

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 1097

**PRINTER'S NO.** 1279

**AMOUNT**

\$1,400,000

**FUND**

General Fund

**DATE INTRODUCED**

June 6, 2011

**PRIME SPONSOR**

Senator D. White

**HISTORY OF BILL**

Referred to BANKING AND INSURANCE, June 6, 2011

Reported as committed, June 7, 2011

First consideration, June 7, 2011

Second consideration, June 13, 2011

Re-referred to APPROPRIATIONS, June 13, 2011

Re-reported as committed, June 14, 2011

**DESCRIPTION AND PURPOSE OF BILL**

The United States Congress enacted the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA") as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRRRA implements reforms for surplus lines insurance, independently procured insurance and reinsurance.

Pennsylvania currently imposes a surplus lines tax and a tax on independently procured insurance. Under the surplus lines tax, the insured is the taxpayer, but a surplus lines licensee remits the tax. Under the tax on independently procured insurance, the tax is imposed on and remitted by the insured. The tax is imposed on Pennsylvania risks. If a policy covers risk in Pennsylvania and one or more additional states, an allocation provision presently ensures each type of tax is paid only on the portion of the premiums that relate to Pennsylvania risks.

Senate Bill 1097 amends Title 72 – Taxation and Fiscal Affairs to address provisions of the NRRRA:

1. Amendment is made to a related statute on the subject of premium tax to make that statute consistent with amendments made to the surplus lines law.

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Senate Bills 1096 and 1097 amends statutes consistent with the NRRRA reforms and also to allow the Commonwealth to collect tax on 100% of the premium when Pennsylvania is the home State of the insured. Failure to have the amendments in place by July 1, 2011, will mean, in the case of a multi-state risk, that: (1) the Commonwealth loses the tax currently received from a multi-state risk home State outside of this Commonwealth, (2) the Commonwealth will have authority to collect tax only on that portion of the premium ascribable to that portion of the risk situated in this Commonwealth when Pennsylvania is the home State of the insured, and (3) the premium ascribable to the risk situated outside of this Commonwealth when Pennsylvania is the home State of the insured will be uncollectible.

Senate Bill 1096 amends existing Pennsylvania statute relating to the regulation of surplus lines insurance and independently procured insurance. The main thrust of the NRRRA reforms are to streamline surplus lines insurance regulation by giving sole regulatory authority over a surplus lines and independently procured transaction to the "home State" of the insured.

The NRRRA also changes the way surplus lines and independently procured insurance is taxed. The NRRRA provides that no state other than the home State of an insured may require premiums tax payment for nonadmitted insurance. Under Senate Bills 1096 & 1097, Pennsylvania will not impose premiums tax unless Pennsylvania is the home state of the insured. These bills also changes the taxation of multi-state risks from an allocation method (taxing only the Pennsylvania risk) to a gross premiums method (taxing the entire premium regardless of where the risk is located) for policies placed after June 30, 2011.

Senate Bill 1096 amends various sections of Article XVI of the Insurance Company Law to address provisions of the NRRRA:

1. NRRRA (Sec. 522) subjects the placement of surplus lines and independently procured insurance to the statutory and regulatory requirements of the insured's home State. A scope was added to Section 1601 and definitions from the NRRRA for "home State," "affiliate," "affiliated group," "control," and "state" were added to Section 1602.
2. NRRRA (Sec. 524) sets out specified standards for eligibility of nonadmitted insurers along with the notion of additional or alternative uniform nationwide standards. These standards were incorporated into Section 1605.
3. NRRRA (Sec. 525) provides that surplus lines brokers seeking to procure or place nonadmitted insurance on behalf of an "exempt commercial purchaser" are not required to satisfy any diligent search requirements. Definitions of "exempt commercial purchaser" and "qualified risk manager" were added to Section 1610.

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4. NRRA (Sec. 522) provides that only the insured's home State may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to that insured. An amendment was made to Section 1615.
5. Reference was added in Section 1615 to the definition of "home state" as it relates to licensing which differs from the NRRA definition of "home State" as it relates to the insured.
6. NRRA (Sec. 521) provides that "no state other than the home State of an insured may require any premium tax payment for nonadmitted insurance." The Commonwealth is currently an allocation state in that, in the case of a multi-state risk, tax is levied only on that portion of the premium ascribable to that portion of the risk situated in the Commonwealth. Significant changes are proposed to Sections 1621 and 1622 to conform surplus lines and independently procured premiums taxation to the NRRA requirements, and to authorize the Commonwealth to collect tax on 100% of the premium for a home State insured.
7. An amendment was made to Section 1623 to clarify the Department's current authority to suspend, revoke or nonrenew a surplus lines licensee for failure to collect premium tax.

### **FISCAL IMPACT:**

Absent any legislative action, the Commonwealth would lose \$1,900,000 in taxes collected on surplus lines and independently procured insurance. The passage of this legislation and the simultaneous passage of Senate Bill 1096 will reduce the loss of tax revenue by \$1,400,000 to \$500,000.