

Insurance Brokers' and Surplus Lines Tax Law Amendments

Background

The proposed bill brings South Carolina into compliance with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act that was signed into law in 2010. Included in that legislation directed at Wall Street reform was the Non-admitted and Reinsurance Reform Act of 2010 which has important ramifications for surplus lines brokers and the standards for allocating premium taxes to states. The NRRA was enacted to promote uniformity in broker tax filing and reporting procedures among states.

Under the NRRA, only the home state can collect broker premium taxes. This means states that are not the home state for purposes of the allocation of broker premium taxes are no longer permitted to collect tax on business placed in their states. The NRRA recognized this issue and contains language that permits states to enter into agreements for the uniform filing, reporting and allocation of broker premium taxes.

The NRRA took effect on July 21, 2011. Its major provisions are outlined on page 2.

Why this bill is necessary?

- 1 – To ensure that South Carolina law is not preempted by federal law
- 2 – To clarify that as the home state South Carolina is permitted to collect 100 percent of broker premium taxes including those on multi-state risks
- 3 - To combine existing broker premium tax rates into one single broker rate of 6 percent
 - o 4 percent is the current state brokers' tax rate and
 - o 2 percent is the current municipal business license tax rate.
- 4 - To maintain the allocation of the municipal portion of the tax to municipalities.
- 5 – To permit the director of the Department of Insurance or his designee to join NIMA or other agreement regarding the allocation of premium taxes among states.

What happens if this bill doesn't pass?

The economic impact to the state is estimated to be \$21 million. The economic impact to cities and towns is \$9.3 million.

Is this a new tax?

No. This is a tax currently paid by surplus lines brokers to state and municipal governments. This bill only changes the process of collection, not the amount collected. This proposal will actually simplify the payment process for the surplus lines insurers since they will be making payment to a single entity.

How have other states dealt with this issue?

Forty-three states have adopted state law changes needed to comply with this federal law.

Conclusion

This bill includes the minimum changes in law necessary to bring state law into compliance with existing federal law. The Department of Insurance plans to work with members of the industry before the 2013 legislative session regarding insurer eligibility and exempt commercial purchasers.

Major provisions of the NRRA

- **Home State Exclusivity.** Under the NRRA, only the home state of an insured may require any premium tax payment for non-admitted insurance. The NRRA defines “home state” as (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 referred to in clause (i), the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.
- **Home State Regulation.** Only the insured’s home state shall regulate surplus lines insurance (including the licensing of insurance brokers selling surplus lines insurance).
- **National Insurance Producer Database.** States are encouraged to participate in the National Insurance Producer Registry Database for licensing and renewal of surplus lines brokers. States that do not participate in NIPR by July 21, 2012, are not allowed to collect broker licensing or renewal fees.
- **Standards for Insurer Eligibility.** NRRA prohibits a state from imposing eligibility requirements on surplus lines insurers that are domiciled in a U.S. jurisdiction except as set forth by the NAIC Non-admitted Insurance Model Act and where the state has adopted uniform requirements, forms and procedures that are consistent with the NRRA. States cannot prohibit a broker from placing business with an insurer that is listed on the Quarterly Listing of Alien Insurers maintained by the NAIC.
- **Streamlined Process for Commercial Purchasers.** Brokers, seeking to place insurance for an exempt commercial purchaser, are exempt from the due diligence search requirements if they comply with the steps set forth in the statute. The NRRA contains a specific definition of an exempt commercial purchaser.
- **GAO Study of the Market.** The GAO is required to submit a report on the market within 30 months of enactment.

Summary provided by the Municipal Association of South Carolina.