TESTIMONY OF CBI IN OPPOSITION

Senate Bill 890

Insurance — Captive Insurers — Premium Receipts Tax Moratorium and Study

2026 Maryland General Assembly

Submitted to: House Ways and Means Committee
House Health and Government Operations Committee

Position: **UNFAVORABLE**

Date: April 2026

Summary

The 3% premium receipts tax on independently procured captive insurance is unambiguously owed under existing Maryland law.

SB 890, in any version — full exemption, retroactive relief, or moratorium — rewards years of noncompliance, neutralizes a valid whistleblower disclosure, creates an inequitable two-tier tax system, and sets a damaging precedent for legislative relief from established tax obligations.

The Maryland Insurance Administration's own Bulletins 11-26 and 11-31, issued in 2011 following enactment of Maryland's National Reinsurance Reform Act conforming legislation, state with precision that all insureds independently procuring insurance from nonadmitted insurers — a category that unambiguously includes offshore captive insurers — are required to file reports and pay the 3% premium receipts tax. These bulletins were public, accessible, and directed specifically to affected parties.

The tax is due. The law is clear. The investigation is underway. The whistleblower came forward at personal risk under a program the State created to encourage exactly this kind of disclosure. This legislation should not pass.

I. Legislative History of SB 890

A. Introduction and Original Scope

Senate Bill 890 was introduced on February 6, 2026. A companion bill, House Bill 1228, was introduced in the House on February 11, 2026. Both bills were initially titled "Insurance — Premium Receipts Tax — Exemption for Captive Insurance Procured by Nonprofit Hospitals and Health Care Systems." SB 890 passed the Senate in amended form and is now before the House Ways and Means Committee and the House Health and Government Operations Committee.

In their original introduced form, SB 890 would have:

- Exempted premiums on lawfully procured captive insurance by nonprofit hospitals and health care systems from the State insurance premium receipts tax imposed on unauthorized insurers (Ins. Art. § 4-209) and on persons insured by unauthorized insurers (Ins. Art. § 4-211);
- Prohibited the Maryland Insurance Administration from charging or collecting such tax, or any related fees, penalties, or interest from certain unauthorized insurers and certain insureds; and
- Applied this exemption both retroactively and prospectively, eliminating all past tax liability.

B. Committee Amendments — Narrowing the Exemption

As amended in committee, SB 890 was substantially restructured. The MHA's proposed amendments shifted the tax obligation from premiums paid by the nonprofit health system to its captive (the original transaction) to premiums charged by a reinsurer to cover a portion of the captive's liability. Specifically, the MHA-proposed Amendment 5 provided that the 3% tax under § 4-211 would apply only to premiums charged by a reinsurer to the captive — not to the premiums paid by the hospital to the captive in the first instance.

Effect of Committee Amendments

The committee amendments, as proposed by MHA, would have exempted the primary transaction — the premium paid by the Maryland nonprofit hospital to its out-of-state captive — from the 3% premium receipts tax, while taxing only the downstream reinsurance transaction. This restructuring would have eliminated the primary tax liability while creating the appearance of preserving revenue.

C. Senate Floor Action — Moratorium Amendment

When SB 890 reached the Senate floor, multiple senators requested additional time to study the issue. In response to these concerns and the complexity of the bill, the sponsor offered an amendment converting the bill from an exemption to a two-year moratorium. The amended bill, retitled "Insurance — Captive Insurers — Premium Receipts Tax Moratorium and Study," was passed by the Senate and transmitted to the House.

As passed by the Senate, SB 890 would:

- Suspend for a two-year period the charge and collection of the 3% premium receipts tax, and all related fees, penalties, and interest, on lawfully procured captive insurance by nonprofit entities located in the State;
- Require the Maryland Insurance Administration to conduct a study on the use, regulation, and taxation of captive insurance companies by entities in the State; and
- Require the MIA to report its findings and recommendations to the Governor, the House Ways and Means Committee, and the House Health and Government Operations Committee by December 1, 2027.

D. The Whistleblower

The entire legislative sequence was initiated by a disclosure under Maryland's Whistleblower Rewards Program. A whistleblower alerted the State that nonprofit

hospitals with offshore captive insurers — primarily domiciled in the Cayman Islands — had not been paying the 3% premium receipts tax on premiums paid to those captives. The whistleblower reported that as much as $3 billion in nonprofit hospital funds may be sitting in those offshore captives.

> **Whistleblower's Statement — Submitted to the General Assembly**
>
> "Having been caught red-handed by Maryland's Whistleblower Rewards Program, these hospitals now shamelessly demand that the legislature retroactively exempt them from a tax they have strategically evaded for years." — Whistleblower testimony submitted to the General Assembly (identity protected under state law).

The MIA confirmed it is conducting ongoing investigations of both nonprofit and for-profit companies regarding tax avoidance on captive insurance. The MIA estimated a minimum revenue loss of $2 million per year if hospitals were exempted — while acknowledging this estimate is conservative. The actual exposure, given the reported scale of offshore captive holdings, may be substantially higher.

II. The Tax Is Unambiguously and Unquestionably Due Under Existing Law

The central argument advanced by the Maryland Hospital Association — that the tax applicability is uncertain or ambiguous — is not supported by the statutory text, the regulatory framework, or the Maryland Insurance Administration's own published guidance. The 3% premium receipts tax on independently procured captive insurance has been clear and consistently applicable under Maryland law for decades.

A. The Statutory Framework

Three provisions of the Insurance Article, Annotated Code of Maryland, establish the tax obligation without ambiguity:

1. Section 4-205(a)(4) — Authorization for Independent Procurement

Section 4-205(a)(4) of the Insurance Article permits the independently procured insurance pathway for unauthorized insurers — but only when the insured reports the coverage and pays the tax under §§ 4-210 and 4-211. A captive insurer domiciled outside Maryland is an unauthorized insurer. The statute does not create an exemption for captives affiliated with or owned by the insured. The authorization and the tax obligation are inseparable under the statute.

2. Section 4-210 — Reporting Obligation

Section 4-210(b)(1) imposes a reporting obligation on "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." A Maryland nonprofit hospital that pays premiums to its Cayman Islands captive is an insured procuring insurance from an unauthorized insurer, squarely within this provision.

3. Section 4-211 — The 3% Tax

Section 4-211(b)(1) imposes the 3% premium receipts tax on the gross premiums charged for independently procured insurance. The insured is directly liable. There is no statutory exception for captive insurers, affiliated entities, nonprofit status, or the type of risk insured. The statute applies on its face.

> **Statutory Text — Ins. Art. § 4-211(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."

B. The Maryland Insurance Administration's Own Published Guidance Confirms the Tax

The MIA did not leave this question to inference. Following enactment of Maryland's NRRA conforming legislation (Chapters 520 and 521, Acts 2011), the MIA issued two bulletins that together confirm the applicability of the 3% tax to all nonadmitted insurance, including captive insurance arrangements. Both bulletins were addressed to, among others, "All Insureds Who Independently Procure Insurance with a Nonadmitted Insurer."

MIA BULLETIN 11-26 | September 1, 2011

RE: *Implementation of the Federal Nonadmitted Reinsurance Reform Act in Maryland*

"For policies effective on or after July 21, 2011, if Maryland is the insured's home state, the entire premium is subject to Maryland's premium receipts tax." The bulletin confirmed that nonadmitted insurance — which expressly includes independently procured insurance such as captive insurance — is subject to the 3% premium receipts tax under the home state principle. A captive insurer not licensed in Maryland is a nonadmitted insurer by definition. The Bulletin was signed by Commissioner Therese M. Goldsmith and issued under the authority of the NRRA and Chapters 520 and 521, Acts 2011.

MIA BULLETIN 11-31 | November 9, 2011

RE: Revised Procedures to the Payment of Premium Receipts Tax on Nonadmitted Insurance in Maryland

"In accordance with Title 4, Subtitle 2 of the Insurance Article, each insured that procures or causes to be procured insurance with a nonadmitted insurance company, other than surplus lines insurance, is required to file with the Administration a report on the insurance procured and remit to the Administration

the premium receipts taxes due on that insurance." The MIA further announced a revised "Report of Independently Procured Insurance with Unauthorized Insurer" form and posted filing instructions specifically for insureds in this situation. If the MIA believed captive insurance was exempt from this framework, it would not have directed insured parties to use this form.

These bulletins were publicly issued, addressed directly to affected insureds, and posted on the MIA's website. Any Maryland hospital with an offshore captive that reviewed the MIA's published guidance after September 2011 was on notice that the 3% premium receipts tax applied to its captive insurance premiums. The claim of uncertainty is not credible in light of this administrative record.

Critical Implication of the MIA's Own Bulletins

The MIA published Bulletins 11-26 and 11-31 expressly confirming that insureds who independently procure coverage from nonadmitted insurers — including captive insurers — are required to file reports and pay the 3% premium receipts tax. These bulletins remain in force. Any hospital claiming it did not know the tax applied had access to this guidance for over a decade. The MIA cannot now credibly contend the law was ambiguous when its own published guidance stated otherwise.

III. SB 890 Silences the Whistleblower and Undermines the Whistleblower Rewards Program

Maryland's Whistleblower Rewards Program exists precisely for situations such as this: to create an incentive for individuals with knowledge of tax avoidance to disclose that

information to the State. Here, the program functioned as intended. A whistleblower, at personal risk, came forward with evidence that Maryland nonprofit hospitals had been placing premiums with offshore captive insurers for years — potentially representing $3 billion in untaxed offshore holdings — without paying the 3% premium receipts tax owed under Ins. Art. § 4-211.

SB 890 — in every form it has taken during this session — operates to nullify that disclosure:

- The original bill would have granted a full retroactive exemption, extinguishing all past tax liability and rendering the whistleblower's disclosure valueless.
- The committee-amended version would have restructured the taxable transaction to eliminate the primary premium-to-captive tax, replacing it with a tax only on reinsurance premiums — a transaction the hospitals may have more control over.
- The moratorium version, as passed by the Senate, suspends tax collection for two years — effectively giving hospitals a two-year window to restructure their captive arrangements, repatriate funds, or lobby for permanent exemption before any tax is collected.

Policy Consequence

If SB 890 passes in any form that delays or eliminates collection of the tax owed, it will signal to future whistleblowers that disclosures involving favored state entities will be rendered moot by the legislative process. This directly undermines the State's Whistleblower Rewards Program and chills future disclosures.

The whistleblower is entitled to participate in the administrative and enforcement process triggered by their disclosure. Legislation that suspends the enforcement mechanism — particularly before the MIA has completed its investigation — effectively silences the

whistleblower's disclosure as a matter of practical consequence, regardless of any protection afforded to the whistleblower's identity.

IV. SB 890 Is Bad Policy for the State of Maryland

A. It Creates an Inequitable Two-Tier Tax System

Other nonprofits operating in Maryland — including other § 501(c)(3) organizations, nonprofit associations, and non-hospital health entities — have been paying the 3% premium receipts tax on independently procured captive insurance, or have declined to use offshore captive structures because of that tax obligation. SB 890 would retroactively validate the conduct of one industry — nonprofit hospitals — while leaving other compliant taxpayers without relief.

The MIA's own records indicate that some nonprofit organizations outside the hospital sector have been paying this tax. To exempt nonprofit hospitals now — after the fact — creates an inequity that the statute does not contemplate and that the legislature should not endorse.

B. The Revenue Loss Is Material and the MIA's Estimate Is Conservative

The MIA estimated a minimum revenue loss of $2 million per year if nonprofit hospitals were exempted — and expressly acknowledged this estimate is conservative. Given that the whistleblower reports approximately $3 billion in offshore captive holdings, and assuming even a conservative premium rate on those reserves, the potential tax base is substantial. A two-year moratorium alone forfeits at minimum $4 million in revenue at the MIA's own conservative estimate — in a fiscal environment in which the General Assembly is addressing significant budget shortfalls.

The State cannot simultaneously seek new revenue sources and legislatively immunize one of its largest industries from a tax obligation that has applied to them under existing law for over a decade.

C. The Moratorium Does Not Resolve the Underlying Issue — It Defers It

Proponents of the moratorium argue it provides time for the MIA to study the issue and report to the legislature. This framing is misleading. The underlying legal question — whether the 3% premium receipts tax applies to captive insurance premiums — is not genuinely unsettled. The statute is clear. The MIA's own bulletins are clear. What the moratorium actually provides is a two-year window for the hospital industry to:

- Restructure offshore captive arrangements to minimize taxable premiums;
- Transfer or repatriate captive holdings under cover of the study period;
- Continue lobbying for a permanent exemption or favorable regulatory interpretation; and
- Return in 2028 with the same argument, but with the added contention that a moratorium has already been granted, establishing a precedent.

A study by the MIA is not necessary to resolve the legal question of whether the tax is due. It is, however, useful to the hospital industry as a tool for delay. The General Assembly should not confuse a request for delay with a request for legal clarity.

D. The "Financial Health of Hospitals" Argument Is Undermined by the 3.1 Billion Held by Hospital Captive Insurance Companies

During the Senate floor debate and committee testimony stakeholders expressed concern for the financial health of hospitals, particularly rural hospitals, as a basis for the moratorium. The financial health of hospitals is a legitimate legislative concern. It is addressed through appropriations, rate-setting by the Health Services Cost Review Commission, Medicaid reimbursement policy, and other instruments designed for that purpose.

Tax exemption based on retroactive equitable arguments — particularly where the tax obligation was clear and the non-payment was strategic — is not an appropriate instrument of health policy.

Furthermore, the financial distress rationale is directly contradicted by the reserve levels of the captive insurance companies at issue. Hospital captive insurance companies hold a collective $3.1 billion in reserves domiciled in the Cayman Islands. Entities holding that level of accumulated offshore reserves are not operating under conditions of financial distress. Applying a financial health justification to excuse an established tax obligation — owed by institutions whose affiliated captive entities hold billions in offshore reserves — is not consistent with the equitable or policy rationale advanced in support of the moratorium.

E. It Rewards Strategic Noncompliance

The hospital industry's position — that it did not know the tax applied — is difficult to credit given the MIA's published guidance following the 2011 NRRA implementation. Bulletins 11-26 and 11-31, issued in September and November 2011 respectively, placed the entire Maryland insurance industry on notice that the 3% premium receipts tax applied to all independently procured nonadmitted insurance. Both bulletins were explicitly addressed to "All Insureds Who Independently Procure Insurance with a Nonadmitted Insurer."

A determination that this language was somehow ambiguous as applied to offshore captive insurers would require ignoring the plain text of the statute, the plain text of the bulletins, and the plain definition of a nonadmitted insurer. The claim of ambiguity, advanced after detection by a whistleblower, should be afforded no weight in this proceeding.

F. It Sets a Dangerous Precedent for Legislative Tax Relief

If SB 890 passes, it will establish that a sufficiently organized and politically influential industry group, upon being discovered in noncompliance with an existing tax, may secure legislative relief — retroactive or prospective — through the General Assembly. This precedent will invite future similar requests and undermine the rule of law in Maryland tax administration.

The appropriate venue for resolving disputes about whether the tax is owed is the administrative process and, if necessary, the courts — not a special session of the legislature convened after a whistleblower disclosure.

VI. Conclusion

Senate Bill 890 / House Bill 1228, in every form presented during this session, asks the General Assembly to override a clear statutory tax obligation, neutralize an active whistleblower disclosure, and grant retroactive or prospective relief to an industry that had access to unambiguous administrative guidance for over a decade.

The Maryland Insurance Administration's own Bulletins 11-26 and 11-31, issued in 2011 following enactment of Maryland's NRRA conforming legislation, state with precision that all insureds independently procuring insurance from nonadmitted insurers — a category that unambiguously includes offshore captive insurers — are required to file reports and pay the 3% premium receipts tax. These bulletins were public, accessible, and directed specifically to affected parties.

The tax is due. The law is clear. The investigation is underway. The whistleblower came forward at personal risk under a program the State created to encourage exactly this kind of disclosure.

We respectfully request an UNFAVORABLE REPORT.

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

MARYLAND INSURANCE ADMINISTRATION

THERESE M. GOLDSMITH
Commissioner

BETH SAMMIS
KAREN STAKEM HORNIG
Deputy Commissioners

NEIL A. MILLER
Associate Commissioner
Examination and Auditing

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2122 Fax: 410-468-2101
Email: nmiller@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

MIA BULLETIN 11-26

DATE: **September 1, 2011**

TO: **All Insurers Eligible to Write Nonadmitted Insurance in Maryland and All Licensed Surplus Lines Brokers**

All Insureds Who Independently Procure Insurance with a Nonadmitted Insurer

RE: **Implementation of the Federal Nonadmitted Reinsurance Reform Act in Maryland**

Changes to the Nonadmitted Insurance Laws

The purpose of this Bulletin is to outline nationwide regulatory changes that will affect the placement of nonadmitted insurance on Maryland risks. One of the components of last year's Dodd-Frank Wall Street Reform and Consumer Protection Act is the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"),[1] which established federal standards for surplus lines coverage and other nonadmitted insurance. On May 19, 2011, Governor O'Malley signed into law Chapters 520 and 521, Acts 2011, which provide for the implementation of the NRRA in Maryland and conform Maryland's nonadmitted insurance laws to federal law. Chapters 520 and 521 took effect July 1, 2011.[2]

The NRRA provides that only an insured's "Home State" may require the payment of premium tax for nonadmitted insurance.[3] Moreover, the NRRA subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's Home

[1] Congress enacted the NRRA last year as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (Title V, Subtitle B, §§511 *et seq*.) The provisions regulating the nonadmitted insurance market, NRRA §§521-525 & 527, are codified at 15 U.S.C. 8201-8206.
[2] Please note that all subsequent footnotes in this Bulletin which cite to statutory provision in the Insurance Article, Annotated Code of Maryland, are citing to the provisions as they were amended by Chapters 520 and 521, Acts 2011.
[3] NRRA §521(a) (15 U.S.C. §8201(a)).

State, and provides that only the insured's Home State may require a surplus lines broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to that insured.[4] Key definitions from the NRRA are included in the Appendix to this Bulletin.

What is the scope of the NRRA?

"Nonadmitted insurance," as defined in the NRRA, includes both surplus lines and independently procured insurance, but is restricted to property and casualty insurance.[5] In addition, the NRRA does not preempt state laws restricting workers' compensation insurance or excess workers' compensation insurance for self-funded plans to be placed in the admitted market.[6] The NRRA does not expand the scope of the kinds of insurance that an insurer may write in the nonadmitted insurance market, and each state continues to determine which kinds of insurance an insurer may write in that state. Although the NRRA preempts certain state laws with respect to nonadmitted insurance, it does not have any impact on insurance on Maryland risks offered by insurers licensed or authorized in Maryland.

When is Maryland the insured's Home State for purposes of a particular placement?

If Maryland is considered the insured's Home State, only Maryland's requirements regarding the placement of nonadmitted business will apply.[7] Maryland is the insured's Home State if the insured maintains its principal place of business in Maryland or, in the case of an individual, the individual's principal residence is Maryland. However, if 100% of the insured risk is located outside Maryland, the insured's Home State is the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.[8]

If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, and the insureds have different Home States, Maryland will be considered the Home State for that contract if Maryland is the Home State of the insured that has the largest percentage of premium attributed to it under the insurance contract.

How will these rules be applied?

New and renewal policies with an effective date before July 21, 2011 will be subject to the laws and regulations of Maryland and other jurisdictions, as applicable, as of the policy effective date. The laws and regulations of Maryland and other jurisdictions, as applicable, as of the effective date of any such policy will also apply to any modification to that policy during the policy period, such as all endorsements, installment payments, and premium audits. New and renewal policies with an effective date on or after July 21, 2011, and any modifications thereto,

---

[4] NRRA §§522(a), (b) (15 U.S.C. §§8202(a), (b)).
[5] NRRA §527(9) (15 U.S.C. §8206(9)).
[6] NRRA §522 (d) (15 U.S.C. 8202(d)).
[7] NRRA §522(a) (15 U.S.C. 8202(a)). See §3-324(i) of the Insurance Article, Annotated Code of Maryland.
[8] See definition of "Home State" at NRRA §527(6) (15 U.S.C. 8206(6) and §3-301(e) of the Insurance Article, Annotated Code of Maryland.

will be subject only to the laws and regulations of Maryland if Maryland is the Home State of the insured.

What are the requirements for premium tax allocation and payment in Maryland?

Until July 21, 2011, the laws and regulations of Maryland and other jurisdictions, as applicable, will continue to apply to premium tax due on multi-state placements. Under current Maryland law, only the portion of the premium attributable to Maryland risk is subject to Maryland's premium receipts tax, and this applies whether or not Maryland is the insured's Home State. For policies effective on or after July 21, 2011, if Maryland is the insured's home state the entire premium is subject to Maryland's premium receipts tax.[9]

The Administration will provide additional information regarding the process for paying premiums receipts taxes in a future bulletin.

What are the license requirements for surplus lines brokers?

Only the insured's Home State may require a surplus lines broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to a particular contract.[10] If Maryland is the insured's Home State, the surplus lines broker must be licensed in Maryland.[11] The NRRA provides that Maryland may not collect licensing fees for surplus lines brokers on or after July 21, 2012, unless Maryland participates in the NAIC's national insurance broker database or any other equivalent uniform national database.[12] Maryland complies with this requirement by participating in the National Insurance Producer Registry (NIPR).[13] Consequently, Maryland will continue to impose licensing fees upon surplus lines brokers.

What are the requirements for a diligent search and when is a diligent search not required?

The procurement procedures for surplus lines insurance are set forth in Sections 3-306 to 3-309 of the Insurance Article.

On or after July 21, 2011, the NRRA provides that a surplus lines broker seeking to procure or place nonadmitted insurance on behalf of an "exempt commercial purchaser" is not required to perform a diligent search if: 1) the broker has disclosed to the exempt commercial purchaser that insurance that may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and 2) the exempt commercial purchaser has subsequently requested in writing for the broker to procure or place the insurance from a nonadmitted insurer.[14] Chapters 520 and 521, Acts 2011, conform Maryland law to these

[9] Sections 3-324(d) and 4-209(b)(3) of the Insurance Article, Annotated Code of Maryland.
[10] NRRA §522 (b) (15 U.S.C. §8022(b)).
[11] Section §3-310 of the Insurance Article, Annotated Code of Maryland.
[12] NRRA §523 (15 U.S.C. §8203).
[13] Section 3-306(d) of the Insurance Article, Annotated Code of Maryland.
[14] NRRA §525 (15 U.S.C. 8205).

provisions and incorporate by reference the NRRA's definition of "exempt commercial purchaser." [15]

What are the eligibility requirements for nonadmitted insurers?

The NRRA restricts the eligibility requirements a state may impose on nonadmitted insurers. For nonadmitted insurers domiciled in the United States, state eligibility requirements must be in conformance with the financial criteria of the NAIC's Nonadmitted Insurance Model Act.[16] Chapters 520 and 521, Acts 2011, conform the provisions under which the Commissioner may approve insurers domiciled in the United States as surplus lines insurers to that criteria.[17]

For nonadmitted insurers domiciled outside the United States, a producer may place business with such insurers provided the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

Any questions about this bulletin should be directed to Neil A. Miller, Associate Commissioner, Examination and Auditing, at (410) 468-2122.

THERESE GOLDSMITH
INSURANCE COMMISSIONER

By: *Signature on Original Document*
Neil A. Miller
Associate Commissioner
Examination and Auditing

[15] Sections §§3-306.1 (d) and 3-301(d) of the Insurance Article, Annotated Code of Maryland.
[16] NRRA §524 (15 U.S.C. §8204).
[17] Section 3-318 of the Insurance Article, Annotated Code of Maryland.

Appendix: Key Definitions from the NRRA

The NRRA includes several definitions relevant to this State's implementation of its requirements. Key definitions include the following:

"Exempt commercial purchaser" (NRRA § 527(5) (15 U.S.C. § 8206(5)): The term ''exempt commercial purchaser'' means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C) (i) The person meets at least one of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"Home State" (NRRA § 527(6) (15 U.S.C. § 8206(6)):

(A) In General.—Except as provided in subparagraph (B), the term ''Home State'' means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) Affiliated Groups.—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term ‘‘Home State’’ means the Home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

“Independently procured insurance” (NRRA § 527(7) (15 U.S.C. § 8206(7)): The term ‘‘independently procured insurance’’ means insurance procured directly by an insured from a nonadmitted insurer.

“Nonadmitted insurance” (NRRA § 527(9) (15 U.S.C. § 8206(9)): The term ‘‘nonadmitted insurance’’ means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

“Nonadmitted insurer” (NRRA § 527(11) (15 U.S.C. § 8206(11)): The term ‘‘nonadmitted insurer’’—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

“Premium tax” (NRRA § 527(12) (15 U.S.C. § 8206(12)): The term ‘‘premium tax’’ means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

“Qualified risk manager” (NRRA § 527(13) (15 U.S.C. § 8206(13)): The term ‘‘qualified risk manager’’ means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i) (I) has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II) (aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as ‘‘CPCU’’) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii) (I) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any one of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

“Surplus lines broker” (NRRA § 527(15) (15 U.S.C. § 8206(15)): The term ‘‘surplus lines broker’’ means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

“State” (NRRA § 527(16) (15 U.S.C. § 820(16)): The term ‘‘State’’ includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

MARYLAND INSURANCE ADMINISTRATION

THERESE M. GOLDSMITH
Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

NEIL A. MILLER
Associate Commissioner
Examination and Auditing

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2122 Fax: 410-468-2101
Email: nmiller@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

MIA BULLETIN 11-31

DATE: **November 9, 2011**

TO: **All Insurers Eligible to Write Nonadmitted Insurance in Maryland and All Licensed Surplus Lines Brokers**

All Insureds Who Independently Procure Insurance with a Nonadmitted Insurer

RE: **Revised Procedures to the Payment of Premium Receipts Tax on Nonadmitted Insurance in Maryland**

On May 19, 2011, Governor O'Malley signed into law Chapters 520 and 521, Acts 2011, which provide for the implementation of the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA")[1] in Maryland and conform Maryland's nonadmitted insurance laws to federal law. Chapters 520 and 521 took effect July 1, 2011.

On September 1, 2011, the Maryland Insurance Administration issued MIA Bulletin 11-26 entitled Implementation of the Federal Nonadmitted Reinsurance Reform Act in Maryland. That Bulletin outlined nationwide regulatory changes made under the NRRA that will affect the placement of nonadmitted insurance on Maryland risks. The purpose of this Bulletin is to provide additional information regarding the process for paying premium receipts taxes on nonadmitted insurance placements under these new laws.[2]

One of the most significant provisions of the NRRA is the way nonadmitted insurance premiums are to be allocated between states for reporting and tax purposes. While premiums for placements where the risk is located entirely within Maryland continue to be allocated entirely to Maryland for reporting and tax purposes, effective July 21, 2011, the allocation of premiums on

[1] Congress enacted the NRRA last year as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Title V, Subtitle B, §§511 *et seq.*). The provisions regulating the nonadmitted insurance market, NRRA §§521-525 & 527, are codified at 15 U.S.C. 8201-8206.

[2] "Nonadmitted insurance," as defined in the NRRA, includes both surplus lines and independently procured insurance, but is restricted to property and casualty insurance.

multi-state placements changed. Until July 21, 2011, only the portion of the premium attributable to Maryland risk was allocated to Maryland, and this applied whether or not Maryland was the insured's Home State.[3] For policies effective on or after July 21, 2011, if Maryland is the insured's Home State the entire premium is allocated to Maryland.[4]

The Administration has not made any changes to its reporting forms to reflect the change in how premiums on multi-state placements are allocated between states. However, it is expected that surplus lines brokers and persons independently procuring insurance with a nonadmitted insurer will properly allocate premiums and remit the appropriate taxes to Maryland under the laws in effect on the policy effective dates.

Additional Reporting Guidance - Surplus Lines Brokers

In accordance with Title 3, Subtitle 3 of the Insurance Article of the Annotated Code of Maryland, surplus lines brokers are required to make periodic filings with the Administration related to their surplus lines business, and to remit to the Administration the premium receipts taxes they collected on that business. The Administration will not be making any significant changes to its reporting forms and tax payment processes at this time. However, the Administration has made certain changes to make these processes more efficient, as follows:

- We have revised the filing instructions on our web site. Please see these revised instructions at:

  http://www.mdinsurance.state.md.us/sa/docs/documents/insurer/premuim-tax/surpluslinesfilinginstructions.doc

- We are asking all surplus lines brokers to file their Quarterly Affidavits and Premium Receipts Tax Reports electronically rather than in paper form;

- We have added a schedule to the Surplus Lines Quarterly Report to allow reporting of Tax Exempt Premiums (i.e., premiums on risks of the Federal Government, State or political subdivision of Maryland); and

---

[3] The NRRA defines "Home State" as:
(A) In General.—Except as provided in subparagraph (B), the term ''Home State'' means, with respect to an insured—
(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
(B) Affiliated Groups.—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term ''Home State'' means the Home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract. (NRRA § 527(6) (15 U.S.C. § 8206(6)).

[4] Sections 3-324(d) and (e) and 4-209(b)(3) of the Insurance Article, Annotated Code of Maryland.

- We have implemented a new Surplus Lines Tax Payment Voucher to be attached to premium receipts tax payments. These forms will allow us to quickly apply tax payments to the proper accounts.

Additional Reporting Guidance – Persons Independently Procuring Insurance

In accordance with Title 4, Subtitle 2 of the Insurance Article, each insured that procures or causes to be procured insurance with a nonadmitted insurance company, other that surplus lines insurance, is required to file with the Administration a report on the insurance procured and remit to the Administration the premium receipts taxes due on that insurance. Chapters 520 and 521 significantly changed the reporting and tax payment deadlines for these procurements. In order to assist insureds in meeting these requirements, we have posted filing instructions on our web site. Linked to those instructions is a revised Report of Independently Procured Insurance with Unauthorized Insurer form to be used in reporting this business. Please see these instructions at:

http://www.mdinsurance.state.md.us/sa/docs/documents/insurer/premuim-tax/independprocurredinsfilinginstructions.doc

Any questions about this bulletin should be directed to Neil A. Miller, Associate Commissioner, Examination and Auditing, at (410) 468-2122.

THERESE M. GOLDSMITH
INSURANCE COMMISSIONER

By: *Signature on original*
Neil A. Miller
Associate Commissioner
Examination and Auditing