

Amendments to Senate Bill No. 331
3rd Reading Copy

For the House Business and Labor Committee

Prepared by Bartley Campbell
April 5, 2011 (8:29am)

1. Title, page 1, lines 8 and 9.
Strike: "ESTABLISHING" on line 8 through "MANAGERS;" on line 9
Insert: "DEFINING "EXEMPT COMMERCIAL PURCHASER" AND "QUALIFIED RISK MANAGER";"
2. Title, page 1, line 16.
Following: "INSURED;"
Insert: "ESTABLISHING THE FUNCTIONS OF THE SURPLUS LINES INSURANCE ADVISORY ORGANIZATION;"
3. Page 3, line 23.
Strike: ", the state in which"
4. Page 3, line 24.
Following: "(i)"
Insert: "the state in which"
Strike: "is"
5. Page 4, line 3.
Strike: "the home state must be"
6. Page 4, line 4.
Strike: "and"
Insert: ", or"
7. Page 4, line 5.
Strike: "the home state must be"
8. Page 4, line 9.
Strike: "a nonadmitted"
Insert: "an unauthorized"
9. Page 4, line 11 through line 16.
Strike: subsections (M) and (N) in their entirety
ReNUMBER: subsequent subsections
10. Page 4, line 27.
Strike: "a nonadmitted"
Insert: "an unauthorized"
11. Page 4, line 30 through page 5, line 2.

Strike: "where" on page 4, line 30 through "placed" on page 5, line 2

Insert: "any property or casualty insurance permitted in a state to be placed directly or through a surplus lines insurance producer"

12. Page 5, line 8 through line 9.

Strike: "an" on line 8 through "states" on line 9

Insert: ", with respect to a state, an insurer not authorized to transact the business of insurance in the state. The term includes an insurance exchange authorized under the laws of another state. The term does not include a risk retention group, as that term is defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901(a)(4) "

13. Page 7, line 25.

Strike: "."

Insert: ";"

14. Page 8, line 22.

Strike: "33-2-311(1)"

Insert: "[section 17]"

15. Page 8, line 23.

Strike: "33-2-311"

Insert: "[section 17]"

16. Page 8, line 24.

Strike: "33-2-311(1)"

Insert: "[section 17]"

17. Page 10, following line 12.

Insert: "(9) The commissioner may participate in the national association of insurance commissioners' producer licensing database regarding surplus lines insurance producer licensing."

18. Page 14, line 3.

Following: "Tax"

Strike: "Authorization" through "tax"

Insert: "Tax"

19. Page 14, line 4.

Following: "lines"

Insert: "insurance"

20. Page 14, line 4 through line 10.

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

21. Page 14, line 11.

Following: "(2)"

Strike: "There is a tax imposed"

Insert: "Except as provided in [section 17], when this state is the home state of the insured, the surplus lines insurance producer shall collect from the insured and pay to the commissioner a tax"

22. Page 14, line 12.

Following: "collected"

Insert: "and the tax rate"

23. Page 14, line 13.

Strike: "(1)"

24. Page 14, line 18.

Following: "period"

Insert: "as well as the stamping fee on the premium payable by the insured regardless of whether the coverage includes risks or exposures partially located or to be performed in another state"

25. Page 14, line 21 through page 15, line 3.

Strike: subsections (3) and (4) in their entirety

26. Page 15, line 4 through line 10.

Strike: "(5)" on line 4 through "Montana" on line 10

Insert: "(2) Except as provided in [section 17], if this state"

27. Page 15, line 12.

Strike: "Montana"

Insert: "this state"

28. Page 15, line 13 through page 16, line 10.

Strike: "(b)" on page 15, line 13 through "." on page 16, line 10

Insert: "(3) The commissioner by rule shall establish procedures that provide for the collection and payment of premium taxes, as well as the reporting of premium tax and surplus lines insurance transaction data, in accordance with the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, for payment of taxes on this state's portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state."

29. Page 19, line 19.

Strike: "33-2-311"

Insert: "[section 17]"

30. Page 19, line 27.

Following: "lines"

Insert: "insurance"

31. Page 19, line 30.

Strike: "INSURANCE PRODUCERS ASSOCIATION"

Insert: "advisory organization"

32. Page 20, lines 1 and 2.

Strike: subsection (1) in its entirety

Insert: "(1) A surplus lines insurance advisory organization of surplus

lines insurance producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market;

(c) receive and disseminate to its members information relative to surplus lines insurance; and

(d) communicate member and industry concerns to the commissioner.

(2) The surplus lines insurance advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members."

ReNUMBER: subsequent subsection

33. Page 20, line 3 through line 4.

Strike: "IF" on line 3 through "THE" on line 4

Insert: "The"

34. Page 20, line 4.

Strike: "ASSOCIATION"

Insert: "organization"

35. Page 20, following line 6.

Insert: "NEW SECTION. **Section 17. Authorization for agreements with other state regarding multistate risks.** (1) Following negotiated rulemaking under Title 2, chapter 5, the commissioner may enter into a cooperative or reciprocal agreement with other states, individually or collectively, for the purposes of collecting, allocating, and disbursing premium taxes and fees attributable to multistate risks. The allocation methodology of any agreement must be based upon readily available data, with

simplicity and uniformity for the surplus lines insurance producer as a material consideration. Any agreement regarding multistate risks may require that a single, blended tax rate be used.

(2) An agreement entered into under this section must provide for:

(a) uniform eligibility standards for unauthorized insurers;

(b) uniform methods for reporting surplus lines insurance transactions and sharing information between the parties to the agreement based upon readily available data;

(c) uniform methods for allocating and reporting surplus lines insurance risk classifications based upon readily available data;

(d) uniform procedures for the collection, allocation, and distribution of taxes and fees attributable to the multistate risks;

(e) uniform disclosures to policyholders regarding the reporting and collection of premium taxes on multistate risks;

(f) an allocation methodology and resulting collection of premium tax revenue, less costs of administration and collection, that generate premium tax revenue not less than the premium tax revenue collected under 33-2-311;

(g) minimizing the data collection and reporting burden on insureds and surplus lines insurance producers;

(h) a withdrawal process that minimizes instability among the participating states and the surplus lines and insurance industries;

(i) regulatory provisions that provide certainty regarding compliance to all persons having an interest in surplus lines insurance transactions, including but not limited to insureds, regulators, surplus lines insurance producers, other insurance producers, and surplus lines insurers; and

(j) continued collection of premium taxes under 33-2-311 until the collection infrastructure under the agreement is fully operational and the provisions of the agreement are fully implemented.

(3) If the commissioner has entered into an agreement under subsection (1) for multistate risks and the agreement provides that each participating state develop a single, blended tax rate for multistate risks:

(a) the provisions of 50-3-109 are not applicable to the collection of premium taxes;

(b) the single, blended tax rate must be 3.3% on premiums and must be computed in the manner provided in 33-2-705(1) as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes and in excess of the premium otherwise required are not considered to be part of the

premium for the purposes of the computation; and

(c) the 3.3% tax collected must be distributed as follows:

(i) 2.75% must be considered premium taxes as provided in 33-2-705 and paid to the state general fund; and

(ii) 0.55% must be considered fire premium taxes as provided in 50-3-109 and paid to the state general fund.

(4) If a single-state risk is involved and Montana is the home state of the insured, the surplus lines transaction must be submitted to the commissioner and the commissioner shall collect the tax at the same rate and in the same manner as provided in 33-2-705.

(5) If the commissioner has entered into a cooperative or reciprocal agreement under subsection (1), the commissioner may contract with the designated clearinghouse to process multistate risks and allocate and distribute taxes and fees collected.

(6) As used in this section, "readily available data" means Montana-specific data, if any, used to rate a surplus lines insurance policy."

Renumber: subsequent sections

36. Page 20, line 8.

Strike: "AND"

Following: "16"

Insert: ", and 17"

37. Page 20, line 10.

Strike: "AND"

Following: "16"

Insert: ", and 17"

38. Page 20, line 19.

Strike: "[the effective date of this act]"

Insert: "July 1, 2011"

- END -