

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 p.m. on March 14, 2011, in Room 152-S of the Capitol.

All members were present except:

Representative Fawcett – Excused

Committee staff present:

David Wiese, Office of the Revisor of Statutes

Ken Wilke, Office of the Revisor of Statutes

Melissa Calderwood, Legislative Research Department

Cindy Lash, Kansas Legislative Research Department

Sue Fowler, Committee Assistant

Conferees appearing before the Committee:

Senator Jeff Longbine, District 17

Others attending:

See attached list.

Informational hearing by staff on;

Sub for SB 206 **Surplus Lines Insurance; Multi-State Compliance Compact**

Melissa Calderwood, (Attachment 1), Kansas Legislative Research Department, Principal Analyst, gave an update on the surplus lines insurance legislation considered by the Senate Subcommittee on **SB 206**, its recommendations to the full Committee, and action by the Senate Committee.

Senator Jeff Longbine, (Attachment 2), Chairman of the Sub-Committee, presented a brief overview of the Committee's determination.

Discussion and action on:

SB 15 **Insurance; Risk-based capital requirements**

Representative Grant moved to pass **SB 15** out favorably and place on the consent calendar. Seconded by Representative Hermanson Motion passed.

SB 65 **Health insurance; internal and external review of health care decisions**

Representative Gregory moved to table **SB 65**. Seconded by Representative Brown. Division called with 4 in favor and 5 opposed. Motion failed. Representative Brown made a motion to amend **SB 65** by placing the contents of **HB 2292** and **HB 2293** into **SB 65**. Seconded by Representative Gregory. Motion Passed. Representative Brown made a motion to pass **SB 65** as amended. Seconded by Representative Gregory. Motion passed.

SB 170 **Portable electronics insurance act**

Representative Burroughs moved to amend **SB 170**, to incorporate the changes proposed by Asurion. Seconded by Representative Grant. Motion passed. Representative Brown moved to further amend the bill on page 1 of the amended version by adding a period in line 11 after the word “Kansas”, and strike all of lines 12 and 13. Seconded by Representative Montgomery. Motion passed. Representative Brown moved to further amend the bill on page 5 of the amended version by striking the words “terminate or otherwise”. Seconded by Representative Hermanson. Motion passed. Representative Hermanson moved to pass out **SB 170** favorably, as amended. Seconded by Representative Grant. Motion passed.

Representative Grant moved without objection to pass the March 9, 2011 committee minutes as written.

Next meeting is scheduled for Wednesday 16, 2011, 3:30 P.M. in Room 152-S in Capitol.

Meeting adjourned at 5:39 p.m.

House Insurance Committee Guest Sign In Sheet Monday, March 14, 2011

[illegible]

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 • FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

March 14, 2011

To: House Committee on Insurance

From: Melissa Calderwood, Principal Analyst

Re: Surplus Lines Insurance; Sub. for SB 206

This memorandum provides an update on the surplus lines insurance legislation considered by the Senate Subcommittee on SB 206, its recommendations to the full Committee, and action by the Senate Committee. The subcommittee reviewed the requirements created by the federal Nonadmitted and Reinsurance Act (NRRA) for the allocation and collection of premium tax for excess and surplus lines and the corresponding legislative models adopted by the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL) in Senate bills 178 and 206, respectively. A summary of the subcommittee review of and Senate Committee on the legislation also is discussed.

Background

Surplus/Excess/Specialty Lines of Coverage

Surplus lines (often referred to as excess lines or specialty lines) insurance also is known as non-admitted insurance. This form of insurance is intended to provide coverage that cannot be procured easily in the conventional insurance marketplace. A definition for non-admitted insurance will be provided later in this memorandum. Surplus lines coverage is a block of business that is separate from the more traditional insurance coverages available, such as homeowners, auto, life and health.

Licensing requirements. Under Kansas law (KSA 2010 Supp. 40-246b) an excess coverage license is obtained to "negotiate the types of contracts of fire insurance enumerated in KSA 40-901, and amendments thereto, and the type of casualty insurance contracts enumerated in KSA 40-1102, and amendments thereto, or reinsurance, or to place risks, or to effect insurance or reinsurance for persons or corporations other than such agent, with insurers not authorized to do business in this state." Licensees are required to file an annual statement by March 1, accounting for all gross premiums upon policies written on risks (located in Kansas) [KSA 2010 Supp. 40-246c].

The Kansas Insurance Department publishes a list of excess lines companies, as well as syndicates (Lloyd's of London) at: <http://www.ksinsurance.org/industry/agent/excesslines.htm>.

House Insurance
Date: 3-14-11
Attachment # 1

Nonadmitted and Reinsurance Reform Act of 2010 – July 21, 2011 Effective Date

Congress enacted the NRRRA in the 2010 federal financial services reform bill, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (PL 111-203). The measure was signed into law by the President on July 21, 2010. The NRRRA provisions become effective upon the expiration of the 12-month period beginning on the date of enactment – July 21, 2011. [Section 513] A copy of the NRRRA provisions in the Dodd-Frank Act is attached (Attachment 1).

Definitions. Following are selected definitions associated with the Nonadmitted and Reinsurance Reform Act of 2010:

- *Home State.* Under the NRRRA, a “home State” is defined to mean, 1) the State in which an insured maintains its principal place of business, or in the case of an individual, the individual's principal residence; or 2) if 100 percent of the insured risk is located out of the State referred to [in (1)], the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated. [Section 527 (6)]
- *Nonadmitted insurance.* Under the Act, “nonadmitted insurance” is defined to mean “any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.” [(9)]
- *Nonadmitted insurer.* The term “nonadmitted insurer” is defined to mean, “with respect to a State, an insurer, not licensed to engage in the business of insurance in such State; but does not include a risk retention group....” [RRGs as defined in the Liability Risk Retention Act of 1986 (11)]
- *Surplus lines broker.* “Surplus lines broker” is defined to mean “an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers. [(15)]

Provisions of the Act

Among the relevant provisions of the NRRRA:

- Compliance, Home-State
 - *Home State's exclusive authority* – only an insured's “home State” is permitted to require a premium tax payment for nonadmitted insurance. [Section 521(a)]
 - *Regulatory authority* – grants exclusive authority for the regulation of surplus line transactions/placements of nonadmitted insurance. [522(a),(b)]
 - *Broker licensing* – only the insured's home State may require a surplus lines broker to be licensed in order to sell or solicit nonadmitted insurance. [522(b)]
 - *Exemptions* – Home State provisions do not apply to workers compensation or excess insurance for self-funded workers compensation plans with a nonadmitted insurer. [522(d)]

- Uniform Standards for Insurers
 - *Nationwide system, Statement of Intent* – states the intent of Congress that each state adopt uniform standards for the collection and allocation of premium taxes. Specifies that this adoption can be accomplished by an interstate compact. [521(b)(4)]
 - *Surplus Lines Eligibility (foreign)* – provides that states cannot impose certain eligibility requirements or establish eligibility criteria for a U.S. domiciled surplus lines insurer, except to comply, by amendment to state law, with two provisions of the National Association of Insurance Commissioners (NAIC) Nonadmitted Model Act: (1) maintain capital and surplus of at least \$15 million (or minimum requirement of the insured's home state, if higher) and (2) be “authorized to write in its domiciliary jurisdiction.”
 - *Surplus Lines Eligibility (alien)* – creates a provision for insurers outside the U.S. (“alien”), allowing that any insurer listed on the NAIC/IIID (International Insurers Department of the NAIC) is eligible [could not be prohibited by a state – Section 524].
- Legislative Response
 - *Implementation of tax allocation system* – prescribes time lines that require a response from state legislatures, including a provision that if states fail to implement a tax allocation within 330 days after the adoption of this act, then a single state taxation system will become effective on July 21, 2011. The home State could retain 100 percent of the tax on gross premium – if it has amended its own laws. [521(A),(B)]
- National Producer Database
 - *Participation in a uniform national database* – requires states to participate in a national producer database of either the NAIC or an equivalent uniform national database for the licensure and renewal of surplus lines brokers by July 1, 2012. Failure to participate would preclude a state from collecting licensing fees for surplus lines brokers. [523]

Legislative Models

The NRRRA authorizes states to enter into a compact or otherwise establish procedures for the collection and allocation of nonadmitted insurance premium taxes. In the months following the enactment of these provisions, two proposals have advanced: the National Association of Insurance Commissioners' Non-Admitted Insurance Multi-State Agreement (NIMA) and the National Conference of Insurance Legislators' (NCOIL) Surplus Lines Insurance Multi-State Compliance Compact (known as SLIMPACT-Lite). To date, two bills in Kansas have been introduced to address this issue – **SB 178**, the Nonadmitted Insurance Act and **SB 206**, the Surplus Lines Insurance Multi-State Compliance Compact. A comparison chart of the proposals, from the NCOIL perspective is attached (Attachment 2).

2010 SB 178

SB 178 was requested as a Committee bill by the Kansas Insurance Department. The bill would authorize the Insurance Commissioner to enter into agreements with other states as necessary to carry out the purposes of the Act. Among the enumerated purposes of the Act, is the compliance with the Nonadmitted and Reinsurance Reform Act of 2010 and the promotion of nationwide uniform reporting requirements, forms and procedures that facilitate the reporting,

payment, collection, and allocation of premium taxes for nonadmitted insurance for multi-state risks. The bill would define the term "principal place of business" for the purpose of determining the home state of the insured. Among the amendments to current law, the Commissioner would be permitted to issue an excess lines coverage license to any licensed property and casualty agent (Kansas or any other state) and those agents would be allowed to negotiate for insureds whose home state is Kansas. The bill also would amend the collection method and allocation of premium taxes in current law (KSA 40-246c). The bill further would provide that in instances where a state failed to enter into a compact or reciprocal allocation procedure, the net premium tax collected would be retained by the state (Kansas).

2010 SB 206

SB 206 would enact the Surplus Lines Insurance Multi-State Compliance Compact. Among the stated purposes of the Compact is to implement the express provisions of the NRRRA. A Compact commission, the Surplus Lines Insurance Multi-State Compliance Compact Commission, would be created by the states participating in the Compact. The bill also provides for exclusive home state regulation of surplus lines compliance. The Commission would be given the authority to adopt mandatory rules which establish Home State authority, allocation formulas, clearinghouse transaction data, a clearinghouse for the receipt and distribution of allocated premium tax and transaction data, and uniform rulemaking procedures for the purpose of operating and administering the Compact, its bylaws, and its rules [Article 3] Further, the bill details the organization and powers of the Executive Committee. Finally, the Insurance Commissioner would represent the State on the Compact.

The organization established for the Compact Commission and the Executive Committee is similar to prior legislation, 2005 SB 268, that allowed Kansas to join the Interstate Insurance Product Regulation Compact.

Fiscal Note on SB 206 (as introduced)

A fiscal note for SB 206 has been published by the Division of the Budget (Attachment 3). The fiscal note indicates that the Insurance Department currently collects revenue from the 6.0 percent tax on surplus lines premiums. Taxes are required to be submitted by March 1 of each year. The revenue from this tax, the fiscal note continues, is deposited in the State General Fund. Passage of the bill would have the potential to protect the State General Fund from revenue loss. Kansas currently collects approximately \$10.0 million in surplus lines premium taxes each year. The Insurance Department estimated that as much as \$2.0 million of this revenue could be lost to the State if a bill is not passed to comply with the Dodd-Frank Wall Street Reform Act. [This fiscal note also would be applicable to SB 178]

Activities in Other States

State legislatures have begun consideration of legislation to comply with the NRRRA. Bills introduced have included provisions associated with the NIMA or SLIMPACT-Lite models as well as a "third option." Proposed legislation in Mississippi (HB 785), for example, does not endorse either NIMA or SLIMPACT, but instead generally authorizes the Insurance Commissioner to enter into an agreement, compact or other procedures for the purposes of the allocation of premium tax. To date, South Dakota has passed legislation (HB 1030) which allows for the Director to enter into an agreement (some similarities with NIMA). The measure was signed by the Governor on February 17th. A SLIMPACT-Lite bill in Kentucky (HB 167, substitute) has been approved by the House and Senate and was delivered to the Governor on March 4th. In North Dakota, HB 1123, which authorizes the Commissioner to participate in a

premium tax allocation compact or agreement, has passed the House and is in Senate Committee (a committee hearing was scheduled for March 8th). A number of states have had action by the first committee, but has not yet had floor debate on the legislative proposals. A cursory review of state legislative proposals (using reporting by both the National Conference of State Legislatures and the National Association of Professional Surplus Lines Offices, Ltd. [NAPSLO]) indicates that some eleven states have introduced a NIMA or NIMA-type legislation. Eleven states also have introduced the SLIMPACT-Lite legislation. Additionally, nine states have language that permits the "third option" (either entering into an agreement or a compact). Finally, seven states have language that allows for compliance with the NRRRA (namely for tax collection purposes). A number of states, like Kansas, are considering more than one legislative model or approach to compliance with the NRRRA provisions.

SB 206 – Subcommittee Review

The Subcommittee received testimony from proponents supporting SB 206 or SB 178. Proponents of SB 206 included Senator Teichman and representatives of the Kansas Association of Insurance Agents and NAPSLO. Information from the Council of State Governments (a legal review of NIMA) also was distributed. A memorandum on the NRRRA and legislative proposals also was provided by Committee staff.

Proponents of SB 206 indicated, among other things, that an agreement rather than a formal compact might not be as stable in the future. Concerns were raised with NIMA serving as a memorandum of understanding among state insurance regulators versus the SLIMPACT-Lite model requiring state legislative adoption. Representatives of the Insurance Department provided information about the regulation and taxation of surplus lines in Kansas, the NRRRA requirements, and summaries of the two bills. The Department generally spoke to the NIMA legislation and made available information on the work of the NAIC Surplus Lines Implementation Task Force and its efforts to craft a "nationwide solution." All parties to the bill discussed the timing for legislation to be adopted as required under the NRRRA and the potential loss to the State of premium tax revenues, if Kansas does not enter into an agreement or compact with other states.

The Subcommittee recommended using SB 206 as the base bill for amendments. The amendments were requested by the Kansas Insurance Department and would make amendments to current surplus lines and premium tax collection law in the Insurance Code. The requested amendments are similar to those amendments presented in SB 178, with one exception: the quarterly reporting required under SB 178 would be restored to the annual reporting, as allowed in current law. Under the amendments adopted by the subcommittee, the effective date of SB 206 also is updated to publication in the *Kansas Register*. Finally, the Revisor indicated technical amendments to the Compact language would be necessary for review at the time of any action by the full Committee.

Sub. for SB 206 – Senate Committee

The Senate Committee on Financial Institutions and Insurance received the Subcommittee report and held discussion, taking action the following day on the legislation. The Senate Committee recommended a substitute bill to incorporate the amendments to the current surplus lines insurance law and the technical amendments to the Compact language.

STATE OF KANSAS

JEFF LONGBINE
SENATOR, 17TH DISTRICT
2801 LAKERIDGE RD
EMPORIA, KS 66801

STATE CAPITOL, ROOM 235-E
TOPEKA, KANSAS 66612
(785) 296-7384
jeff.longbine@senate.ks.gov



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
COMMERCE
FINANCIAL INSTITUTIONS AND INSURANCE
FEDERAL AND STATE AFFAIRS

Substitute for SB 206

The Federal Nonadmitted and Reinsurance Act (NRRA) was passed by Congress as part of the 2010 Federal Financial Reform Bill, the Dodd-Frank Wall Street Reform and Consumer Protection Act. The measure was signed into law by the President on July 21, 2010. The NRRA provisions become effective upon the expiration of the 12 month period beginning on the date of enactment. (July 21, 2011)

The NRRA requirements govern the allocation and collection of premium tax for excess and surplus lines. The act also places requirements upon States regarding disclosure and data sharing.

Among the relevant provision of the NRRA:

- Compliance, Home State
 1. Home States Exclusive Authority-insured's home State is permitted to collect premium tax
 2. Regulatory Authority- grants exclusive authority for the regulation of surplus line transactions
 3. Broker Licensing- only an insured's home State may require a broker to be licensed.
 4. Exemptions – Worker Comp, Excess Insurance for self funded Work Comp.
- Uniform Standards for Insurers
 1. Nationwide System, Statement of Intent – Each State adopts uniform standards for collection and allocation of premium taxes
 2. Surplus Lines Eligibility (foreign)- establishes criteria for U.S. domiciled companies and requires minimum capital standards.
 3. Surplus Lines Eligibility (alien) – allowing any insurer listed on the NAIC/IID to be eligible
- Legislative Response
 1. Implementation of tax allocation system- prescribes a timeline requiring Legislatures to adopt a tax allocation response.
- National Producer Database
 1. Participation in a uniform database- requires State's participation by July 1, 2012

The NRRA allows States to enter into a compact or otherwise establish procedures for the collection and allocation of nonadmitted insurance premium taxes. The sub-committee and the Senate's Financial Institutions and Insurance committee studied two models for compliance. The National Assoc. of

House Insurance
Date: 3-14-11
Attachment # 2

Insurance Commissioners (NIMA) Non-Admitted Insurance Multi-State Agreement and the National Conference of Insurance Legislators (NCOIL) Surplus Lines Insurance Multi-State Compliance Compact (Sлимпact-Lite) were both considered.

It was the determination of the Committee that the NCOIL (SB206) would best serve the State of Kansas. The bill had considerable organizational structure provided that would allow the member States to move quickly. The compact would organize a Commission that would establish mandatory rules for Home State authority, allocation formulas, clearing house transaction data, a clearinghouse for receipt and distribution of allocated premium tax and transaction data, and uniform rulemaking procedures for the operating and administration of the Compact. Finally the Insurance Commissioner would represent the State on the Compact.

The fiscal note indicates the State currently collects 6% tax on surplus line premiums. Failure to adopt the regulation of NRRA and enter into a multi-state sharing agreement could cost the State \$1.5 to \$2.0 million dollars. It is my belief that if the State does not meet the NRRA requirements then the US government will eventually take over and retain the entire premium tax collections. It was the consensus of the Committee to enter into the Compact to protect against the possible loss.

SB 206 was amended and ultimately substituted by the Committee to incorporate the requirements specific to Kansas law. These recommendations were made by the Kansas Insurance Department and the Kansas Revisers' office.

As Chairman of the Sub-Committee, I feel the Committee worked with the Insurance Department and members of the industry to develop the best model for the State of Kansas. I would ask the House Insurance Committee to strongly consider the substitute for SB206 and recommend its passage. Time is of the essence due to the July 21, 2011 date enacted by Congress. Failure to act will cost the State considerable loss of surplus lines premium tax dollars.