

17:22-6.6d

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 119

NJSA: 17:22-6.6d (Revises method of regulation and collection of surplus lines insurance premium taxes)

BILL NO: S2930 (Substituted for A4224)

SPONSOR(S) Sarlo and others

DATE INTRODUCED: June 6, 2011

COMMITTEE: **ASSEMBLY:** ---

SENATE: Commerce
 Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 29, 2011

SENATE: June 29, 2011

DATE OF APPROVAL: August 19, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First Reprint enacted)

S2930

SPONSOR'S STATEMENT: (Begins on page 7 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A4224

SPONSOR'S STATEMENT: (Begins on page 7 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

SEE ALSO: 15 U.S.C. § 8201 et. seq.

LAW/KR

P.L.2011, CHAPTER 119, *approved August 19, 2011*
Senate, No. 2930 (*First Reprint*)

1 AN ACT concerning certain taxes on surplus lines insurance and
2 amending and supplementing P.L.1960, c.32.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 7 of P.L.1960, c.32 (C.17:22-6.41) is amended to
8 read as follows:

9 7. As used in this surplus lines law:

10 (a) "Surplus lines agent" means an individual licensed as **[an]** a
11 surplus lines insurance producer with surplus lines authority as
12 provided in **[P.L.1987, c.293 (C.17:22A-1 et seq.)]** P.L.2001, c.210
13 (C.17:22A-26 et seq.) to handle the placement of insurance
14 coverages on behalf of unauthorized insurers.

15 (b) "Surplus lines insurer" means an unauthorized insurer in
16 which an insurance coverage is placed or may be placed under this
17 surplus lines law.

18 (c) To "export" means to place in an unauthorized insurer under
19 this surplus lines law, insurance covering a subject of insurance
20 resident, located, or to be performed in New Jersey.

21 (d) "Commissioner" means the Commissioner of Banking and
22 Insurance of the State of New Jersey.

23 (e) "Certificate of insurance" means permanent evidence of
24 insurance on a form approved by the commissioner and issued by a
25 surplus lines agent who has filed evidence of his binding authority
26 with the commissioner on behalf of an alien insurer. When issued
27 other than on behalf of an alien insurer, an initial certificate of
28 insurance will be treated as temporary evidence of insurance,
29 pending the issuance of a policy. "Certificate of insurance" also
30 means evidence of a renewal of that insurance provided: (1) there
31 is no change in the terms or amounts of coverage; (2) the coverage
32 is still eligible for export; and (3) the insured may request the
33 issuance of a new policy.

34 (f) "Cover note," "binder" or "confirmation of insurance,"
35 means temporary evidence of insurance, to be replaced by a policy
36 or certificate of insurance.

37 (g) "Home state" means,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 27, 2011.

1 (1) Except as provided in ¹ [paragraphs (4) and (5)] paragraph
2 (2)¹ of this subsection, the term “home state” means, with respect
3 to an insured:

4 (i) the state in which an insured maintains its principal place of
5 business or, in the case of an individual, the individual’s principal
6 residence; or

7 (ii) if 100 percent of the insured risk is located out of the state
8 referred to in subparagraph (i) of this paragraph, the state to which
9 the greatest percentage of the insured’s taxable premium for that
10 insurance contract is allocated.

11 (2) ¹ [“Principal place of business” means, with respect to
12 determining the home state of the insured:

13 (i) the state in which the insured maintains its headquarters and
14 where the insured’s high-level officers direct, control and
15 coordinate the business activities;

16 (ii) if the insured’s high-level officers direct, control and
17 coordinate the business activities in more than one state, the state in
18 which the greatest percentage of the insured’s taxable premium for
19 that insurance contract is allocated; or

20 (iii) if the insured maintains its headquarters or the insured’s
21 high-level officers direct, control and coordinate the business
22 activities outside any state, the state to which the greatest
23 percentage of the insured’s taxable premium for that insurance
24 contract is allocated.

25 (3) “Principal residence” means, with respect to determining the
26 home state of the insured:

27 (i) the state in which the insured resides for the greatest number
28 of days during a calendar year; or

29 (ii) if the insured’s principal residence is located outside any
30 state, the state to which the greatest percentage of the insured’s
31 taxable premium for that insurance contract is allocated.

32 (4)¹ If more than one insured from an affiliated group are
33 named insureds on a single nonadmitted insurance contract, the
34 term “home state” means the home state, as determined pursuant to
35 subparagraph (i) of paragraph (1) of this subsection, of the member
36 of the affiliated group that has the largest percentage of premium
37 attributed to it under that insurance contract.

38 ¹ [(5) If the group policyholder pays 100 percent of the premium
39 from its own funds, the term “home state” means the home state, as
40 determined pursuant to subparagraph (i) of paragraph (1) of this
41 subsection, of the group policyholder. If the group policyholder
42 does not pay 100 percent of the premium from its own funds, the
43 term “home state” means the home state, as determined pursuant to
44 subparagraph (i) of paragraph (1) of this subsection, of the group
45 member.]¹

46 (cf: P.L.1996, c.69, s.1)

1 2. Section 25 of P.L.1960, c.32 (C.17:22-6.59) is amended to
2 read as follows:

3 25. The premiums charged for surplus lines coverages are
4 subject to a premium receipts tax of 5% of all gross premiums less
5 any return premiums charged for such insurance. The surplus lines
6 agent shall collect from the insured, either directly or through the
7 originating broker, the amount of the tax, in addition to the full
8 amount of the gross premium charged by the insurer for the
9 insurance; provided, however, that the tax on any unearned portion
10 of the premium shall be returned to the policyholder by the surplus
11 lines agent. The surplus lines agent is prohibited from absorbing
12 such tax, or, as an inducement for insurance or for any other reason,
13 rebating all or any part of such tax or of his commission.

14 The surplus lines agent shall forward to the commissioner
15 together with his quarterly report submitted pursuant to section 24
16 of P.L.1960, c.32 (C.17:22-6.58) a check in the amount of the
17 premium receipts tax due for that period made out to "the State of
18 New Jersey," except that where the policies cover fire insurance on
19 property in any municipality or portion of a township, or fire
20 district in this State, which now has or may hereafter have, a duly
21 incorporated firemen's relief association, 3% of the premium
22 receipts tax covering such insurance shall be paid to the treasurer of
23 the New Jersey State Firemen's Association and the remaining 2%
24 of the premium receipts tax shall be forwarded to the commissioner.

25 The tax imposed hereunder, if delinquent, shall be subject to the
26 provisions of R.S.54:49-3 and R.S.54:49-4.

27 The check covering taxes paid under the provisions of this act
28 shall be forwarded by the commissioner to the Director of the
29 Division of Taxation and that portion of the premiums representing
30 fire insurance shall be distributed by him in the amount now or
31 hereafter provided by law as to taxes collected by him from fire
32 insurance companies of other states and foreign countries. The
33 commissioner shall ascertain and report to the Director of the
34 Division of Taxation all facts necessary to enable the director to
35 ascertain, fix and collect the amount of the tax to be paid by each
36 licensee subject thereto under this act.

37 If a surplus lines policy covers risks or exposures **【only partially**
38 **in this State, the tax payable shall be computed on the portion of the**
39 **premium which is properly allocable to the risks or exposures**
40 **located】** in this State and other states, where this State is the home
41 state, as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41), the
42 tax payable pursuant to this section shall be based on the total
43 United States premium for the applicable policy.

44 This section does not apply as to insurance of or with respect to
45 insurance of risks of the State Government or its agencies, or of any
46 county or municipality or of any agency thereof.

47 (cf: P.L.2009, c.75, s.4)

1 3. Section 30 of P.L.1960, c.32 (C.17:22-6.64) is amended to
2 read as follows:

3 30. Every insured who in this State procures or causes to be
4 procured or continues or renews insurance with an unauthorized
5 foreign or alien insurer, or any insured or self-insurer who procures
6 or continues excess loss, catastrophe or other insurance, upon a
7 subject of insurance resident, located or to be performed within this
8 State, other than insurance procured through a surplus lines agent
9 pursuant to the surplus lines law of this State or exempted from tax
10 under section 25 of P.L.1960, c.32 (C.17:22-6.59), shall within 30
11 days after the date such insurance was so procured, continued, or
12 renewed, file a report of the same with the commissioner in writing
13 and upon forms designated by the commissioner and furnished to
14 such an insured upon request. The report shall show the name and
15 address of the insured or insureds, name and address of the insurer,
16 the subject of the insurance, a general description of the coverage,
17 the amount of premium currently charged therefor, and such
18 additional pertinent information as is reasonably requested by the
19 commissioner.

20 Any insurance in an unauthorized insurer procured through
21 negotiations or an application, in whole or in part occurring or made
22 within or from within this State, or for which premiums in whole or
23 in part are remitted directly or indirectly from within this State,
24 shall be deemed to be insurance procured, or continued or renewed
25 in this State within the intent of this section.

26 There is hereby levied upon the obligation, chose in action, or
27 right represented by the premium charged for such insurance, a tax
28 at the rate of 5% of the gross amount of such premium less any
29 return premiums charged for such insurance. Within 30 days after
30 the insurance was so procured, continued or renewed, and
31 coincidentally with the filing with the commissioner of the report
32 provided for in this section, the insured shall pay the amount of the
33 tax to the commissioner, who, after reviewing the above report,
34 shall turn over the amount of the tax to the Director of the Division
35 of Taxation along with a summary of the facts necessary to enable
36 the director to ascertain and fix the proper amount of the tax, except
37 that where the policies cover fire insurance on property in any
38 municipality or portion of a township, or fire district in this State,
39 which now has or may hereafter have, a duly incorporated firemen's
40 relief association, 3% of the premium receipts tax covering such
41 insurance shall be paid to the treasurer of the New Jersey State
42 Firemen's Association and the remaining 2% of the premium
43 receipts tax shall be forwarded to the commissioner.

44 If the insured fails to withhold from the premium the amount of
45 tax herein levied, the insured shall be liable for the amount thereof
46 and shall pay the same to the commissioner within the time
47 specified in this section.

1 If a surplus lines policy covers risks or exposures in this State
2 and other states, where this State is the home state, as defined in
3 section 7 of P.L.1960, c.32 (C.17:22-6.41), the tax payable pursuant
4 to this section shall be based on the total United States premium for
5 the applicable policy.

6 The tax imposed hereunder if delinquent shall be subject to the
7 provisions of R.S.54:49-3 and R.S.54:49-4.

8 The tax shall be collectible from the insured by civil action
9 brought by the commissioner.

10 The amount of taxes paid to the Director of the Division of
11 Taxation under the provisions of this section on premiums for fire
12 insurance shall be distributed by him in the manner now or hereafter
13 provided by law as to taxes collected by him from fire insurance
14 companies of other states and foreign countries.

15 This section does not abrogate or modify, and shall not be
16 construed or deemed to abrogate or modify, any provision of
17 section 3 of P.L.1960, c.32 (C.17:22-6.37), representing or aiding
18 unauthorized insurer prohibited; section 4 of P.L.1960, c.32
19 (C.17:22-6.38), penalty for representing unauthorized insurer; or
20 section 5 of P.L.1960, c.32 (C.17:22-6.39), suits by unauthorized
21 insurers prohibited; or any other provision of this Title.

22 This section does not apply as to life or disability insurances.
23 (cf: P.L.2009, c.75, s.5)

24
25 4. (New section) a. Notwithstanding the provisions of sections
26 24, 25 or 30 of P.L.1960, c.32 (C.17:22-6.58, C.17:22-6.59 or
27 C.17:22-6.64) or any other law to the contrary, the commissioner is
28 authorized ¹, subject to the provisions of section 6 of P.L. _____, c.
29 (C. _____)(pending before the Legislature as this bill),¹ to enter into,
30 modify and to terminate this State's participation in one or more
31 compacts or agreements that establish procedures for the reporting,
32 payment, collection and allocation, among the other states
33 participating in those compacts or agreements, the premium taxes
34 for multi-state risks paid to this State as the home state pursuant to
35 sections 25 or 30 of P.L.1960, c. 32 (C.17:22-6.59 and C.17:22-
36 6.64) or paid to any other state as home state as defined in section 7
37 of P.L.1960, c.32 (C.17:22-6.41) on a risk which is resident or
38 located in this State. The compacts or agreements may address any
39 matters necessary to facilitate the reporting, payment, collection and
40 allocation of premium taxes on multi-state risks, including, but not
41 limited to:

42 (1) A method and formula for that allocation;

43 (2) Establishment of uniform requirements, forms and
44 procedures that facilitate the reporting, payment, collection and
45 allocation of premium taxes on multi-state risks;

46 (3) Establishment of a clearinghouse to facilitate the receipt and
47 distribution of premium taxes and transaction data related to multi-
48 state risks; and

1 (4) The authority to collect and distribute taxes based on a
2 single home state rate as well as the rates of other states.

3 b. In determining whether to enter into one more compacts or
4 agreements, the commissioner shall consider:

5 (1) The efficiencies to be achieved in the reporting, payment,
6 collection and allocation of premium taxes on surplus lines
7 insurance;

8 (2) The amount of revenue to be generated through participation
9 in any such compacts or agreements. The commissioner may
10 consult with the State Treasurer in making this determination; and

11 (3) Any other material factor relevant to the reporting, payment,
12 collection and allocation of premium taxes on surplus lines
13 insurance.

14
15 5. (New section) Notwithstanding any other law to the
16 contrary, the commissioner is authorized ¹, subject to the provisions
17 of section 6 of P.L. , c. (C.)(pending before the Legislature
18 as this bill),¹ to enter into, modify and to terminate this State's
19 participation in one or more compacts or agreements necessary to
20 implement the federal "Nonadmitted and Reinsurance Reform Act
21 of 2010," Pub.L.111-203 (15 U.S.C. 8201 et seq.), as authorized by
22 that act, including, but not limited to, the imposition of eligibility
23 requirements or establishment of eligibility criteria for nonadmitted
24 surplus lines insurers.

25
26 ¹6. (New section) The commissioner shall submit any decision
27 to enter into or terminate this State's participation in any compacts
28 or agreements pursuant to sections 4 or 5 of P.L. ,
29 c. (C.)(pending before the Legislature as this bill) to the Joint
30 Budget Oversight Committee, or its successor. The Joint Budget
31 Oversight Committee, or its successor, shall have the authority to
32 nullify any decision to enter into or terminate participation in a
33 compact or agreement. The committee shall notify the
34 commissioner in writing of any nullification within 30 days of
35 receipt of the commissioner's decision. Should the committee not
36 act within 30 days of receipt of the commissioner's decision, the
37 commissioner's decision shall be deemed approved.¹

38
39 ¹[6.] 7. (New section) The commissioner, pursuant to the
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.), may adopt such rules and regulations as may be necessary to
42 effectuate the purposes of this act.

43
44 ¹[7.] 8. This act shall take effect on ¹[September 1, 2011]
45 July 21, 2011¹, but the commissioner may take any action in
46 advance thereof to enter into one or more compacts or agreements
47 as set forth in sections 4 or 5 of this act, and may take anticipatory

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7

1 administrative action in advance thereof as shall be necessary for
2 the implementation of this act.

3

4

5

6

7 Revises method of regulation and collection of surplus lines
8 insurance premium taxes.

SENATE, No. 2930

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 6, 2011

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

SYNOPSIS

Revises method of regulation and collection of surplus lines insurance premium taxes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/10/2011)

1 AN ACT concerning certain taxes on surplus lines insurance and
2 amending and supplementing P.L.1960, c.32.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 7 of P.L.1960, c.32 (C.17:22-6.41) is amended to
8 read as follows:

9 7. As used in this surplus lines law:

10 (a) "Surplus lines agent" means an individual licensed as **[an]** a
11 surplus lines insurance producer with surplus lines authority as
12 provided in **[P.L.1987, c.293 (C.17:22A-1 et seq.)]** P.L.2001, c.210
13 (C.17:22A-26 et seq.) to handle the placement of insurance
14 coverages on behalf of unauthorized insurers.

15 (b) "Surplus lines insurer" means an unauthorized insurer in
16 which an insurance coverage is placed or may be placed under this
17 surplus lines law.

18 (c) To "export" means to place in an unauthorized insurer under
19 this surplus lines law, insurance covering a subject of insurance
20 resident, located, or to be performed in New Jersey.

21 (d) "Commissioner" means the Commissioner of Banking and
22 Insurance of the State of New Jersey.

23 (e) "Certificate of insurance" means permanent evidence of
24 insurance on a form approved by the commissioner and issued by a
25 surplus lines agent who has filed evidence of his binding authority
26 with the commissioner on behalf of an alien insurer. When issued
27 other than on behalf of an alien insurer, an initial certificate of
28 insurance will be treated as temporary evidence of insurance,
29 pending the issuance of a policy. "Certificate of insurance" also
30 means evidence of a renewal of that insurance provided: (1) there
31 is no change in the terms or amounts of coverage; (2) the coverage
32 is still eligible for export; and (3) the insured may request the
33 issuance of a new policy.

34 (f) "Cover note," "binder" or "confirmation of insurance,"
35 means temporary evidence of insurance, to be replaced by a policy
36 or certificate of insurance.

37 (g) "Home state" means,

38 (1) Except as provided in paragraphs (4) and (5) of this
39 subsection, the term "home state" means, with respect to an
40 insured:

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

44 (ii) if 100 percent of the insured risk is located out of the state

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 referred to in subparagraph (i) of this paragraph, the state to which
2 the greatest percentage of the insured's taxable premium for that
3 insurance contract is allocated.

4 (2) "Principal place of business" means, with respect to
5 determining the home state of the insured:

6 (i) the state in which the insured maintains its headquarters and
7 where the insured's high-level officers direct, control and
8 coordinate the business activities;

9 (ii) if the insured's high-level officers direct, control and
10 coordinate the business activities in more than one state, the state in
11 which the greatest percentage of the insured's taxable premium for
12 that insurance contract is allocated; or

13 (iii) if the insured maintains its headquarters or the insured's
14 high-level officers direct, control and coordinate the business
15 activities outside any state, the state to which the greatest
16 percentage of the insured's taxable premium for that insurance
17 contract is allocated.

18 (3) "Principal residence" means, with respect to determining the
19 home state of the insured:

20 (i) the state in which the insured resides for the greatest number
21 of days during a calendar year; or

22 (ii) if the insured's principal residence is located outside any
23 state, the state to which the greatest percentage of the insured's
24 taxable premium for that insurance contract is allocated.

25 (4) If more than one insured from an affiliated group are named
26 insureds on a single nonadmitted insurance contract, the term
27 "home state" means the home state, as determined pursuant to
28 subparagraph (i) of paragraph (1) of this subsection, of the member
29 of the affiliated group that has the largest percentage of premium
30 attributed to it under that insurance contract.

31 (5) If the group policyholder pays 100 percent of the premium
32 from its own funds, the term "home state" means the home state, as
33 determined pursuant to subparagraph (i) of paragraph (1) of this
34 subsection, of the group policyholder. If the group policyholder
35 does not pay 100 percent of the premium from its own funds, the
36 term "home state" means the home state, as determined pursuant to
37 subparagraph (i) of paragraph (1) of this subsection, of the group
38 member.

39 (cf: P.L.1996, c.69, s.1)

40

41 2. Section 25 of P.L.1960, c.32 (C.17:22-6.59) is amended to
42 read as follows:

43 25. The premiums charged for surplus lines coverages are
44 subject to a premium receipts tax of 5% of all gross premiums less
45 any return premiums charged for such insurance. The surplus lines
46 agent shall collect from the insured, either directly or through the
47 originating broker, the amount of the tax, in addition to the full
48 amount of the gross premium charged by the insurer for the

1 insurance; provided, however, that the tax on any unearned portion
2 of the premium shall be returned to the policyholder by the surplus
3 lines agent. The surplus lines agent is prohibited from absorbing
4 such tax, or, as an inducement for insurance or for any other reason,
5 rebating all or any part of such tax or of his commission.

6 The surplus lines agent shall forward to the commissioner
7 together with his quarterly report submitted pursuant to section 24
8 of P.L.1960, c.32 (C.17:22-6.58) a check in the amount of the
9 premium receipts tax due for that period made out to "the State of
10 New Jersey," except that where the policies cover fire insurance on
11 property in any municipality or portion of a township, or fire
12 district in this State, which now has or may hereafter have, a duly
13 incorporated firemen's relief association, 3% of the premium
14 receipts tax covering such insurance shall be paid to the treasurer of
15 the New Jersey State Firemen's Association and the remaining 2%
16 of the premium receipts tax shall be forwarded to the commissioner.

17 The tax imposed hereunder, if delinquent, shall be subject to the
18 provisions of R.S.54:49-3 and R.S.54:49-4.

19 The check covering taxes paid under the provisions of this act
20 shall be forwarded by the commissioner to the Director of the
21 Division of Taxation and that portion of the premiums representing
22 fire insurance shall be distributed by him in the amount now or
23 hereafter provided by law as to taxes collected by him from fire
24 insurance companies of other states and foreign countries. The
25 commissioner shall ascertain and report to the Director of the
26 Division of Taxation all facts necessary to enable the director to
27 ascertain, fix and collect the amount of the tax to be paid by each
28 licensee subject thereto under this act.

29 If a surplus lines policy covers risks or exposures [only partially
30 in this State, the tax payable shall be computed on the portion of the
31 premium which is properly allocable to the risks or exposures
32 located] in this State and other states, where this State is the home
33 state, as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41), the
34 tax payable pursuant to this section shall be based on the total
35 United States premium for the applicable policy.

36 This section does not apply as to insurance of or with respect to
37 insurance of risks of the State Government or its agencies, or of any
38 county or municipality or of any agency thereof.

39 (cf: P.L.2009, c.75, s.4)

40

41 3. Section 30 of P.L.1960, c.32 (C.17:22-6.64) is amended to
42 read as follows:

43 30. Every insured who in this State procures or causes to be
44 procured or continues or renews insurance with an unauthorized
45 foreign or alien insurer, or any insured or self-insurer who procures
46 or continues excess loss, catastrophe or other insurance, upon a
47 subject of insurance resident, located or to be performed within this
48 State, other than insurance procured through a surplus lines agent

1 pursuant to the surplus lines law of this State or exempted from tax
2 under section 25 of P.L.1960, c.32 (C.17:22-6.59), shall within 30
3 days after the date such insurance was so procured, continued, or
4 renewed, file a report of the same with the commissioner in writing
5 and upon forms designated by the commissioner and furnished to
6 such an insured upon request. The report shall show the name and
7 address of the insured or insureds, name and address of the insurer,
8 the subject of the insurance, a general description of the coverage,
9 the amount of premium currently charged therefor, and such
10 additional pertinent information as is reasonably requested by the
11 commissioner.

12 Any insurance in an unauthorized insurer procured through
13 negotiations or an application, in whole or in part occurring or made
14 within or from within this State, or for which premiums in whole or
15 in part are remitted directly or indirectly from within this State,
16 shall be deemed to be insurance procured, or continued or renewed
17 in this State within the intent of this section.

18 There is hereby levied upon the obligation, chose in action, or
19 right represented by the premium charged for such insurance, a tax
20 at the rate of 5% of the gross amount of such premium less any
21 return premiums charged for such insurance. Within 30 days after
22 the insurance was so procured, continued or renewed, and
23 coincidentally with the filing with the commissioner of the report
24 provided for in this section, the insured shall pay the amount of the
25 tax to the commissioner, who, after reviewing the above report,
26 shall turn over the amount of the tax to the Director of the Division
27 of Taxation along with a summary of the facts necessary to enable
28 the director to ascertain and fix the proper amount of the tax, except
29 that where the policies cover fire insurance on property in any
30 municipality or portion of a township, or fire district in this State,
31 which now has or may hereafter have, a duly incorporated firemen's
32 relief association, 3% of the premium receipts tax covering such
33 insurance shall be paid to the treasurer of the New Jersey State
34 Firemen's Association and the remaining 2% of the premium
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36 If the insured fails to withhold from the premium the amount of
37 tax herein levied, the insured shall be liable for the amount thereof
38 and shall pay the same to the commissioner within the time
39 specified in this section.

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41 and other states, where this State is the home state, as defined in
42 section 7 of P.L.1960, c.32 (C.17:22-6.41), the tax payable pursuant
43 to this section shall be based on the total United States premium for
44 the applicable policy.

45 The tax imposed hereunder if delinquent shall be subject to the
46 provisions of R.S.54:49-3 and R.S.54:49-4.

47 The tax shall be collectible from the insured by civil action
48 brought by the commissioner.

1 The amount of taxes paid to the Director of the Division of
2 Taxation under the provisions of this section on premiums for fire
3 insurance shall be distributed by him in the manner now or hereafter
4 provided by law as to taxes collected by him from fire insurance
5 companies of other states and foreign countries.

6 This section does not abrogate or modify, and shall not be
7 construed or deemed to abrogate or modify, any provision of
8 section 3 of P.L.1960, c.32 (C.17:22-6.37), representing or aiding
9 unauthorized insurer prohibited; section 4 of P.L.1960, c.32
10 (C.17:22-6.38), penalty for representing unauthorized insurer; or
11 section 5 of P.L.1960, c.32 (C.17:22-6.39), suits by unauthorized
12 insurers prohibited; or any other provision of this Title.

13 This section does not apply as to life or disability insurances.
14 (cf: P.L.2009, c.75, s.5)

15

16 4. (New section) a. Notwithstanding the provisions of sections
17 24, 25 or 30 of P.L.1960, c.32 (C.17:22-6.58, C.17:22-6.59 or
18 C.17:22-6.64) or any other law to the contrary, the commissioner is
19 authorized to enter into, modify and to terminate this State's
20 participation in one or more compacts or agreements that establish
21 procedures for the reporting, payment, collection and allocation,
22 among the other states participating in those compacts or
23 agreements, the premium taxes for multi-state risks paid to this
24 State as the home state pursuant to sections 25 or 30 of P.L.1960, c.
25 32 (C.17:22-6.59 and C.17:22-6.64) or paid to any other state as
26 home state as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41)
27 on a risk which is resident or located in this State. The compacts or
28 agreements may address any matters necessary to facilitate the
29 reporting, payment, collection and allocation of premium taxes on
30 multi-state risks, including, but not limited to:

31 (1) A method and formula for that allocation;

32 (2) Establishment of uniform requirements, forms and
33 procedures that facilitate the reporting, payment, collection and
34 allocation of premium taxes on multi-state risks;

35 (3) Establishment of a clearinghouse to facilitate the receipt and
36 distribution of premium taxes and transaction data related to multi-
37 state risks; and

38 (4) The authority to collect and distribute taxes based on a
39 single home state rate as well as the rates of other states.

40 b. In determining whether to enter into one more compacts or
41 agreements, the commissioner shall consider:

42 (1) The efficiencies to be achieved in the reporting, payment,
43 collection and allocation of premium taxes on surplus lines
44 insurance;

45 (2) The amount of revenue to be generated through participation
46 in any such compacts or agreements. The commissioner may
47 consult with the State Treasurer in making this determination; and

1 (3) Any other material factor relevant to the reporting, payment,
2 collection and allocation of premium taxes on surplus lines
3 insurance.

4
5 5. (New section) Notwithstanding any other law to the
6 contrary, the commissioner is authorized to enter into, modify and
7 to terminate this State's participation in one or more compacts or
8 agreements necessary to implement the federal "Nonadmitted and
9 Reinsurance Reform Act of 2010," Pub.L.111-203 (15 U.S.C. 8201
10 et seq.), as authorized by that act, including, but not limited to, the
11 imposition of eligibility requirements or establishment of eligibility
12 criteria for nonadmitted surplus lines insurers.

13
14 6. (New section) The commissioner, pursuant to the
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.), may adopt such rules and regulations as may be necessary to
17 effectuate the purposes of this act.

18
19 7. This act shall take effect on September 1, 2011, but the
20 commissioner may take any action in advance thereof to enter into
21 one or more compacts or agreements as set forth in sections 4 or 5
22 of this act, and may take anticipatory administrative action in
23 advance thereof as shall be necessary for the implementation of this
24 act.

25
26
27 STATEMENT

28
29 This bill revises the method for the regulation and collection of
30 surplus lines insurance premium taxes by the Department of
31 Banking and Insurance. These revisions are intended to bring "the
32 surplus lines law," P.L.1960, c.32 (C.17:22-6.40 et seq.), into
33 compliance with the federal "Nonadmitted and Reinsurance Reform
34 Act of 2010" (NRRRA), which was recently passed by Congress as
35 part of the Dodd-Frank Wall Street Reform and Consumer
36 Protection Act. Currently, states share surplus lines premium tax
37 revenue based on the location of the insured's various risks. Under
38 NRRRA, this ability to share surplus lines premium tax revenue will
39 be suspended in July 2011 until such time as New Jersey enters into
40 a multi-state compact or agreement with one or more other states.

41 A state that does not join such an agreement may collect 100
42 percent of the taxes due from insureds located in its state, otherwise
43 known as "home-state" insureds. This includes the continued
44 ability to collect all premium taxes owed by "home-state" insureds
45 for their risks located in other states. However, as established under
46 NRRRA, a state that does not participate in a compact or agreement
47 is precluded from collecting surplus lines premium taxes it

1 currently receives from risks in its state that belong to the home-
2 state insureds of other jurisdictions.

3 Accordingly, this bill authorizes the Commissioner of Banking
4 and Insurance to enter into compacts or agreements with other
5 states with respect to the collection of surplus lines premium taxes
6 in order to maximize the tax revenue rightfully due and owing the
7 State. With respect to an insured, the bill defines “home state” as
8 the state in which the insured maintains its principal place of
9 business or if 100 percent of the insured risk is located outside of
10 the home state, the state to which the greatest percentage of the
11 insured’s taxable premium for that insurance contract is allocated.
12 For an individual, the state of the individual’s principal residence is
13 designated the “home state.”

14 The bill specifies that a compact or agreement entered into by the
15 commissioner may address a method and formula for surplus lines
16 premium tax allocation; the establishment of uniform requirements,
17 forms and procedures that facilitate payment, collection and
18 allocation of premium taxes on multi-state risks; the establishment
19 of a clearinghouse to facilitate the receipt and distribution of
20 premium taxes and transaction data related to multi-state risks; and
21 the authority to collect and distribute taxes based on a single “home
22 state” rate as well as the rates of other states.

23 The bill also provides that, in determining whether to enter into
24 one more compacts or agreements, the commissioner shall consider:
25 (1) the efficiencies to be achieved in the payment, collection and
26 allocation of surplus lines insurance premium taxes; (2) the amount
27 of revenue to be generated through participation in any compacts or
28 agreements (in making this determination the commissioner may
29 consult with the State Treasurer); and (3) any other material factor
30 relevant to payment, collection and allocation of premium taxes on
31 surplus lines insurance or otherwise necessary to implement the
32 NRRA, as authorized by the NRRA.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2930

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2930, with committee amendments.

As amended, this bill revises the method for the regulation and collection of surplus lines insurance premium taxes by the Department of Banking and Insurance. These revisions are intended to bring “the surplus lines law,” P.L.1960, c.32 (C.17:22-6.40 et seq.), into compliance with the federal “Nonadmitted and Reinsurance Reform Act of 2010” (NRRA), which was recently passed by Congress as part of the “Dodd-Frank Wall Street Reform and Consumer Protection Act.” Currently, states share surplus lines premium tax revenue based on the location of the insured’s various risks. Under NRRA, this ability to share surplus lines premium tax revenue will be suspended in July 2011 until such time as New Jersey enters into a multi-state compact or agreement with one or more other states.

As a result of NRRA, a state that does not join such an agreement may collect 100 percent of the taxes due from insureds located in its state, otherwise known as “home-state” insureds. This includes the continued ability to collect all premium taxes owed by “home-state” insureds for their risks located in other states. However, as established under NRRA, a state that does not participate in a compact or agreement is precluded from collecting surplus lines premium taxes it currently receives from risks in its state that belong to the home-state insureds of other jurisdictions.

Accordingly, this bill authorizes the Commissioner of Banking and Insurance, subject to nullification by the Joint Budget Oversight Committee, to enter into compacts or agreements with other states with respect to the collection of surplus lines premium taxes in order to maximize the tax revenue rightfully due and owing the State. With respect to an insured, the bill defines “home state” as the state in which the insured maintains its principal place of business, or if 100 percent of the insured risk is located outside of the home state, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated. For an individual, the state of the individual’s principal residence is designated as the “home state.”

The bill specifies that a compact or agreement entered into by the commissioner may address a method and formula for surplus lines premium tax allocation; the establishment of uniform requirements, forms and procedures that facilitate payment, collection and allocation of premium taxes on multi-state risks; the establishment of a clearinghouse to facilitate the receipt and distribution of premium taxes and transaction data related to multi-state risks; and the authority to collect and distribute taxes based on a single “home state” rate as well as the rates of other states.

The bill also provides that, in determining whether to enter into one or more compacts or agreements, the commissioner shall consider: (1) the efficiencies to be achieved in the payment, collection and allocation of surplus lines insurance premium taxes; (2) the amount of revenue to be generated through participation in any compacts or agreements (in making this determination the commissioner may consult with the State Treasurer); and (3) any other material factor relevant to payment, collection and allocation of premium taxes on surplus lines insurance or otherwise necessary to implement the NRRRA, as authorized by the NRRRA.

The bill also permits the commissioner to enter into, modify and to terminate, subject to nullification by the Joint Budget Oversight Committee, this State’s participation in one or more compacts or agreements necessary to implement the NRRRA, as authorized by that act, including, but not limited to, the imposition of eligibility requirements or establishment of eligibility criteria for nonadmitted surplus lines insurers.

COMMITTEE AMENDMENTS:

The committee amendments:

- remove from the bill definitions for the terms “principal place of business,” “principal residence,” and, in certain situations pertaining to group policyholders, the term “home state.”
- change the effective date of the bill from September 1, 2011 to July 21, 2011 to coincide with the effective date of the federal “Nonadmitted and Reinsurance Reform Act of 2010.”
- make any decision by the Commissioner of Banking and Insurance to enter into or terminate this State’s participation in any compacts or agreements subject to nullification by the Joint Budget Oversight Committee. This amendment provides that the commissioner shall submit any decision to enter into or terminate this State’s participation in any compacts or agreements to the Joint Budget Oversight Committee, or its successor. The Joint Budget Oversight Committee, or its successor, then has the authority to nullify the commissioner’s decision. The committee is to notify the commissioner, in writing, of any nullification within 30 days of receipt of the commissioner’s decision. Should the committee not act within

30 days of receipt of the commissioner's decision, the commissioner's decision is deemed approved.

FISCAL IMPACT:

Senate Bill No. 2930 will have an indeterminate effect on the revenue generated by the surplus lines insurance premium tax for the General Fund. As of July 2011, pursuant to the federal "Nonadmitted and Reinsurance Reform Act of 2010" (NRRA), and in the absence of an interstate compact regarding future surplus lines tax collections, all insureds for whom New Jersey qualifies as their "home state" will be assessed the 5 percent surplus lines premium tax on all surplus lines insurance premiums, even if the premiums are on risks located out of the State.

Currently, under most circumstances, insureds pay the surplus lines premium tax to the state or states in which the risk is located. According to the Department of Banking and Insurance, the State collected \$42 million in revenue from the surplus lines premium tax in 2010. Approximately 80 percent of this revenue was from "home state" insureds. The remaining 20 percent of revenue was collected from insureds for whom there is uncertainty as to their "home state," but that tax may be collected by New Jersey in the future. The department estimates that there may be increased revenue due to capturing current out of State risks from "home state" insureds and due to increased clarity and standardized procedures for the market participants. However, due to uncertainty as to the location of insureds, estimates on future revenue from the surplus lines premium tax can not be made with any assurance.

Additionally, pursuant to the bill, the State may enter into an interstate compact or agreement regarding future surplus lines premium tax collections. The bill specifies certain factors the commissioner must consider when entering into compacts or agreements, including efficiencies to be achieved in the payment, collection and allocation of surplus lines insurance premium taxes and the amount of revenue to be generated through participation in the agreement or compact. Since the details of these possible future compacts or agreements are unknown, it is not possible to ascertain if this provision of the bill will result in a revenue gain or loss for the State.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2930 STATE OF NEW JERSEY 214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

- Synopsis:** Revises method of regulation and collection of surplus lines insurance premium taxes.
- Type of Impact:** Indeterminate
- Agencies Affected:** Department of Banking and Insurance, Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate	Indeterminate	Indeterminate

- This bill revises the method for the regulation and collection of surplus lines insurance premium taxes by the Department of Banking and Insurance to bring “the surplus lines law” into compliance with the federal “Nonadmitted and Reinsurance Reform Act of 2010.”
- The Office of Legislative Services notes that this bill will have an indeterminate effect on revenues collected from the surplus lines insurance premium taxes for the General Fund.

BILL DESCRIPTION

Senate Bill No. 2930 (1R) of 2011 revises the method for the regulation and collection of surplus lines insurance premium taxes by the Department of Banking and Insurance. These revisions are intended to bring “the surplus lines law,” P.L.1960, c.32 (C.17:22-6.40 et seq.), into compliance with the federal “Nonadmitted and Reinsurance Reform Act of 2010” (NRRRA), which was recently passed by Congress as part of the “Dodd-Frank Wall Street Reform and Consumer Protection Act.” Currently, states share surplus lines premium tax revenue based on the location of the insured’s various risks. Under NRRRA, this ability to share surplus lines premium tax revenue will be suspended in July 2011 until such time as New Jersey enters into a multi-state compact or agreement with one or more other states.

A state that does not join such an agreement may collect 100 percent of the taxes due from insureds located in its state, otherwise known as “home-state” insureds. This includes the continued ability to collect all premium taxes owed by “home-state” insureds for their risks located in other states. However, as established under NRRA, a state that does not participate in a compact or agreement is precluded from collecting surplus lines premium taxes it currently receives from risks in its state that belong to the home-state insureds of other jurisdictions.

Accordingly, this bill authorizes the Commissioner of Banking and Insurance to enter into compacts or agreements with other states with respect to the collection of surplus lines premium taxes in order to maximize the tax revenue rightfully due and owing the State. With respect to an insured, the bill defines “home state” as the state in which the insured maintains its principal place of business or if 100 percent of the insured risk is located outside of the home state, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated. For an individual, the state of the individual’s principal residence is designated the “home state.”

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Senate Bill No. 2930 (1R) will have an indeterminate effect on the revenue generated by the surplus lines tax for the General Fund. As of July 2011, pursuant to the federal NRRA, and in the absence of an interstate compact regarding future surplus lines tax collections, all insureds for whom New Jersey qualifies as their “home state” will be assessed the 5 percent surplus lines premium tax on all surplus lines insurance premiums, even if the premiums are on risks located out of the State.

Currently, under most circumstances, insureds pay the surplus lines premium tax to the state or states in which the risk is located. According to the Department of Banking and Insurance, the State collected \$42 million in revenue from the surplus lines premium tax in 2010. Approximately 80 percent of this revenue was from “home state” insureds. The remaining 20 percent of revenue was collected from insureds for whom there is uncertainty as to their “home state,” but that tax may be collected by New Jersey in the future. The department estimates that there may be increased revenue due to capturing current out of State risks from “home state” insureds and due to increased clarity standardized procedures for the market participants. However, due to uncertainty as to the location of insureds, estimates on future revenue from the surplus lines premium tax can not be made with any assurance.

Additionally, pursuant to the bill, the State may enter into an interstate compact or agreement regarding future surplus lines premium tax collections. The bill specifies certain factors the commissioner must consider when entering into compacts or agreements, including efficiencies to be achieved in the payment, collection and allocation of surplus lines insurance premium taxes and the amount of revenue to be generated through participation in the agreement or compact. Since the details of these possible future compacts or agreements are unknown, it is not possible to ascertain if this provision of the bill will result in a revenue gain or loss for the State.

Section: Commerce, Labor and Industry

*Analyst: Robin C. Ford
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4224

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 27, 2011

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblyman GARY R. CHIUSANO

District 24 (Sussex, Hunterdon and Morris)

Assemblywoman DENISE M. COYLE

District 16 (Morris and Somerset)

SYNOPSIS

Revises method of regulation and collection of surplus lines insurance premium taxes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2011)

1 AN ACT concerning certain taxes on surplus lines insurance and
2 amending and supplementing P.L.1960, c.32.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 7 of P.L.1960, c.32 (C.17:22-6.41) is amended to
8 read as follows:

9 7. As used in this surplus lines law:

10 (a) "Surplus lines agent" means an individual licensed as **[an]** a
11 surplus lines insurance producer with surplus lines authority as
12 provided in **[P.L.1987, c.293 (C.17:22A-1 et seq.)]** P.L.2001, c.210
13 (C.17:22A-26 et seq.) to handle the placement of insurance
14 coverages on behalf of unauthorized insurers.

15 (b) "Surplus lines insurer" means an unauthorized insurer in
16 which an insurance coverage is placed or may be placed under this
17 surplus lines law.

18 (c) To "export" means to place in an unauthorized insurer under
19 this surplus lines law, insurance covering a subject of insurance
20 resident, located, or to be performed in New Jersey.

21 (d) "Commissioner" means the Commissioner of Banking and
22 Insurance of the State of New Jersey.

23 (e) "Certificate of insurance" means permanent evidence of
24 insurance on a form approved by the commissioner and issued by a
25 surplus lines agent who has filed evidence of his binding authority
26 with the commissioner on behalf of an alien insurer. When issued
27 other than on behalf of an alien insurer, an initial certificate of
28 insurance will be treated as temporary evidence of insurance,
29 pending the issuance of a policy. "Certificate of insurance" also
30 means evidence of a renewal of that insurance provided: (1) there
31 is no change in the terms or amounts of coverage; (2) the coverage
32 is still eligible for export; and (3) the insured may request the
33 issuance of a new policy.

34 (f) "Cover note," "binder" or "confirmation of insurance,"
35 means temporary evidence of insurance, to be replaced by a policy
36 or certificate of insurance.

37 (g) "Home state" means,

38 (1) Except as provided in paragraph (2) of this subsection, the
39 term "home state" means, with respect to an insured:

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

43 (ii) if 100 percent of the insured risk is located out of the state
44 referred to in subparagraph (i) of this paragraph, the state to which

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 the greatest percentage of the insured's taxable premium for that
2 insurance contract is allocated.

3 (2) If more than one insured from an affiliated group are named
4 insureds on a single nonadmitted insurance contract, the term
5 'home state' means the home state, as determined pursuant to
6 subparagraph (i) of paragraph (1) of this subsection, of the member
7 of the affiliated group that has the largest percentage of premium
8 attributed to it under that insurance contract.

9 (cf: P.L.1996, c.69, s.1)

10

11 2. Section 25 of P.L.1960, c.32 (C.17:22-6.59) is amended to
12 read as follows:

13 25. The premiums charged for surplus lines coverages are
14 subject to a premium receipts tax of 5% of all gross premiums less
15 any return premiums charged for such insurance. The surplus lines
16 agent shall collect from the insured, either directly or through the
17 originating broker, the amount of the tax, in addition to the full
18 amount of the gross premium charged by the insurer for the
19 insurance; provided, however, that the tax on any unearned portion
20 of the premium shall be returned to the policyholder by the surplus
21 lines agent. The surplus lines agent is prohibited from absorbing
22 such tax, or, as an inducement for insurance or for any other reason,
23 rebating all or any part of such tax or of his commission.

24 The surplus lines agent shall forward to the commissioner
25 together with his quarterly report submitted pursuant to section 24
26 of P.L.1960, c.32 (C.17:22-6.58) a check in the amount of the
27 premium receipts tax due for that period made out to "the State of
28 New Jersey," except that where the policies cover fire insurance on
29 property in any municipality or portion of a township, or fire
30 district in this State, which now has or may hereafter have, a duly
31 incorporated firemen's relief association, 3% of the premium
32 receipts tax covering such insurance shall be paid to the treasurer of
33 the New Jersey State Firemen's Association and the remaining 2%
34 of the premium receipts tax shall be forwarded to the commissioner.

35 The tax imposed hereunder, if delinquent, shall be subject to the
36 provisions of R.S.54:49-3 and R.S.54:49-4.

37 The check covering taxes paid under the provisions of this act
38 shall be forwarded by the commissioner to the Director of the
39 Division of Taxation and that portion of the premiums representing
40 fire insurance shall be distributed by him in the amount now or
41 hereafter provided by law as to taxes collected by him from fire
42 insurance companies of other states and foreign countries. The
43 commissioner shall ascertain and report to the Director of the
44 Division of Taxation all facts necessary to enable the director to
45 ascertain, fix and collect the amount of the tax to be paid by each
46 licensee subject thereto under this act.

47 If a surplus lines policy covers risks or exposures [only partially
48 in this State, the tax payable shall be computed on the portion of the

1 premium which is properly allocable to the risks or exposures
2 located] in this State and other states, where this State is the home
3 state, as defined in section 7 of P.L.1960, c.32 (C.17:22-6.41), the
4 tax payable pursuant to this section shall be based on the total
5 United States premium for the applicable policy.

6 This section does not apply as to insurance of or with respect to
7 insurance of risks of the State Government or its agencies, or of any
8 county or municipality or of any agency thereof.

9 (cf: P.L.2009, c.75, s.4)

10

11 3. Section 30 of P.L.1960, c.32 (C.17:22-6.64) is amended to
12 read as follows:

13 30. Every insured who in this State procures or causes to be
14 procured or continues or renews insurance with an unauthorized
15 foreign or alien insurer, or any insured or self-insurer who procures
16 or continues excess loss, catastrophe or other insurance, upon a
17 subject of insurance resident, located or to be performed within this
18 State, other than insurance procured through a surplus lines agent
19 pursuant to the surplus lines law of this State or exempted from tax
20 under section 25 of P.L.1960, c.32 (C.17:22-6.59), shall within 30
21 days after the date such insurance was so procured, continued, or
22 renewed, file a report of the same with the commissioner in writing
23 and upon forms designated by the commissioner and furnished to
24 such an insured upon request. The report shall show the name and
25 address of the insured or insureds, name and address of the insurer,
26 the subject of the insurance, a general description of the coverage,
27 the amount of premium currently charged therefor, and such
28 additional pertinent information as is reasonably requested by the
29 commissioner.

30 Any insurance in an unauthorized insurer procured through
31 negotiations or an application, in whole or in part occurring or made
32 within or from within this State, or for which premiums in whole or
33 in part are remitted directly or indirectly from within this State,
34 shall be deemed to be insurance procured, or continued or renewed
35 in this State within the intent of this section.

36 There is hereby levied upon the obligation, chose in action, or
37 right represented by the premium charged for such insurance, a tax
38 at the rate of 5% of the gross amount of such premium less any
39 return premiums charged for such insurance. Within 30 days after
40 the insurance was so procured, continued or renewed, and
41 coincidentally with the filing with the commissioner of the report
42 provided for in this section, the insured shall pay the amount of the
43 tax to the commissioner, who, after reviewing the above report,
44 shall turn over the amount of the tax to the Director of the Division
45 of Taxation along with a summary of the facts necessary to enable
46 the director to ascertain and fix the proper amount of the tax, except
47 that where the policies cover fire insurance on property in any
48 municipality or portion of a township, or fire district in this State,

1 which now has or may hereafter have, a duly incorporated firemen's
2 relief association, 3% of the premium receipts tax covering such
3 insurance shall be paid to the treasurer of the New Jersey State
4 Firemen's Association and the remaining 2% of the premium
5 receipts tax shall be forwarded to the commissioner.

6 If the insured fails to withhold from the premium the amount of
7 tax herein levied, the insured shall be liable for the amount thereof
8 and shall pay the same to the commissioner within the time
9 specified in this section.

10 If a surplus lines policy covers risks or exposures in this State
11 and other states, where this State is the home state, as defined in
12 section 7 of P.L.1960, c.32 (C.17:22-6.41), the tax payable pursuant
13 to this section shall be based on the total United States premium for
14 the applicable policy.

15 The tax imposed hereunder if delinquent shall be subject to the
16 provisions of R.S.54:49-3 and R.S.54:49-4.

17 The tax shall be collectible from the insured by civil action
18 brought by the commissioner.

19 The amount of taxes paid to the Director of the Division of
20 Taxation under the provisions of this section on premiums for fire
21 insurance shall be distributed by him in the manner now or hereafter
22 provided by law as to taxes collected by him from fire insurance
23 companies of other states and foreign countries.

24 This section does not abrogate or modify, and shall not be
25 construed or deemed to abrogate or modify, any provision of
26 section 3 of P.L.1960, c.32 (C.17:22-6.37), representing or aiding
27 unauthorized insurer prohibited; section 4 of P.L.1960, c.32
28 (C.17:22-6.38), penalty for representing unauthorized insurer; or
29 section 5 of P.L.1960, c.32 (C.17:22-6.39), suits by unauthorized
30 insurers prohibited; or any other provision of this Title.

31 This section does not apply as to life or disability insurances.
32 (cf: P.L.2009, c.75, s.5)

33

34 4. (New section) a. Notwithstanding the provisions of sections
35 24, 25 or 30 of P.L.1960, c.32 (C.17:22-6.58, C.17:22-6.59 or
36 C.17:22-6.64) or any other law to the contrary, the commissioner is
37 authorized, subject to the provisions of section 6 of P.L. , c.
38 (C.) (pending before the Legislature as this bill), to enter into,
39 modify and to terminate this State's participation in one or more
40 compacts or agreements that establish procedures for the reporting,
41 payment, collection and allocation, among the other states
42 participating in those compacts or agreements, the premium taxes
43 for multi-state risks paid to this State as the home state pursuant to
44 sections 25 or 30 of P.L.1960, c. 32 (C.17:22-6.59 and C.17:22-
45 6.64) or paid to any other state as home state as defined in section 7
46 of P.L.1960, c.32 (C.17:22-6.41) on a risk which is resident or
47 located in this State. The compacts or agreements may address any
48 matters necessary to facilitate the reporting, payment, collection and

1 allocation of premium taxes on multi-state risks, including, but not
2 limited to:

- 3 (1) A method and formula for that allocation;
- 4 (2) Establishment of uniform requirements, forms and
5 procedures that facilitate the reporting, payment, collection and
6 allocation of premium taxes on multi-state risks;
- 7 (3) Establishment of a clearinghouse to facilitate the receipt and
8 distribution of premium taxes and transaction data related to multi-
9 state risks; and
- 10 (4) The authority to collect and distribute taxes based on a
11 single home state rate as well as the rates of other states.

12 b. In determining whether to enter into one more compacts or
13 agreements, the commissioner shall consider:

- 14 (1) The efficiencies to be achieved in the reporting, payment,
15 collection and allocation of premium taxes on surplus lines
16 insurance;
- 17 (2) The amount of revenue to be generated through participation
18 in any such compacts or agreements. The commissioner may
19 consult with the State Treasurer in making this determination; and
- 20 (3) Any other material factor relevant to the reporting, payment,
21 collection and allocation of premium taxes on surplus lines
22 insurance.

23
24 5. (New section) Notwithstanding any other law to the
25 contrary, the commissioner is authorized, subject to the provisions
26 of section 6 of P.L. , c. (C.) (pending before the Legislature
27 as this bill), to enter into, modify and to terminate this State's
28 participation in one or more compacts or agreements necessary to
29 implement the federal "Nonadmitted and Reinsurance Reform Act
30 of 2010," Pub.L.111-203 (15 U.S.C. 8201 et seq.), as authorized by
31 that act, including, but not limited to, the imposition of eligibility
32 requirements or establishment of eligibility criteria for nonadmitted
33 surplus lines insurers.

34
35 6. (New section) The commissioner shall submit any decision to
36 enter into or terminate this State's participation in any compacts or
37 agreements pursuant to sections 4 or 5 of P.L. , c. (C.)
38 (pending before the Legislature as this bill) to the Joint Budget
39 Oversight Committee, or its successor. The Joint Budget Oversight
40 Committee, or its successor, shall have the authority to nullify any
41 decision to enter into or terminate participation in a compact or
42 agreement. The committee shall notify the commissioner in writing
43 of any nullification within 30 days of receipt of the commissioner's
44 decision. Should the committee not act within 30 days of receipt of
45 the commissioner's decision, the commissioner's decision shall be
46 deemed approved.

1 7. (New section) The commissioner, pursuant to the
2 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
3 seq.), may adopt such rules and regulations as may be necessary to
4 effectuate the purposes of this act.

5
6 8. This act shall take effect on July 21, 2011, but the
7 commissioner may take any action in advance thereof to enter into
8 one or more compacts or agreements as set forth in sections 4 or 5
9 of this act, and may take anticipatory administrative action in
10 advance thereof as shall be necessary for the implementation of this
11 act.

12
13
14 STATEMENT

15
16 This bill revises the method for the regulation and collection of
17 surplus lines insurance premium taxes by the Department of
18 Banking and Insurance. These revisions are intended to bring “the
19 surplus lines law,” P.L.1960, c.32 (C.17:22-6.40 et seq.), into
20 compliance with the federal “Nonadmitted and Reinsurance Reform
21 Act of 2010” (NRRA), which was recently passed by Congress as
22 part of the “Dodd-Frank Wall Street Reform and Consumer
23 Protection Act.” Currently, states share surplus lines premium tax
24 revenue based on the location of the insured’s various risks. Under
25 NRRA, this ability to share surplus lines premium tax revenue will
26 be suspended in July 2011 until such time as New Jersey enters into
27 a multi-state compact or agreement with one or more other states.

28 As a result of NRRA, a state that does not join such an
29 agreement may collect 100 percent of the taxes due from insureds
30 located in its state, otherwise known as “home-state” insureds. This
31 includes the continued ability to collect all premium taxes owed by
32 “home-state” insureds for their risks located in other states.
33 However, as established under NRRA, a state that does not
34 participate in a compact or agreement is precluded from collecting
35 surplus lines premium taxes it currently receives from risks in its
36 state that belong to the home-state insureds of other jurisdictions.

37 Accordingly, this bill authorizes the Commissioner of Banking
38 and Insurance, subject to nullification by the Joint Budget Oversight
39 Committee, to enter into compacts or agreements with other states
40 with respect to the collection of surplus lines premium taxes in
41 order to maximize the tax revenue rightfully due and owing the
42 State. With respect to an insured, the bill defines “home state” as
43 the state in which the insured maintains its principal place of
44 business, or if 100 percent of the insured risk is located outside of
45 the home state, the state to which the greatest percentage of the
46 insured’s taxable premium for that insurance contract is allocated.
47 For an individual, the state of the individual’s principal residence is
48 designated as the “home state.”

1 The bill specifies that a compact or agreement entered into by the
2 commissioner may address a method and formula for surplus lines
3 premium tax allocation; the establishment of uniform requirements,
4 forms and procedures that facilitate payment, collection and
5 allocation of premium taxes on multi-state risks; the establishment
6 of a clearinghouse to facilitate the receipt and distribution of
7 premium taxes and transaction data related to multi-state risks; and
8 the authority to collect and distribute taxes based on a single “home
9 state” rate as well as the rates of other states.

10 The bill also provides that, in determining whether to enter into
11 one or more compacts or agreements, the commissioner shall
12 consider: (1) the efficiencies to be achieved in the payment,
13 collection and allocation of surplus lines insurance premium taxes;
14 (2) the amount of revenue to be generated through participation in
15 any compacts or agreements (in making this determination the
16 commissioner may consult with the State Treasurer); and (3) any
17 other material factor relevant to payment, collection and allocation
18 of premium taxes on surplus lines insurance or otherwise necessary
19 to implement the NRRA, as authorized by the NRRA.

20 The bill also permits the commissioner to enter into, modify and
21 to terminate, subject to nullification by the Joint Budget Oversight
22 Committee, this State’s participation in one or more compacts or
23 agreements necessary to implement the NRRA, as authorized by
24 that act, including, but not limited to, the imposition of eligibility
25 requirements or establishment of eligibility criteria for nonadmitted
26 surplus lines insurers.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4224
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

Synopsis: Revises method of regulation and collection of surplus lines insurance premium taxes.

Type of Impact: Indeterminate

Agencies Affected: Department of Banking and Insurance, Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate	Indeterminate	Indeterminate

- This bill revises the method for the regulation and collection of surplus lines insurance premium taxes by the Department of Banking and Insurance to bring “the surplus lines law” into compliance with the federal “Nonadmitted and Reinsurance Reform Act of 2010.”
- The Office of Legislative Services notes that this bill will have an indeterminate effect on revenues collected from the surplus lines insurance premium taxes for the General Fund.

BILL DESCRIPTION

Assembly Bill No. 4224 of 2011 revises the method for the regulation and collection of surplus lines insurance premium taxes by the Department of Banking and Insurance. These revisions are intended to bring “the surplus lines law,” P.L.1960, c.32 (C.17:22-6.40 et seq.), into compliance with the federal “Nonadmitted and Reinsurance Reform Act of 2010” (NRRA), which was recently passed by Congress as part of the “Dodd-Frank Wall Street Reform and Consumer Protection Act.” Currently, states share surplus lines premium tax revenue based on the location of the insured’s various risks. Under NRRA, this ability to share surplus lines premium tax revenue will be suspended in July 2011 until such time as New Jersey enters into a multi-state compact or agreement with one or more other states.

A state that does not join such an agreement may collect 100 percent of the taxes due from insureds located in its state, otherwise known as “home-state” insureds. This includes the

continued ability to collect all premium taxes owed by “home-state” insureds for their risks located in other states. However, as established under NRRA, a state that does not participate in a compact or agreement is precluded from collecting surplus lines premium taxes it currently receives from risks in its state that belong to the home-state insureds of other jurisdictions.

Accordingly, this bill authorizes the Commissioner of Banking and Insurance, subject to nullification by the Joint Budget Oversight Committee, to enter into compacts or agreements with other states with respect to the collection of surplus lines premium taxes in order to maximize the tax revenue rightfully due and owing the State. With respect to an insured, the bill defines “home state” as the state in which the insured maintains its principal place of business or if 100 percent of the insured risk is located outside of the home state, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated. For an individual, the state of the individual’s principal residence is designated the “home state.”

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Assembly Bill No. 4224 will have an indeterminate effect on the revenue generated by the surplus lines tax for the General Fund. As of July 2011, pursuant to the federal NRRA, and in the absence of an interstate compact regarding future surplus lines tax collections, all insureds for whom New Jersey qualifies as their “home state” will be assessed the 5 percent surplus lines premium tax on all surplus lines insurance premiums, even if the premiums are on risks located out of the State.

Currently, under most circumstances, insureds pay the surplus lines premium tax to the state or states in which the risk is located. According to the Department of Banking and Insurance, the State collected \$42 million in revenue from the surplus lines premium tax in 2010. Approximately 80 percent of this revenue was from “home state” insureds. The remaining 20 percent of revenue was collected from insureds for whom there is uncertainty as to their “home state,” but that tax may be collected by New Jersey in the future. The department estimates that there may be increased revenue due to capturing current out of State risks from “home state” insureds and due to increased clarity standardized procedures for the market participants. However, due to uncertainty as to the location of insureds, estimates on future revenue from the surplus lines premium tax can not be made with any assurance.

Additionally, pursuant to the bill, the State may enter into an interstate compact or agreement regarding future surplus lines premium tax collections. The bill specifies certain factors the commissioner must consider when entering into compacts or agreements, including efficiencies to be achieved in the payment, collection and allocation of surplus lines insurance premium taxes and the amount of revenue to be generated through participation in the agreement or compact. Since the details of these possible future compacts or agreements are unknown, it is not possible to ascertain if this provision of the bill will result in a revenue gain or loss for the State.

Section: Commerce, Labor and Industry

*Analyst: Robin C. Ford
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).