

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1601 Session of
2011

INTRODUCED BY GODSHALL, MICOZZIE, BOYD, FABRIZIO, KOTIK,
PICKETT, QUINN AND SCHRODER, MAY 25, 2011

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 8, 2011

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," further providing for purpose, for
12 definitions, for acting for or aiding nonadmitted insurers,
13 for requirements for eligible surplus lines insurers, for
14 surplus lines licensee's duty to notify insured, for exempt
15 risks, for surplus lines advisory organizations, for
16 licensing of surplus lines licensee, for surplus lines
17 licensees may accept business from insurance producer, for
18 surplus lines tax, for tax on independently procured
19 insurance and for suspension, revocation or nonrenewal of
20 surplus lines licensee's license.

21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Section 1601 of the act of May 17, 1921 (P.L.682,
24 No.284), known as The Insurance Company Law of 1921, added
25 December 18, 1992 (P.L.1519, No.178), is amended to read:

26 Section 1601. Purpose and scope.--(a) The purpose of this

1 article is to protect the public interest by:

2 (1) Protecting persons seeking insurance in this
3 Commonwealth.

4 (2) Permitting surplus lines insurance to be placed with
5 reputable and financially sound nonadmitted insurers and
6 exported from this Commonwealth pursuant to this article.

7 (3) Establishing a system of regulation which will permit
8 orderly access to surplus lines insurance in this Commonwealth
9 and encouraging insurers to make new and innovative types of
10 insurance available to consumers in this Commonwealth.

11 (4) Protecting revenues of this Commonwealth.

12 (b) (1) The provisions of this article, in so far as they
13 relate to the placement of surplus lines insurance and
14 independently procured insurance, shall apply when this
15 Commonwealth is the home state of the insured.

16 (2) The provisions of this article, in so far as they relate
17 to the imposition of surplus lines and independently procured
18 premium tax and penalties for policies placed after June 30,
19 2011, shall apply when this Commonwealth is the home state of
20 the insured.

21 (3) The provisions of this article, in so far as they relate
22 to the collection, reporting and remittance of surplus lines
23 insurance and independently procured insurance premium tax for
24 policies placed after June 30, 2011, shall apply when this
25 Commonwealth is the home state of the insured.

26 Section 2. Sections 1602, 1603(c)(6), 1605(a) and 1608 of
27 the act, amended March 22, 2010 (P.L.147, No.14), are amended to
28 read:

29 Section 1602. Definitions.--As used in this article the
30 following words and phrases shall have the meanings given to

1 them in this section:

2 "Admitted insurer." An insurer licensed to do an insurance
3 business in this Commonwealth.

4 "Affiliate." With respect to an insured, any entity that
5 controls, is controlled by or is under common control with the
6 insured.

7 "Affiliated group." Any group of entities that are all
8 affiliated.

9 "Business entity." A corporation, a partnership, a limited
10 liability company, a limited liability partnership, a business
11 trust or any other entity doing business other than as a natural
12 person.

13 "Capital." The term, as used in the financial requirements
14 of section 1605, means funds paid for stock or other evidence of
15 ownership.

16 "Commissioner." The Insurance Commissioner of the
17 Commonwealth.

18 "Control." An entity has control over another entity if:
19 (1) the entity directly or indirectly or acting through one
20 or more other persons owns, controls or has the power to vote
21 twenty-five per centum (25%) or more of any class of voting
22 securities of the other entity; or

23 (2) the entity controls in any manner the election of a
24 majority of the directors or trustees of the other entity.

25 "Department." The Insurance Department of the Commonwealth.

26 "Eligible surplus lines insurer." A nonadmitted insurer with
27 which a surplus lines licensee may place surplus lines insurance
28 under section 1604.

29 "Export." To place surplus lines insurance with either a
30 nonadmitted insurer or an eligible surplus lines insurer in

1 accordance with this article.

2 ~~"Home state." Except as provided under section 1615(g), as~~ ←
3 ~~follows:~~

4 ~~(1) With respect to an insured:~~

5 "HOME STATE." ←

6 (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), WITH RESPECT TO
7 AN INSURED:

8 (i) the state in which an insured maintains its principal
9 place of business or, in the case of an individual, the
10 individual's principal residence; or

11 (ii) if one hundred per centum (100%) of the insured risk is
12 located out of the state referred to under subparagraph (i), the
13 state to which the greatest percentage of the insured's taxable
14 premium for that insurance contract is allocated.

15 (2) If more than one insured from an affiliated group are
16 named insureds on a single nonadmitted insurance contract, the
17 term means the home state, as determined under paragraph (1), of
18 the member of the affiliated group that has the largest
19 percentage of premium attributed to it under the insurance
20 contract.

21 (3) THIS DEFINITION SHALL NOT APPLY TO SECTION 1615(G). ←

22 "Independently procured insurance." Any insurance [which a
23 resident of this Commonwealth directly negotiates with and
24 purchases, continues or renews from a nonadmitted insurer
25 without securing the services of an insurance producer or
26 surplus lines licensee] directly procured by an insured from a
27 nonadmitted insurer.

28 "Insurance producer." A person that is licensed to sell,
29 solicit or negotiate contracts of insurance with admitted
30 insurers.

1 "Kind of insurance." One of the types of insurance required
2 to be reported in the annual statement which must be filed with
3 the department by admitted insurers.

4 "Nonadmitted insurer." An insurer not authorized and not
5 licensed to do an insurance business in this Commonwealth. The
6 term includes insurance exchanges as authorized under the laws
7 of various states. The term does not include a risk retention
8 group.

9 "Person." A natural person or business entity.

10 "Purchasing group." An entity formed to purchase liability
11 insurance under the Risk Retention Amendments of 1986 (Public
12 Law 99-563, 100 Stat. 3170).

13 "Risk retention group." An insurer organized to do business
14 under the Risk Retention Amendments of 1986 (Public Law 99-563,
15 100 Stat. 3170).

16 "State." Any state of the United States, the District of
17 Columbia, the Commonwealth of Puerto Rico, Guam, the Northern
18 Mariana Islands, the Virgin Islands and American Samoa.

19 "Surplus." The term, as used in the financial requirements
20 of section 1605, means funds over and above liabilities and
21 capital of the company for the protection of its policyholders.

22 "Surplus lines insurance." Any insurance [of risks resident,
23 located or to be performed in this Commonwealth,] permitted to
24 be placed through a surplus lines licensee with a nonadmitted
25 insurer eligible to accept such insurance, other than
26 reinsurance, wet marine and transportation insurance,
27 independently procured insurance, life insurance and annuities
28 and coverage obtained from risk retention groups under the Risk
29 Retention Amendments of 1986 (Public Law 99-563, 100 Stat.
30 3170).

1 "Surplus lines licensee." A person licensed as a surplus
2 lines producer under section 1615 to place surplus lines
3 insurance with nonadmitted insurers eligible to accept such
4 insurance.

5 "Type of insurance." Coverage afforded under the particular
6 policy that is being placed.

7 "Wet marine and transportation insurance." Any of the
8 following:

9 (1) Insurance upon vessels, crafts or hulls and of interests
10 therein or with relation thereto.

11 (2) Insurance of marine builder's risks, marine war risks
12 and contracts of marine protection and indemnity insurance.

13 (3) Insurance of freights and disbursements pertaining to a
14 subject of insurance coming within this definition.

15 (4) Insurance of personal property and interest therein, in
16 the course of exportation from or importation into any country,
17 or in the course of transportation coastwise or on inland
18 waters, including transportation by land, water or air from
19 point of origin to final destination, in connection with any and
20 all risks or perils of navigation, transit or transportation,
21 and while being prepared for and while awaiting shipment, and
22 during any delays, transshipment or reshipment. Insurance of
23 personal property and interests therein shall not be considered
24 wet marine and transportation insurance if:

25 (i) the property has been transported solely by land;

26 (ii) the property has reached its final destination as
27 specified in the bill of lading or other shipping document; or

28 (iii) the insured no longer has an insurable interest in the
29 property.

30 (5) Any insurance associated with transportation of property

1 listed under this definition.

2 "Writing producer." The insurance producer which brings
3 about or negotiates contracts of insurance directly on behalf of
4 the consumer seeking insurance.

5 Section 1603. Acting for or Aiding Nonadmitted Insurers.--*

6 * *

7 (c) This section does not apply to any of the following:

8 * * *

9 (6) Transactions subsequent to issuance of a policy [not
10 covering domestic risks at time of issuance and lawfully
11 solicited, written or delivered outside of this Commonwealth] in
12 which this Commonwealth becomes the home state.

13 * * *

14 Section 1605. Requirements for Eligible Surplus Lines
15 Insurers.--(a) No surplus lines licensee shall place any
16 coverage with a nonadmitted insurer unless, at the time of
17 placement, such nonadmitted insurer[:

18 (1) Is of good repute and financial integrity.

19 (2) Qualifies under any of the following subparagraphs:

20 (i) Has policyholder surplus equal to or greater than two
21 times the minimum capital and surplus required to be fully
22 licensed in this Commonwealth. Two (2) years from the effective
23 date of this article is granted to allow those nonadmitted
24 insurers which are eligible surplus lines insurers on the
25 effective date of this article to achieve this capital and
26 surplus requirement. If an alien insurer, as defined by the act
27 of December 10, 1974 (P.L.804, No.266), referred to as the Alien
28 Insurer Domestication Law, it shall maintain in the United
29 States an irrevocable trust fund in either a national bank or a
30 member of the Federal Reserve System, in an amount not less than

1 that currently required by the National Association of Insurance
2 Commissioners' International Insurers Department or its
3 successor for the protection of all of its policyholders in the
4 United States, and such trust fund consists of cash, securities,
5 letters of credit or investments of substantially the same
6 character and quality as those which are eligible investments
7 for admitted insurers authorized to write like kinds of
8 insurance in this Commonwealth. Such trust fund will be in
9 addition to the capital and surplus required in this
10 subparagraph and shall have an expiration date which at no time
11 shall be less than five (5) years.

12 (ii) Is any Lloyd's or other similar group of insurers which
13 includes unincorporated individual insurers that maintains a
14 trust fund of not less than fifty million (\$50,000,000) dollars
15 as security to the full amount thereof for all policyholders and
16 creditors in the United States of each member of the group. Such
17 trust funds shall likewise comply with the terms and conditions
18 established in subparagraph (i) for alien insurers.

19 (iii) Is an insurance exchange created by the laws of
20 individual states that maintains capital and surplus or the
21 substantial equivalent thereof of not less than fifteen million
22 (\$15,000,000) dollars in the aggregate. For insurance exchanges
23 which maintain funds for the protection of all insurance
24 exchange policyholders, each individual syndicate shall maintain
25 minimum capital and surplus or the substantial equivalent
26 thereof of not less than one million five hundred thousand
27 (\$1,500,000) dollars. In the event the insurance exchange does
28 not maintain funds for the protection of all insurance exchange
29 policyholders, each individual syndicate shall meet the minimum
30 capital and surplus requirements of subparagraph (i).

1 (3) Has provided to the department a copy of its current
2 annual financial statement certified by such insurer, such
3 statement to be provided no more than thirty (30) days after the
4 date required for filing an annual financial statement in its
5 domiciliary jurisdiction and which is either:

6 (i) certified by the regulatory authority in the domicile of
7 the insurer; or

8 (ii) certified by an accounting or auditing firm licensed in
9 the jurisdiction of the insurer's domicile.

10 In the case of an insurance exchange, the statement may be an
11 aggregate statement of all underwriting syndicates operating
12 during the period reported.] qualifies under one of the
13 following:

14 (1) (i) is authorized to write the type of insurance in its
15 domiciliary jurisdiction; and

16 (ii) has capital and surplus or its equivalent under the
17 laws of its domiciliary jurisdiction which is greater than or
18 equal to fifteen million (\$15,000,000) dollars. The requirement
19 of this subparagraph may be satisfied by an insurer's possessing
20 less than the minimum capital and surplus upon an affirmative
21 finding of acceptability by the commissioner. The finding shall
22 be based upon such factors as quality of management, capital and
23 surplus of any parent company, company underwriting profit and
24 investment income trends, market availability and company record
25 and reputation within the industry. In no event shall the
26 commissioner make an affirmative finding of acceptability when
27 the nonadmitted insurer's capital and surplus is less than four
28 million five hundred thousand (\$4,500,000) dollars.

29 (2) If domiciled outside the United States, is listed on the
30 Quarterly Listing of Alien Insurers maintained by the

1 International Insurers Department of the National Association of
2 Insurance Commissioners.

3 * * *

4 Section 1608. Surplus Lines Licensee's Duty to Notify
5 Insured.--At the time of presenting a quotation to the insured,
6 the surplus lines licensee shall present to the insured or to
7 the writing producer written notice that the insurance or a
8 portion thereof involves placement with nonadmitted insurers.
9 The surplus lines licensee shall, either directly or through the
10 writing producer, give notice to the insured that:

11 (1) the insurer with which the licensee places the insurance
12 is not licensed by the [Pennsylvania Insurance Department]
13 department and is subject to its limited regulation; and

14 (2) in the event of the insolvency of an eligible surplus
15 lines insurer, losses will not be paid by the Pennsylvania
16 Property and Casualty Insurance Guaranty Association.

17 Section 3. Section 1610(a) of the act, added December 18,
18 1992 (P.L.1519, No.178), is amended and the section is amended
19 by adding subsections to read:

20 Section 1610. Exempt Risks.--[(a) The diligent search
21 requirements of section 1604(2), the reporting requirements of
22 section 1609(a) and the twenty-five per centum (25%) limitation
23 of section 1606 are not applicable to placements of insurance
24 with nonadmitted insurers for risks of an insured which meets at
25 least three of the following requirements:

26 (1) The insured employs a full-time risk manager or
27 contracts for services from a qualified risk management service.

28 (2) The insured has gross sales in excess of one hundred
29 million (\$100,000,000) dollars.

30 (3) The insured regularly employs in excess of two hundred

1 fifty (250) full-time employees.

2 (4) The insured has assets in excess of one hundred million
3 (\$100,000,000) dollars.

4 (5) The insured has insurance premiums for property and
5 casualty insurance, excluding employee benefits, in excess of two
6 hundred fifty thousand (\$250,000) dollars.

7 (6) The insured is seeking insurance for risks resident,
8 located or to be performed in one or more states other than this
9 Commonwealth and the portion of the total risk ascribable to
10 states other than this Commonwealth exceeds fifty per centum
11 (50%).]

12 (a.1) The diligent search requirements of section 1604(2),
13 the reporting requirements of section 1609(a) and the twenty-
14 five per centum (25%) limitation of section 1606 shall not apply
15 to placements of insurance with nonadmitted insurers for an
16 exempt commercial purchaser if:

17 (1) the surplus lines licensee procuring or placing the
18 surplus lines insurance has disclosed to the exempt commercial
19 purchaser that the insurance may be available from the admitted
20 market that may provide greater protection with more regulatory
21 oversight; and

22 (2) the exempt commercial purchaser has subsequently
23 requested in writing the surplus lines licensee to procure or
24 place the insurance from a nonadmitted insurer.

25 * * *

26 (c) The following words and phrases when used in this
27 section shall have the meanings given to them in this subsection
28 unless the context clearly indicates otherwise:

29 "Exempt commercial purchaser." Any person purchasing
30 commercial insurance that, at the time of placement, meets the

following requirements:

(1) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(2) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand (\$100,000) dollars in the immediately preceding twelve (12) months.

(3) (i) The person meets at least one of the following criteria:

(A) The person ~~posses~~ POSSESSES a net worth in excess of twenty million (\$20,000,000) dollars, as adjusted under subparagraph ~~elause~~ (ii).

(B) The person generates annual revenues in excess of fifty million (\$50,000,000) dollars, as adjusted under subparagraph (ii).

(C) The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate.

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million (\$30,000,000) dollars, as adjusted under subparagraph (ii).

(E) The person is a municipality with a population in excess of fifty thousand (50,000) persons.

(ii) Beginning January 1, 2015 and every five years thereafter, the amounts under clauses (A), (B) and (D) shall be adjusted to reflect the percentage change for the five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of

1 Labor and Industry.

2 "Qualified risk manager." With respect to a policyholder of
3 commercial insurance, a person who meets all of the following
4 requirements:

5 (1) The person is an employee of, or third-party consultant
6 retained by, the commercial policyholder.

7 (2) The person provides skilled services in loss prevention,
8 loss reduction or risk and insurance coverage analysis and
9 purchase of insurance.

10 (3) The person:

11 (i) (A) has a bachelor's degree or higher from an
12 accredited college or university in risk management, business
13 administration, finance, economics or any other field determined
14 by the commissioner to demonstrate minimum competence in risk
15 management; and

16 (B) (I) has three (3) years of experience in risk
17 financing, claims administration, loss prevention, risk and
18 insurance analysis or purchasing commercial lines of insurance;
19 or

20 (II) has:

21 (a) a designation as a Chartered Property and Casualty
22 Underwriter issued by the American Institute for Chartered
23 Property and Casualty Underwriter/Insurance Institute of
24 America;

25 (b) a designation as an Associate in Risk Management issued
26 by the American Institute for Chartered Property and Casualty
27 Underwriter/Insurance Institute of America;

28 (c) a designation as Certified Risk Manager issued by the
29 National Alliance for Insurance Education & Research;

30 (d) a designation as a RIMS Fellow issued by the Global Risk

Management Institute; or

(e) any other designation, certification or license
determined by the commissioner to demonstrate minimum competency
in risk management;

(ii) (A) has at least seven (7) years of experience in risk
financing, claims administration, loss prevention, risk and
insurance coverage analysis or purchasing commercial lines of
insurance; and

(B) has any one of the designations specified under clauses
(a), (b), (c), (d) and (e);

(iii) has at least ten (10) years of experience in risk
financing, claims administration, loss prevention, risk and
insurance coverage analysis or purchasing commercial lines of
insurance; or

(iv) has a graduate degree from an accredited college or
university in risk management, business administration, finance,
economics or any other field determined by the commissioner to
demonstrate minimum competence in risk management.

Section 4. Section 1611(f) of the act, amended March 22,
2010 (P.L.147, No.14), is amended to read:

Section 1611. Surplus Lines Advisory Organizations.--* * *

(f) The advisory organization may submit reports and make
recommendations to the department regarding the financial
condition of any eligible surplus lines insurer. These reports
and recommendations shall not be considered to be public
information or subject to any Federal or [State] state freedom
of information law. There shall be no liability on the part of
nor shall any cause of action of any nature be sustained against
eligible surplus lines insurers, the advisory organization or
its members, agents, employes, officers or directors or the

1 department or authorized representatives of the department for
2 statements and any reports or recommendations made by them in
3 good faith under this section.

4 * * *

5 Section 5. Section 1615(a) of the act, amended March 22,
6 2010 (P.L.147, No.14), is amended and the section is amended by
7 adding subsections to read:

8 Section 1615. Licensing of Surplus Lines Licensee.--(a)
9 [No] For insureds whose home state is this Commonwealth, no
10 insurance producer licensed by the department shall transact
11 surplus lines insurance with any nonadmitted insurer unless the
12 insurance producer possesses a valid surplus lines producer's
13 license issued by the department.

14 * * *

15 (c.2) The commissioner may participate with the National
16 Association of Insurance Commissioners or its affiliates in a
17 centralized insurance producer registry for the purpose of
18 submitting or obtaining information on insurance producers,
19 surplus lines producers and other licensees, including licensing
20 history, lines of authority and regulatory actions.

21 * * *

22 (g) As used in subsection (c.1), the term "home state" for
23 an insurance producer or surplus lines producer shall be as
24 defined as in section 601-A of the act of May 17, 1921 (P.L.789,
25 No.285), known as "The Insurance Department Act of 1921."

26 Section 6. Sections 1616, 1621, 1622 and 1623 of the act,
27 amended March 22, 2010 (P.L.147, No.14), are amended to read:

28 Section 1616. Surplus Lines Licensees May Accept Business
29 from Insurance [Producer] Producers.--A surplus lines licensee
30 may originate surplus lines insurance or accept such insurance

1 from an insurance producer duly licensed as to the kind or kinds
2 of insurance involved, and the surplus lines licensee may
3 compensate the insurance producer.

4 Section 1621. Surplus Lines Tax.--(a) (1) There is hereby
5 levied a tax of three per centum (3%) on all premiums charged
6 for insurance which is placed with either an eligible surplus
7 lines insurer, other than a risk retention group, or other
8 nonadmitted insurer in accordance with this article, such taxes
9 to be based on the gross premiums charged less any return
10 premiums. This tax shall be in addition to the full amount of
11 the gross premium charged by the insurer for the insurance. The
12 tax on any unearned portion of the premium shall be returned to
13 the insured.

14 [(b) Neither the surplus lines licensee nor the writing
15 producer shall pay directly or indirectly such tax or any
16 portion thereof, either as an inducement to the insured to
17 purchase the insurance or for any other reason.

18 (c) The surplus lines licensee shall collect from the
19 insured or the writing producer the amount of the tax at the
20 time of delivery of the initial policy, cover note or other
21 evidence of insurance or at such time thereafter as is
22 reasonably consistent with normal credit terms customary in the
23 business. Each surplus lines licensee shall, on or before
24 January 31 of each year, file with the Department of Revenue a
25 report of all transactions involving the placement of insurance
26 with either an eligible surplus lines insurer or other
27 nonadmitted insurers during the previous calendar year. The
28 report shall set forth the name of the insured, identification
29 of the insurer, the type of insurance, gross premiums charged
30 less any return premiums allowed and the tax due as provided in

1 this section. The remittance for the taxes due shall accompany
2 this report. Such report shall be made on forms prescribed and
3 furnished by the Department of Revenue. A copy of the report
4 shall be filed with the department by the surplus lines
5 licensee. A surplus lines licensee that is a business entity
6 licensee which files the annual premium tax return with the
7 Department of Revenue shall include in its return the premium
8 taxes generated during the year subject to reporting by all
9 licensees associated with said business entity during the
10 reporting period.]

11 [(d)] (2) In the event that a placement of insurance
12 involves subjects of insurance resident, located or to be
13 performed in one or more states other than this Commonwealth,
14 then the premium taxes provided for in this section shall be
15 levied:

16 (i) For policies placed before July 1, 2011, only on that
17 portion of the premium reasonably ascribable to that portion of
18 the risk situated in this Commonwealth.

19 (ii) For policies placed after June 30, 2011, upon the gross
20 premium charged less any return premiums where this Commonwealth
21 is the home state of the insured.

22 (d.1) (1) Each surplus lines licensee shall, on or before
23 January 31 of each year, file a report of all premiums
24 transacted from the placement of insurance with either an
25 eligible surplus lines insurer or other nonadmitted insurers
26 during the previous calendar year. The report shall be filed as
27 prescribed by the Department of Revenue with any payment. A full
28 copy of the report shall be filed with the department by the
29 surplus lines licensee.

30 (2) The report described under this subsection shall set

forth the name of the insured, the home state of the insured, if
required by the department, identification of the insurer, the
type of insurance, gross premiums charged less any return
premiums allowed, the tax due as provided in this section and
any other information as required by the Department of Revenue.
A surplus lines licensee that is a business entity licensee
which files the annual premium tax return with the Department of
Revenue shall include in its return the premium taxes generated
during the year subject to reporting by all licensees associated
with said business entity during the reporting period. The
report shall be made on forms prescribed by the Department of
Revenue.

(3) The remittance for the taxes due shall accompany the
report described under this subsection. Neither the surplus
lines licensee nor the writing producer shall pay directly or
indirectly the tax or any portion of the tax, either as an
inducement to the insured to purchase the insurance or for any
other reason. The surplus lines licensee shall collect from the
insured or the writing producer the amount of the tax at the
time of delivery of the initial policy, cover note or other
evidence of insurance or at the time thereafter as is reasonably
consistent with normal credit terms customary in the business.

(4) A penalty shall be imposed for failure to file the
report required under this subsection on or before the due date
in accordance with the rules of section 403(d) of the act of
March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of
1971."

(e) With respect to insurance placed with or issued by a
risk retention group which is an eligible surplus lines insurer,
there is hereby levied a tax of two per centum (2%) on all

1 premiums charged for risks resident, located or to be performed
2 in this Commonwealth. The risk retention group shall be
3 responsible for the payment of the taxes levied in this article
4 in accordance with procedures set forth in Article XV.

5 (f) The [settlement and resettlement] assessment of taxes
6 imposed by this article, including the granting of extensions of
7 time to file reports and the rights of the taxpayers to present
8 and prosecute a petition for [resettlement] assessment, a
9 petition for review or an appeal to court or to file a petition
10 for refund and the imposition of interest and penalties, shall
11 be governed by the provisions of the act of March 4, 1971
12 (P.L.6, No.2), known as the "Tax Reform Code of 1971," as
13 approved in the case of [capital stock and franchise taxes]
14 corporate net income tax.

15 Section 1622. Tax on Independently Procured Insurance.--(a)
16 (1) The tax provided by section 1621(a) is imposed upon an
17 insured whose home state is this Commonwealth who independently
18 procures insurance [on a subject of insurance resident, located
19 or to be performed in this Commonwealth] from a nonadmitted
20 insurer or continues or renews such independently procured
21 insurance. [The insured shall, within thirty (30) days after the
22 date when such insurance was independently procured, continued
23 or renewed, report such transaction on forms prescribed by the
24 Department of Revenue. This report shall set forth the
25 information required of surplus lines licensees as required in
26 section 1621(c). The tax of three per centum (3%) shall be paid
27 on the date the report is due as provided in this section. If
28 the independently procured insurance covers risks resident,
29 located or to be performed in one or more states other than this
30 Commonwealth, the premium taxes shall be prorated in accordance

with provisions in section 1621(d). A copy of such report shall be filed with the department by the insured.]

(2) If the independently procured insurance covers risks resident, located or to be performed in one or more states other than this Commonwealth, the premium taxes shall be payable as computed in accordance with section 1621(a).

(b) The insured shall, within thirty (30) days after the last day of the month in which the insurance was independently procured, continued or renewed, report the transaction on the forms and in the manner prescribed by the Department of Revenue. The report shall set forth the information required of surplus lines licensees as required in any report described under section 1621. The tax of three per centum (3%) shall be paid on the date the report is due as provided under this section. The insured shall file a copy of the report with the department upon its request.

(c) A penalty shall be imposed for failure to file the report required under this section on or before the due date in accordance with the rules of section 403(d) of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

Section 1623. Suspension, Revocation or Nonrenewal of Surplus Lines Licensee's License.--The department may suspend, revoke or refuse to renew the license of a surplus lines licensee after notice and a hearing, as provided under the applicable provision of the laws of this Commonwealth, upon any one or more of the following grounds:

(3) Closing of the surplus lines licensee's office for a period of more than thirty (30) business days, unless permission is granted by the department.

(4) Failure to make and file required reports.

1 (5) Failure to collect or transmit required tax on surplus
2 lines premiums.

3 (7) Failure to remit premiums due insurers or return
4 premiums due insureds in the normal course of business and
5 within reasonable time limits.

6 (8) Violation of any provision of this [article] act.

7 (9) For any other cause for which an insurance producer's
8 license could be denied, revoked or suspended or refused upon
9 renewal.

10 Section 7. This act shall take effect immediately.