

HOUSE BILL NO. 240

INTRODUCED BY T. BERRY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SURPLUS LINES INSURANCE PRODUCERS TO CHARGE A FLAT FEE IN CONNECTION WITH SURPLUS LINES INSURANCE TRANSACTIONS; AMENDING SECTIONS 33-2-311 AND 33-18-212, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Surplus lines insurance producer fee.** (1) A surplus lines insurance producer may collect a flat fee per policy for business placed in the surplus lines insurance market. The fee may not exceed:

- (a) \$50 for a personal lines insurance policy; or
- (b) \$100 for a commercial lines insurance policy.

(2) The fees allowed under this section are not considered part of the premium charged to the insured and do not fall within the definition of premium provided in 33-15-102.

(3) The fees allowed under this section apply only to surplus lines insurance producers transacting surplus lines insurance business.

Section 2. Section 33-2-311, MCA, is amended to read:

"33-2-311. Tax on surplus lines insurance. (1) Except as provided in 33-2-323, 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 ~~upon~~ on premiums collected for surplus lines insurance transacted in this state. The amount of premiums collected and the tax rate must be computed in the same manner as provided in 33-2-705 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, or fees imposed by the surplus lines insurance producer pursuant to [section 1], are not considered to be part of the premium for the purposes of the computation. Upon filing of the tax and fee statement referred to in 33-2-310, the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by the

1 surplus lines insurance producer during the preceding reporting period as well as the stamping fee on the
 2 premium payable by the insured regardless of whether the coverage includes risks or exposures partially located
 3 or to be performed in another state.

4 (2) Except as provided in 33-2-323, if this state is not the home state of the insured, the commissioner
 5 may not collect any tax or stamping fee regardless of whether the coverage includes risks or exposures partially
 6 located or to be performed in this state.

7 (3) The commissioner by rule shall establish procedures that provide for the collection and payment of
 8 premium taxes, as well as the reporting of premium tax and surplus lines insurance transaction data, in
 9 accordance with the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of
 10 Public Law 111-203, for payment of taxes on this state's portion of risks covered by surplus lines insurance
 11 policies transacted outside this state that cover risks with exposures both in this state and outside this state."
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13 **Section 3.** Section 33-18-212, MCA, is amended to read:

14 **"33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) A person may not
 15 willfully collect any sum as a premium or charge for insurance that is not then provided or is not in due course
 16 to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as
 17 authorized by this code.

18 (2) A person may not willfully collect as a premium or charge for insurance any sum in excess of or less
 19 than the premium or charge applicable to the insurance and, as specified in the policy, in accordance with the
 20 applicable classifications and rates filed with or approved by the commissioner; or in cases in which
 21 classifications, premiums, or rates are not required by this code to be filed or approved, the premiums and
 22 charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. This
 23 provision may not prohibit the charging and collection, by surplus lines insurance producers licensed under
 24 chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the
 25 insurer. This provision may not prohibit the charging and collection, by a life insurer, of amounts actually to be
 26 expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

27 (3) This section does not prohibit the charging and collection of a flat fee by a surplus lines insurance
 28 producer as specified in [section 1] for transaction of surplus lines insurance policies.

29 ~~(3)~~(4) Each violation of this section is punishable under 33-1-104."
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1 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
2 integral part of Title 33, chapter 2, part 3, and the provisions of Title 33, chapter 2, part 3, apply to [section 1].

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4 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2015.

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6 NEW SECTION. **Section 6. Applicability.** [This act] applies to surplus lines insurance transactions on
7 or after July 1, 2015.

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