

TAXATION OF SURPLUS LINES OF INSURANCE

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd E. Kiser

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code to address the taxation of surplus lines of insurance including prohibiting local taxation and authorizing the commissioner to enter into certain agreements.

Highlighted Provisions:

This bill:

- ▶ prohibits local taxation of surplus lines insurance transactions;
- ▶ defines terms;
- ▶ authorizes the commissioner to enter into an agreement related to surplus lines insurance;
- ▶ addresses the collection of taxes and fees, if an agreement is entered into, for coverage of property, risks, or exposures located or to be performed in and out of this state; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-3-301, as last amended by Laws of Utah 2005, Chapter 124

31A-3-303, as last amended by Laws of Utah 2003, Chapters 252 and 298

30 ENACTS:

31 **31A-3-305**, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **31A-3-301** is amended to read:

35 **31A-3-301. Tax imposed on surplus lines insurance transactions.**

36 (1) (a) An insurance transaction under Section 31A-15-103 is subject to a tax of
37 4-1/4% of gross premiums, less 4-1/4% of return premiums paid to insureds by reason of policy
38 cancellations or premium reductions.

39 (b) [~~The gross~~] "Gross premium," for a surplus lines insurance transaction, means the
40 monetary consideration for an insurance policy including [~~and~~] the fees charged to the insured,
41 however designated.

42 (2) The tax imposed by this section does not apply to:

43 (a) ocean marine insurance;

44 (b) insurance premiums paid by institutions within the state system of higher education
45 as specified in Section 53B-1-102; or

46 (c) annuities.

47 (3) [~~This tax shall be deposited~~] The department shall deposit a tax imposed by this
48 section in the General Fund.

49 (4) (a) A county, city, or municipality within the state may not impose an occupation
50 tax or other tax or fee on a surplus lines insurance transaction.

51 (b) Notwithstanding Subsection (4)(a), an insurer, producer, or policyholder may be
52 subject to other taxes not described in Subsection (4)(a).

53 Section 2. Section **31A-3-303** is amended to read:

54 **31A-3-303. Payment of tax.**

55 (1) [~~The~~] (a) An insurer, [~~and~~] the producers involved in the transaction, and the
56 policyholder are jointly and severally liable for the payment of the taxes required under Section
57 31A-3-301.

58 (b) The policyholder's liability for payment of the premium tax under Section
59 31A-3-301 ends when the policyholder pays the tax to ~~[the]~~ a producer or an insurer.

60 (c) The insurer and ~~[and]~~ the producers involved in the transaction are jointly and
61 severally liable for the payment of the additional tax required under Section 31A-3-302.

62 (d) Except for the tax under Section 31A-3-302, the ~~[taxes]~~ policyholder shall pay a tax
63 under this part ~~[shall be paid by the policyholder who]~~ and shall be billed specifically for the
64 tax when billed for the premium.

65 (e) Except for the tax imposed under Section 31A-3-302, absorption of the tax by the
66 producer or insurer is an unfair method of competition under Section 31A-23a-402.

67 (2) (a) The commissioner shall by rule prescribe accounting and reporting forms and
68 procedures for insurers, producers, and policyholders to use in determining the amount of taxes
69 owed under this part, and the manner and time of payment.

70 (b) If a tax is not paid within the time prescribed under the commissioner's rule, a
71 penalty shall be imposed of 25% of the tax due, plus 1-1/2% per month from the time of
72 default until full payment of the tax.

73 (3) Upon making a record of its actions, and upon reasonable cause shown, the ~~[State~~
74 ~~Tax Commission]~~ commissioner may waive, reduce, or compromise any of the penalties or
75 interest imposed under this part.

76 (4) ~~[H]~~ (a) Subject to Section 31A-3-305, if a policy covers risks that are only partially
77 located in this state, for computation of tax under this part the premium shall be reasonably
78 allocated among the states on the basis of risk locations. However, ~~[and]~~ the premiums with
79 respect to surplus lines insurance received in this state by a surplus lines producer or charged
80 on policies written or negotiated in or from this state are taxable in full under this part, subject
81 to a credit for any tax actually paid in another state to the extent of a reasonable allocation on
82 the basis of risk locations.

83 (5) ~~[A]~~ Subject to Section 31A-3-305, the premium taxes collected under this part by
84 a producer or by an insurer are the property of this state.

85 (6) If the property of ~~[any]~~ a producer is seized under any process in a court in this

86 state, or if [his] a producer's business is suspended by the action of creditors or put into the
87 hands of an assignee, receiver, or trustee, [~~all~~] the taxes and penalties due this state under this
88 part are preferred claims and the state is to that extent a preferred creditor.

89 Section 3. Section **31A-3-305** is enacted to read:

90 **31A-3-305. Agreement related to nonadmitted insurance taxes.**

91 (1) As used in this section:

92 (a) "Agreement" means a cooperative agreement, reciprocal agreement, or compact
93 with one or more other states.

94 (b) (i) "Home state," except as provided in Subsections (1)(b)(ii) and (iii), with respect
95 to an insured, means:

96 (A) the state in which the insured maintains its principal place of business or, in the
97 case of an individual, the individual's principal residence; or

98 (B) if 100% of the insured risk is located out of the state described in Subsection
99 (1)(b)(i)(A), the state to which the greatest percentage of the insured's taxable premium for that
100 insurance contract is allocated.

101 (ii) If more than one insured from an affiliated group are named insureds on a single
102 nonadmitted insurance contract, "home state" means the home state determined under
103 Subsection (1)(b)(i) of the member of the affiliated group that has the largest percentage of
104 premium attributed to it under the nonadmitted insurance contract.

105 (iii) (A) When a group policyholder pays 100% of the premium from its own money,
106 "home state" means the home state determined under Subsection (1)(b)(i) of the group policy
107 holder.

108 (B) When a group policyholder does not pay 100% of the premium from its own
109 money, "home state" means the home state determined under Subsection (1)(b)(i) of the group
110 member.

111 (c) "Principal place of business," for purposes of determining the home state of an
112 insured, means:

113 (i) the state where the insured maintains its headquarters and where the insured's

114 high-level officers direct, control, and coordinate the business activities;

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

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

121 (d) "Principal residence," with respect to determining the home state of an insured,
122 means:

123 (i) the state where the insured resides for the greatest number of days during a calendar
124 year; or

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

127 (2) The commissioner may enter into an agreement to:

128 (a) facilitate the collection, allocation, and disbursement of premium taxes attributable
129 to the placement of nonadmitted insurance;

130 (b) provide for uniform methods of allocation and reporting among nonadmitted
131 insurance risk classifications; and

132 (c) share information among states relating to nonadmitted insurance premium taxes.

133 (3) If the commissioner enters into an agreement under Subsection (2), the following
134 apply:

135 (a) In addition to the full amount of gross premiums charged by the insurer for the
136 insurance, a surplus lines producer shall collect and pay to the commissioner a sum based on
137 the total gross premiums charged, less any return premiums, for surplus lines insurance
138 provided by the surplus lines producer.

139 (b) When surplus lines insurance covers property, risks, or exposures located or to be
140 performed in and out of this state, the sum payable is calculated as follows:

141 (i) calculate an amount equal to the applicable tax rates under this part on that portion

142 of the gross premiums allocated to this state pursuant to the agreement;

143 (ii) add to the amount under Subsection (3)(b)(i) an amount equal to the portion of the
144 premiums allocated to other states or territories on the basis of the tax rates and fees applicable
145 to properties, risks, or exposures located or to be performed outside of this state pursuant to the
146 agreement; and

147 (iii) subtract from the amount under Subsection (3)(b)(ii) the amount of gross
148 premiums allocated to this state and returned to the insured.

149 (c) The tax on any portion of the premium unearned at termination of insurance having
150 been credited by the state to the licensee shall be returned to the policyholder directly by the
151 surplus lines producer. A surplus lines producer may not absorb or rebate, for any reason, any
152 part of the tax.

153 (4) The commissioner may participate in a clearinghouse established through an
154 agreement described in Subsection (2) for the purpose of collecting or disbursing to reciprocal
155 states any money collected pursuant to Subsection (3) applicable to properties, risks, or
156 exposures located or to be performed outside of this state. To the extent that other states where
157 portions of the properties, risks, or exposures reside have failed to enter into an agreement with
158 this state, the state shall retain the net premium tax collected.

159 (5) The commissioner may adopt an allocation schedule included in an agreement
160 described in Subsection (2) for the purpose of allocating risk and computing the tax due on the
161 portion of premium attributable to each risk classification and to each state where properties,
162 risks, or exposures reside.

163 (6) The commissioner may apply the definition of "home state" in Subsection (1) when
164 implementing an agreement described in Subsection (2).

165 (7) The commissioner shall report to the Business and Labor Interim Committee
166 regarding the nature and status of any agreement into which the commissioner enters under
167 Subsection (2).