

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2075

As Amended by Senate Committee of the Whole

Brief*

HB 2075, as amended, would enact the Surplus Lines Insurance Multi-State Compliance Compact and make amendments to the current law governing the allocation of surplus lines' premium tax revenue. The model compact legislation (known as SLIMPACT-Lite, a National Conference of Insurance Legislators [NCOIL] initiative) is intended to comply with requirements of the Nonadmitted and Reinsurance Reform Act of 2010 [the NRRRA], legislation enacted in Title V, Subtitle B of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The bill would become effective upon publication in the *Kansas Register*. The Compact would become effective and binding upon legislative enactment of the Compact by two Compacting States. The Commission becomes effective for purposes of adopting Rules and creating the Clearinghouse when there are a total of ten Compacting and Contracting States **or**, when the Compacting and Contracting States represent greater than 40 percent of the Surplus Lines Insurance premium volume (Article 13).

Legislatures, under the provisions of Article 14, could withdraw from the Compact by enacting a statute repealing the enacting statute for the Compact.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

***NRRA requirements, Purposes of
the Compact (Preamble, Article 1)***

Among the stated purposes of the Compact are:

- To implement the express provisions of the NRRA;
- To protect the Premium Tax revenues of the Compacting States through facilitating the payment and collection of Premium Tax on Non-admitted Insurance; and to protect the interests of the Compacting States by supporting the continued availability of such insurance to consumers; and to provide for allocation of Premium Tax for Non-Admitted Insurance of Multi-State risks among the States in accordance with uniform Allocation Formulas to be developed, adopted, and implemented by the Commission;
- To establish a Clearinghouse for receipt and dissemination of Premium Tax and Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to be adopted by the Commission;
- To adopt uniform Rules to provide for Premium Tax payment, reporting, allocation, data collection and dissemination for Non-Admitted Insurance of Multi-State Risks and Single-State Risks, in accordance with Rules to be adopted by the Commission, thereby promoting the overall efficiency of the Non-Admitted Insurance market; and
- To establish the Surplus Lines Multi-State Compliance Compact Commission.

Definitions (Article 2)

Among the definitions established under the Compact (in compliance with definitions and provisions established under the NRRA):

Home State means, (i) 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 (ii) if 100 percent of the insured risk is located out of the State [in part (i)], the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

- *Non-Admitted Insurer* means an insurer that is not authorized or admitted to transact the business of insurance under the law of the Home State.
- *Principal Place of Business* means the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.
- *Surplus Lines Insurance* means insurance procured by a Surplus Lines Licensee from a Surplus Lines Insurer or other Non-Admitted Insurer as permitted under the law of the Home State; for purposes of the Compact, the term also means excess lines insurance as may be defined by applicable State law.

Organization and Powers

The 16 articles of the Compact address: Purpose; Definitions; Establishment of the Commission and Venue; Authority to Establish Mandatory Rules; Powers of the Commission; Organization of the Commission; Meetings and Acts of the Commission; Rules and Operating Procedures: Rulemaking; Commission Records and Enforcement; Dispute Resolution; Review of Commission Decisions; Finance; Compacting States, Effective Date and Amendment; Withdrawal, Default and Termination; and Binding Effect of Compact and Other Laws.

The Compact would create the Surplus Lines Insurance Multi-State Compliance Compact Commission (Commission) whose powers would include the adoption of mandatory

Rules which establish exclusive Home State authority regarding Non-Admitted Insurance of Multi-State Risk, Allocation Formulas, Clearinghouse Transaction Data, a Clearinghouse for receipt and distribution of allocated Premium Tax and Clearinghouse Transaction Data, and uniform rulemaking procedures and Rules for the purpose of financing, administering, operating and enforcing compliance with the provisions of the Compact, its Bylaws and Rules.

The powers of the Commission are outlined in Article 5, with 23 separate stated powers. The Commission would consist of one member from each of the Compacting States; each member would be entitled to one vote (Article 6). The Commission would be responsible for the payment of reasonable expenses of its establishment and organization. The Commission is permitted to accept contributions, grants, and other forms of funding from State stamping offices, Compacting States and other sources to fund the costs of initial operations. The Commission is required, under the Compact, to collect a fee payable to the insured directly or through a Surplus Lines licensee on each transaction process through the Clearinghouse to cover the cost of operations and activities of the Commission (Article 12).

In addition to the Commission, the organizational structure of the Compact includes:

- An Executive Committee (no more than 15 Compacting State representatives) whose duties will include establishing the organizational structure and appropriate procedures for the Commission to provide for the creation of Rules and operating procedures.
- An Operations Committee (no more than 15 representatives) whose duties will include making recommendations to the Executive Committee based on its analysis and determination of the Clearinghouse technology requirements and compatibility with state stamping office systems. Representatives serving on the Committee will be individuals who have extensive

experience and/or employment in the Surplus Lines Insurance business.

- Legislative and Advisory Committees. The Legislative Committee would be comprised of state legislators and is to monitor the operations of and make recommendations to the Commission. The Commission will be permitted to establish Advisory Committees.

Finally, the Compacting legislation provides that the Insurance Commissioner, or an alternate designated by the Commissioner, will represent Kansas on the Surplus Insurance Multi-State Compliance Compact.

Regulation of Surplus (Excess) Lines in Kansas; Amendments

Among the amendments to current law, the Insurance Commissioner would be permitted, upon receipt of an application, 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 for surplus lines insurance in current law to conform to the requirements of the NRRRA. The tax rate of 6.0 percent on gross premiums would remain unchanged. 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). Finally, the bill would increase from \$1.5 million to \$4.5 million, the capital or surplus requirement (from the annual statement) for inclusion on the white list of eligible surplus lines insurers.

Background

The Senate Committee on Financial Institutions and Insurance amendments to the bill delete the contents of the original bill and insert the provisions of Sub. for SB 206 (as

recommended by Senate Committee). The Senate Committee also made a technical amendment to an amendment in current law, contained in Sub. for SB 206.

HB 2075, as introduced, would extend the sunset provision that allows anti-fraud plans to be confidential and not public record.

The Senate Committee of the Whole recommended a technical amendment to the bill.

SB 206. The Senate Committee on Financial Institutions and Insurance recommended a substitute bill (Sub. for SB 206). The substitute incorporates technical amendments to the Compact model language and inserts amendments to current law regulating surplus lines and premium tax collection from SB 178, with one exception (retains annual reporting as authorized in the current law, rather than reporting on a quarterly basis). The adopted amendments also change the effective date of the bill.

SB 206 was introduced by the Senate Committee on Ways and Means and was referred to the Senate Committee on Financial Institutions and Insurance. This Senate Committee organized a subcommittee on the bill. The subcommittee's review also included SB 178 (introduced by the Kansas Insurance Department; the National Association of Insurance Commissioner's model agreement, the Nonadmitted Insurance Multi-State Agreement [NIMA]) and other options for compliance with the NRRA. Proponents of SB 206 included Senator Teichman and representatives of the Kansas Association of Insurance Agents and the National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO). Information from the Council of State Governments (a legal review of NIMA) also was distributed. A memorandum on the NRRA 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 NIRA 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 NIRA 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, incorporating the amendments from the Insurance Department. The full committee reviewed the report and the amendments submitted by the Revisor.

The fiscal note prepared by the Division of the Budget on HB 2075 would no longer apply to the amended bill. The fiscal note for the introduced version of SB 206 indicates that the Kansas Insurance Department states that it 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 is deposited in the State General Fund. Passage of the bill has the potential to protect the State General Fund from revenue loss. Kansas, the fiscal note continues, currently collects approximately \$10.0 million in surplus lines premium taxes each year. The Department estimates 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. Any fiscal effect associated with the bill is not reflected in *The FY 2012 Governor’s Budget Report*.