

SENATE BILL REPORT

SB 5397

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 1, 2011

Title: An act relating to unauthorized insurance.

Brief Description: Regulating unauthorized insurance.

Sponsors: Senators Benton, Hobbs and Shin; by request of Insurance Commissioner.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/01/11 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Fain, Haugen and Litzow.

Staff: Edward Redmond (786-7471)

Background: A surplus lines insurer is an insurance company that does not have a certificate of authority issued by the Insurance Commissioner (Commissioner) to transact business in the state, and may only operate under certain rules, specified by statute. They are also called unauthorized insurers.

The insurance offered by surplus lines brokers (Brokers) must be of a type that is not available from authorized insurers, and the Brokers must be licensed to engage surplus lines transactions. The Broker must execute an affidavit setting forth the facts that (1) a diligent effort was made to find coverage from an authorized insurer before procuring the coverage from an unauthorized insurer, and (2) use of the unauthorized insurer is not to obtain a lower premium rate or to secure any other competitive advantage. The affidavit must be filed with the Office of Insurance Commissioner within 30 days after the insurance is procured.

In July 2010, the United States Congress passed the Nonadmitted and Reinsurance Reform Act (NRRRA) as part of the comprehensive Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRRRA creates a uniform system for collecting nonadmitted insurance premium taxes by adopting a standard rule that only the home state of the insured may impose premium tax payments. The NRRRA, thus, encourages states to enter into an interstate

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compact to create nationwide requirements, forms, and procedures for reporting, paying, collecting, and allocating premium taxes when risk is spread across multiple states.

The insured's home state, under the NRRRA, will have exclusive authority over the placement of nonadmitted insurance and licensing of Brokers. States are required, however, to establish eligibility requirements consistent with the National Association of Insurance Commissioners (NAIC) Non-Admitted Insurance Model Act. States may not prohibit a Broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from a foreign nonadmitted insurer listed by the NAIC as an alien insurer. The home-state rule, single licensing provision, and NAIC listed alien insurer admission takes effect July 21, 2011.

The NRRRA also encourages states to participate in a national insurance producer database. States that do not participate by 2013 will be prohibited from collecting licensing fees from Brokers. Subject to certain conditions, Brokers are exempt from state diligent effort requirements when large commercial purchasers of insurance request that the Broker use a nonadmitted insurer.

Summary of Bill: New definitions and provisions are added to statute in response to the NRRRA. All surplus property and casualty insurance, except for industrial insurance under Title 51 RCW, must be purchased from a licensed Broker in accordance to the laws of the insured's home state.

Diligent Effort Certification. The word affidavit is replaced with certify. A Broker must certify at the time of procurement that a diligent effort was made to purchase the line of insurance from an authorized insurer. The filing period is extended from 30 to 60 days from the date of procurement. The certification may be filed electronically, digitally, or by another format as authorized by the Commissioner.

A Broker is exempt from the diligent effort requirement when providing unauthorized insurance to an exempt commercial purchaser subject to the following specified conditions: (1) the Broker discloses that the insurance may be available from the admitted market with greater protection and regulatory oversight; and (2) the exempt commercial purchaser requests in writing that the Broker procure the insurance from an unauthorized insurer. The Broker must maintain these records as proof that these conditions were satisfied.

National Producer Database. The Commissioner is authorized to join a national producer database for the licensure of surplus line brokers when such database is established by the NAIC or other comparable national organization.

Nonadmitted Foreign Insurers. Rules for nonadmitted foreign insurers are amended. A Broker may only place surplus line insurance with a foreign insurer that is authorized to write such insurance in its home jurisdiction, and either has capital and surplus in its home jurisdiction equal to the minimum capital and surplus requirements of the laws of Washington, or has at least \$15 million of capital. The Commissioner may also find a foreign insurer to be acceptable based on such factors as capital and surplus of any parent company, company underwriting profit and investment income trends, and market availability. The Commissioner is prohibited, however, from making an affirmative determination for any foreign insurer with capital and surplus of less than \$4.5 million.

A Broker may also place surplus line insurance with an alien insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC.

Reporting Requirements and Exceptions. A Broker must file an annual statement by March 1 each year listing all surplus line insurance transacted during the previous year. The statement must be filed in the form and format authorized by the Commissioner. A statement is not required for property and casualty insurance procured by the Broker when the insured's home state is a state other than Washington.

Home State Taxable Premium Computation. The taxable premium computation assessed on surplus line insurance is amended. For property and casualty insurance other than industrial insurance, if Washington is the insured's home state, the tax must be calculated on the entire premium irrespective of whether the policy covers risks or exposures that are located in the state. For all other insurance, if a surplus line policy covers risks or exposure only partially in Washington, the taxable premium is calculated based on the percentage of risk or exposure located in the state.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill is largely in response to changes that will come into affect by Dodd-Frank. The Office of Insurance Commissioner is changing the surplus line tax provisions to reflect what will be the law of the land beginning July 21, 2011. The bill also modernizes the processing requirements for the sale of the policies and identification of an admitted market by authorizing electronic filing rather than paper form. This should increase efficiency and reduce costs for both the industry and agency. Surplus Line Association of Washington and its members are in support of this bill. The Association has been monitoring Dodd-Frank and has worked closely with the insurance department on the affidavit issue. The bill has the Association's full support.

Persons Testifying: PRO: Drew Bouton, John Hamje, Office of the Insurance Commissioner; Robert Hope, Surplus Line Association of Washington.