate these issues.

Accordingly, the Insurance Agents and Brokers respectfully request that its recommended amendment be adopted in order to advance this legislation.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Bryson F. Popham". The signature is written in black ink and is positioned above the printed name.

Bryson F. Popham

**SB0572-243229-01.pdf**

Uploaded by: Katherine Klausmeier

Position: FWA





SB0572/243229/1

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