Regular Session, 2011

HOUSE BILL NO. 469

BY REPRESENTATIVE ANDERS

INSURANCE/SURPLUS LINE: Provides relative to the tax on premiums paid for surplus lines insurance

AN ACT

To amend and reenact R.S. 22:439, relative to surplus lines insurance; to provide with respect to the tax on premiums paid for such insurance, including provisions relative to its receipt, collection, and distribution; to conform state law with federal law; to require the commissioner of insurance to enter into a multistate agreement authorizing a clearinghouse for such taxes and assessment of a clearinghouse fee payable by brokers or independently procuring insureds; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:439 is hereby amended and reenacted to read as follows:

§439. Tax on surplus lines

A.(1) On or before March first, June first, September first, and December first of each year, each surplus lines broker shall transmit to the commissioner of insurance a surplus lines tax report for the prior calendar quarter~~.~~ for single-state, Louisiana properties, risks, or exposures. This report shall be in a manner and format prescribed by the commissioner of insurance and include any additional information as required by the commissioner. The reporting of transactions shall be as follows:

(a) All new and renewal policies will be included in the report for the calendar quarter in which the effective date of the policy falls.

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(b) All other premium transactions will be included in the report for the calendar quarter in which the invoice falls.

(2) Along with the report required to be filed on the due dates provided in Paragraph (1) of this Subsection, each surplus lines broker shall remit to the commissioner of insurance a tax on the premiums on surplus lines insurance reported in the quarterly surplus lines tax report, at the rate of five percent per annum. Such tax when collected by the commissioner of insurance shall be paid to the state treasurer and be credited to the general fund.

B. Every person placing insurance for single-state, Louisiana properties, risks, or exposures with an unauthorized insurer without going through a licensed Louisiana producer or surplus lines broker, except as provided in R.S. 22:432, shall remit to the commissioner of insurance a tax of five percent of the gross premium, such tax to be paid at the same time and under the same conditions as that levied on surplus lines brokers under the provisions of Subsection A of this Section. Such tax when collected by the commissioner of insurance shall be paid to the state treasurer and be credited to the general fund.

C. ~~If a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.~~ There shall be a tax on all premiums paid for surplus lines insurance covering properties, risks, or exposures for more than one state and for which Louisiana is the home state of the insured. Surplus lines brokers and independently procuring insureds shall remit the tax to the commissioner who shall transfer it to the general fund less the amount due to other states pursuant to Subsection D of this Section. The state shall return to the insured, through the surplus lines broker, if any, the tax on any portion of the premium unearned at the termination of the insurance. The surplus lines licensee or broker shall not rebate, for any reason, any part of the tax.

D. The tax required in Subsection C of this Section shall be on the gross premiums charged for any surplus lines insurance policy covering properties, risks,

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or exposures in more than one state and for which Louisiana is the home state of the insured. The surplus lines broker or independently procuring insured shall compute the sum payable based upon all of the following:

(1) An amount equal to five percent on that portion of the gross premiums allocated to this state.

(2) Plus an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed in other states and territories that participate in a reciprocal allocation procedure as authorized herein.

(3) Less the amount of gross premiums allocated to this state and returned to the insured.

(4) Less the net premium tax collected on properties, risks, or exposures allocable to states or territories that do not participate in a reciprocal allocation procedure with this state.

E. Each surplus lines broker and insured independently procuring surplus lines insurance covering properties, risks, or exposures in more than one state for which Louisiana is the home state of the insured shall transmit to the commissioner of insurance a surplus lines tax report for the prior calendar quarter not later than on the dates designated by the commissioner. The commissioner shall prescribe the form and content of the report, which shall conform to any interstate agreement or compact for the receipt, allocation, and distribution of surplus lines premium taxes.

F. The home state of the insured for purposes of this Section shall be as defined in the Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. 8206(6)).

G.(1) The commissioner shall on behalf of the state of Louisiana enter into the Nonadmitted Insurance Multi-State Agreement or other cooperative compacts or agreements with other states for any of the following:

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(a) The receipt, allocation, and disbursement among the participating, compacting, or contracting states of premium taxes attributable to the placement of surplus lines insurance.

(b) A uniform method of allocating and reporting among surplus lines insurance risk classifications.

(c) Sharing information among states relating to surplus lines insurance premium taxes.

(d) Such other purposes that are necessary and proper to maintain the state's revenues from surplus lines insurance premium taxes and to comply with the Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. 8206, et seq.).

(2) Such compact or agreement shall be in writing and filed with the commissioner prior to its taking effect.

(3) Such compact or agreement may provide for any of the following:

(a) The use of a clearinghouse to perform functions required under the agreement.

(b) The use of an allocation schedule to allocate risk and compute the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures are located.

(c) Any other provisions that will facilitate the administration of the compact or agreement.

(4) The commissioner may, as required by the terms of the compact or agreement, forward to officers of another state or to an agreed clearinghouse any information in the commissioner's possession relative to nonadmitted insurance.

(5) The commissioner may promulgate rules and regulations for the administration and enforcement of any such compact or agreement, including the assessment of a clearinghouse transaction fee.

~~D.~~ H. The tax imposed on surplus lines ~~under~~ pursuant to this Section shall not apply to the purchase of excess insurance obtained by an interlocal risk management agency pursuant to R.S. 33:1359 or 1485.

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Section 2. The commissioner shall on behalf of the state of Louisiana enter into the Nonadmitted Insurance Multi-State Agreement or other cooperative compacts or agreements with other states.

Section 3. Section 1 of this Act shall become effective when the commissioner on behalf of the state of Louisiana enters into the Nonadmitted Insurance Multi-State Agreement or other cooperative compacts or agreements with other states.

Section 4. This Section, Section 2, and Section 3 of this Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Anders HB No. 469

Abstract: Retains the 5% surplus lines insurance premium tax now levied on surplus lines policies covering risks solely in this state. Also authorizes the taxation of surplus lines policies covering multistate risks, in conformance with federal law and a multistate agreement, which the commissioner of insurance shall, on behalf of the state, enter into that allocates such tax revenues among the states.

Present law requires each surplus lines broker to quarterly transmit a surplus lines tax report to the commissioner of insurance and remit to the commissioner of insurance a 5% tax on the premiums on that surplus lines insurance. Requires that such tax be paid to the state treasurer and credited to the general fund.

Proposed law provides that the current report and tax remain only on single-state, La. properties, risks, and exposures. Otherwise retains present law.

Present law requires every person placing insurance with an unauthorized insurer without going through a licensed producer or surplus lines broker to also remit to the commissioner a 5% tax on the gross premiums at the same time and under the same conditions as that levied on surplus lines brokers by present law.

Proposed law provides that present law applies only to such persons placing insurance for single-state, La. properties, risks, and exposures. Otherwise retains present law.

Present law provides that if a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is allocable to the risks or exposures located in this state.

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Proposed law instead provides that there shall be a tax on all premiums paid for surplus lines insurance covering properties, risks, or exposures for more than one state and for which La. is the home state of the insured. Provides that surplus lines brokers and independently procuring insureds shall remit the tax to the commissioner who shall transfer it to the general fund less the amount due to other states as provided in proposed law. Further requires the state to return to the insured, through the surplus lines broker, if any, the tax on any portion of the premium unearned at the termination of the insurance. Prohibits the surplus lines licensee or broker from rebating any part of the tax.

Proposed law requires that the tax so required shall be on the gross premiums charged for any surplus lines insurance policy covering properties, risks, or exposures in more than one state and for which La. is the home state of the insured. Also requires the surplus lines broker or independently procuring insured to compute the sum payable based upon all of the following:

(1) An amount equal to 5% on that portion of the gross premiums allocated to this state.

(2) Plus an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed in other states and territories that participate in a reciprocal allocation procedure as authorized in proposed law.

(3) Less the amount of gross premiums allocated to this state and returned to the insured.

(4) Less the net premium tax collected on properties, risks, or exposures allocable to states or territories that do not participate in a reciprocal allocation procedure with this state.

Proposed law further requires each surplus lines broker and insured independently procuring surplus lines insurance covering properties, risks, or exposures in more than one state for which La. is the home state of the insured to transmit to the commissioner of insurance a quarterly surplus lines tax report not later than on the dates designated by the commissioner. Authorizes the commissioner to prescribe the form and content of the report, which shall conform to any interstate agreement or compact for the receipt, allocation, and distribution of surplus lines premium taxes.

Proposed law defines the home state of the insured for purposes of proposed law as that defined in the federal Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. 8206(6)).

Proposed law requires the commissioner, on behalf of the state, to enter into the Nonadmitted Insurance Multi-State Agreement (NIMA) or other cooperative compacts or agreements with other states for any of the following:

(1) The receipt, allocation, and disbursement among the participating, compacting, or contracting states of premium taxes attributable to the placement of surplus lines insurance.

(2) A uniform method of allocating and reporting among surplus lines insurance risk classifications.

(3) Sharing information among states relating to surplus lines insurance premium taxes.

(4) Such other purposes that are necessary and proper to maintain the state's revenues from surplus lines insurance premium taxes and to comply with the Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. 8206, et seq.).

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Proposed law requires that any such compact or agreement shall be in writing and filed with the commissioner prior to its taking effect and may provide for any of the following:

(1) The use of a clearinghouse to perform functions required under the compact or agreement.

(2) The use of an allocation schedule to allocate risk and compute the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures are located.

(3) Any other provisions that will facilitate the administration of the compact or agreement.

Proposed law authorizes the commissioner to, as required by the terms of the compact or agreement, forward to officers of another state or to an agreed clearinghouse any information in the commissioner's possession relative to nonadmitted insurance. Further authorizes the commissioner to promulgate rules and regulations for the administration and enforcement of any such compact or agreement, including the assessment of a clearinghouse transaction fee.

Makes proposed law effective when the commissioner, on behalf of the state, enters into NIMA or other cooperative compacts or agreements with other states.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 22:439)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Insurance to the original bill.

1. Clarifies that the surplus lines premium tax remitted by surplus lines brokers and independently procuring insureds to the commissioner shall be less the amount due to other states as provided in proposed law.

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill.

1. Makes technical changes to clarify citations to federal law and to make references to compacts or agreements entered into by the commissioner of insurance consistent.

House Floor Amendments to the reengrossed bill.

1. Requires rather than authorizes the commissioner, on behalf of the state, to enter into the Nonadmitted Insurance Multi-State Agreement (NIMA) or other cooperative compacts or agreements with other states.

2. Makes proposed law effective when the commissioner, on behalf of the state, enters into NIMA or other cooperative compacts or agreements with other states.

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