
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1096 Session of 2011

INTRODUCED BY D. WHITE, STACK, ERICKSON AND RAFFERTY, JUNE 6, 2011

REFERRED TO BANKING AND INSURANCE, JUNE 6, 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

insurance and for suspension, revocation or nonrenewal of surplus lines licensee's license.

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

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

Section 1601. Purpose and scope.--(a) The purpose of this article is to protect the public interest by:

(1) Protecting persons seeking insurance in this Commonwealth.

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

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

(4) Protecting revenues of this Commonwealth.

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

(2) The provisions of this article, in so far as they relate

16 to the imposition of surplus lines and independently procured
17 premium tax and penalties for policies placed after June 30,
18 2011, shall apply when this Commonwealth is the home state of
19 the insured.

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

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

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

20110SB1096PN1278

- 2 -

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

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

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

8 "Business entity." A corporation, a partnership, a limited

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

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

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

17 "Control." An entity has control over another entity if:

18 (1) the entity directly or indirectly or acting through one
19 or more other persons owns, controls or has the power to vote
20 twenty-five per centum (25%) or more of any class of voting
21 securities of the other entity; or

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

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

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

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

20110SB1096PN1278

- 3 -

1 "Home state."

2 (1) (i) Except as provided under paragraph (2), with
3 respect to an insured:

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

7 (B) if one hundred per centum (100%) of the insured risk is
8 located out of the state referred to under clause (A), the state
9 to which the greatest percentage of the insured's taxable
10 premium for that insurance contract is allocated.

11 (ii) If more than one insured from an affiliated group are
12 named insureds on a single nonadmitted insurance contract, the
13 term means the home state, as determined under subparagraph (i),
14 of the member of the affiliated group that has the largest
15 percentage of premium attributed to it under the insurance
16 contract.

17 (2) This definition shall not apply to section 1615(g).

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

24 "Insurance producer." A person that is licensed to sell,
25 solicit or negotiate contracts of insurance with admitted

26 insurers.

27 "Kind of insurance." One of the types of insurance required
28 to be reported in the annual statement which must be filed with
29 the department by admitted insurers.

30 "Nonadmitted insurer." An insurer not authorized and not

20110SB1096PN1278

- 4 -

1 licensed to do an insurance business in this Commonwealth. The
2 term includes insurance exchanges as authorized under the laws
3 of various states. The term does not include a risk retention
4 group.

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

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

9 "Risk retention group." An insurer organized to do business
10 under the Risk Retention Amendments of 1986 (Public Law 99-563,
11 100 Stat. 3170).

12 "State." Any state of the United States, the District of
13 Columbia, the Commonwealth of Puerto Rico, Guam, the Northern
14 Mariana Islands, the Virgin Islands and American Samoa.

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

18 "Surplus lines insurance." Any insurance [of risks resident,

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

27 "Surplus lines licensee." A person licensed as a surplus
28 lines producer under section 1615 to place surplus lines
29 insurance with nonadmitted insurers eligible to accept such
30 insurance.

20110SB1096PN1278

- 5 -

1 "Type of insurance." Coverage afforded under the particular
2 policy that is being placed.

3 "Wet marine and transportation insurance." Any of the
4 following:

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

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

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

11 (4) Insurance of personal property and interest therein, in

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

21 (i) the property has been transported solely by land;
22 (ii) the property has reached its final destination as
23 specified in the bill of lading or other shipping document; or
24 (iii) the insured no longer has an insurable interest in the
25 property.

26 (5) Any insurance associated with transportation of property
27 listed under this definition.

28 "Writing producer." The insurance producer which brings
29 about or negotiates contracts of insurance directly on behalf of
30 the consumer seeking insurance.

20110SB1096PN1278

- 6 -

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

2 * *

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

4 * * *

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

9 * * *

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

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

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

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

29 successor for the protection of all of its policyholders in the
30 United States, and such trust fund consists of cash, securities,
20110SB1096PN1278

- 7 -

1 letters of credit or investments of substantially the same
2 character and quality as those which are eligible investments
3 for admitted insurers authorized to write like kinds of
4 insurance in this Commonwealth. Such trust fund will be in
5 addition to the capital and surplus required in this
6 subparagraph and shall have an expiration date which at no time
7 shall be less than five (5) years.

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

15 (iii) Is an insurance exchange created by the laws of
16 individual states that maintains capital and surplus or the
17 substantial equivalent thereof of not less than fifteen million
18 (\$15,000,000) dollars in the aggregate. For insurance exchanges
19 which maintain funds for the protection of all insurance
20 exchange policyholders, each individual syndicate shall maintain
21 minimum capital and surplus or the substantial equivalent

22 thereof of not less than one million five hundred thousand
23 (\$1,500,000) dollars. In the event the insurance exchange does
24 not maintain funds for the protection of all insurance exchange
25 policyholders, each individual syndicate shall meet the minimum
26 capital and surplus requirements of subparagraph (i).

27 (3) Has provided to the department a copy of its current
28 annual financial statement certified by such insurer, such
29 statement to be provided no more than thirty (30) days after the
30 date required for filing an annual financial statement in its

20110SB1096PN1278

- 8 -

1 domiciliary jurisdiction and which is either:

2 (i) certified by the regulatory authority in the domicile of
3 the insurer; or

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

6 In the case of an insurance exchange, the statement may be an
7 aggregate statement of all underwriting syndicates operating
8 during the period reported.] qualifies under one of the
9 following:

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

12 (ii) has capital and surplus or its equivalent under the
13 laws of its domiciliary jurisdiction which is greater than or
14 equal to fifteen million (\$15,000,000) dollars. The requirement

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

25 (2) If domiciled outside the United States, is listed on the
26 Quarterly Listing of Alien Insurers maintained by the
27 International Insurers Department of the National Association of
28 Insurance Commissioners.

29 * * *

30 Section 1608. Surplus Lines Licensee's Duty to Notify

20110SB1096PN1278

- 9 -

1 Insured.--At the time of presenting a quotation to the insured,
2 the surplus lines licensee shall present to the insured or to
3 the writing producer written notice that the insurance or a
4 portion thereof involves placement with nonadmitted insurers.
5 The surplus lines licensee shall, either directly or through the
6 writing producer, give notice to the insured that:

7 (1) the insurer with which the licensee places the insurance

is not licensed by the [Pennsylvania Insurance Department]
department and is subject to its limited regulation; and

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

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

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

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

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

(3) The insured regularly employs in excess of two hundred
fifty (250) full-time employees.

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

(5) The insured has insurance premiums for property and

casualty insurance, excluding employee benefits, in excess of two hundred fifty thousand (\$250,000) dollars.

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

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

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

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

* * *

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

25 "Exempt commercial purchaser." Any person purchasing
26 commercial insurance that, at the time of placement, meets the
27 following requirements:

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

30 (2) The person has paid aggregate nationwide commercial

20110SB1096PN1278

- 11 -

1 property and casualty insurance premiums in excess of one
2 hundred thousand (\$100,000) dollars in the immediately preceding
3 twelve (12) months.

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

6 (A) The person possesses a net worth in excess of twenty
7 million (\$20,000,000) dollars, as adjusted under subparagraph
8 (ii).

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

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

16 (D) The person is a not-for-profit organization or public
17 entity generating annual budgeted expenditures of at least

18 thirty million (\$30,000,000) dollars, as adjusted under
19 subparagraph (ii).

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

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

28 "Qualified risk manager." With respect to a policyholder of
29 commercial insurance, a person who meets all of the following
30 requirements:

20110SB1096PN1278

- 12 -

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

3 (2) The person provides skilled services in loss prevention,
4 loss reduction or risk and insurance coverage analysis and
5 purchase of insurance.

6 (3) The person:

7 (i) (A) has a bachelor's degree or higher from an
8 accredited college or university in risk management, business
9 administration, finance, economics or any other field determined
10 by the commissioner to demonstrate minimum competence in risk

11 management; and

12 (B) (I) has three (3) years of experience in risk
13 financing, claims administration, loss prevention, risk and
14 insurance analysis or purchasing commercial lines of insurance;
15 or

16 (II) has:

17 (a) a designation as a Chartered Property and Casualty
18 Underwriter issued by the American Institute for Chartered
19 Property and Casualty Underwriter/Insurance Institute of
20 America;

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

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

26 (d) a designation as a RIMS Fellow issued by the Global Risk
27 Management Institute; or

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

20110SB1096PN1278

- 13 -

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

4 insurance; and

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

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

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

15 Section 4. Section 1611(f) of the act, amended March 22,
16 2010 (P.L.147, No.14), is amended to read:

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

18 (f) The advisory organization may submit reports and make
19 recommendations to the department regarding the financial
20 condition of any eligible surplus lines insurer. These reports
21 and recommendations shall not be considered to be public
22 information or subject to any Federal or [State] state freedom
23 of information law. There shall be no liability on the part of
24 nor shall any cause of action of any nature be sustained against
25 eligible surplus lines insurers, the advisory organization or
26 its members, agents, employees, officers or directors or the
27 department or authorized representatives of the department for

28 statements and any reports or recommendations made by them in
29 good faith under this section.

30 * * *

20110SB1096PN1278

- 14 -

1 Section 5. Section 1615(a) of the act, amended March 22,
2 2010 (P.L.147, No.14), is amended and the section is amended by
3 adding subsections to read:

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

10 * * *

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

17 * * *

18 (g) As used in subsection (c.1), the term "home state" for
19 an insurance producer or surplus lines producer shall be as
20 defined as in section 601-A of the act of May 17, 1921 (P.L.789,

21 No.285), known as "The Insurance Department Act of 1921."

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

24 Section 1616. Surplus Lines Licensees May Accept Business
25 from Insurance [Producer] Producers.--A surplus lines licensee
26 may originate surplus lines insurance or accept such insurance
27 from an insurance producer duly licensed as to the kind or kinds
28 of insurance involved, and the surplus lines licensee may
29 compensate the insurance producer.

30 Section 1621. Surplus Lines Tax.--(a) (1) There is hereby
20110SB1096PN1278 - 15 -

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

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

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

20110SB1096PN1278

- 16 -

1 licensee. A surplus lines licensee that is a business entity
2 licensee which files the annual premium tax return with the
3 Department of Revenue shall include in its return the premium
4 taxes generated during the year subject to reporting by all
5 licensees associated with said business entity during the
6 reporting period.]

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

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

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

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

26 (2) The report described under this subsection shall set
27 forth the name of the insured, the home state of the insured, if
28 required by the department, identification of the insurer, the
29 type of insurance, gross premiums charged less any return
30 premiums allowed, the tax due as provided in this section and

1 any other information as required by the Department of Revenue.

2 A surplus lines licensee that is a business entity licensee
3 which files the annual premium tax return with the Department of
4 Revenue shall include in its return the premium taxes generated
5 during the year subject to reporting by all licensees associated
6 with said business entity during the reporting period. The
7 report shall be made on forms prescribed by the Department of
8 Revenue.

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

19 (4) A penalty shall be imposed for failure to file the
20 report required under this subsection on or before the due date
21 in accordance with the rules of section 403(d) of the act of
22 March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of
23 1971."

24 (e) With respect to insurance placed with or issued by a

25 risk retention group which is an eligible surplus lines insurer,
26 there is hereby levied a tax of two per centum (2%) on all
27 premiums charged for risks resident, located or to be performed
28 in this Commonwealth. The risk retention group shall be
29 responsible for the payment of the taxes levied in this article
30 in accordance with procedures set forth in Article XV.

20110SB1096PN1278

- 18 -

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

11 Section 1622. Tax on Independently Procured Insurance.--(a)
12 (1) The tax provided by section 1621(a) is imposed upon an
13 insured whose home state is this Commonwealth who independently
14 procures insurance [on a subject of insurance resident, located
15 or to be performed in this Commonwealth] from a nonadmitted
16 insurer or continues or renews such independently procured
17 insurance. [The insured shall, within thirty (30) days after the

18 date when such insurance was independently procured, continued
19 or renewed, report such transaction on forms prescribed by the
20 Department of Revenue. This report shall set forth the
21 information required of surplus lines licensees as required in
22 section 1621(c). The tax of three per centum (3%) shall be paid
23 on the date the report is due as provided in this section. If
24 the independently procured insurance covers risks resident,
25 located or to be performed in one or more states other than this
26 Commonwealth, the premium taxes shall be prorated in accordance
27 with provisions in section 1621(d). A copy of such report shall
28 be filed with the department by the insured.]

29 (2) If the independently procured insurance covers risks
30 resident, located or to be performed in one or more states other
20110SB1096PN1278 - 19 -

1 than this Commonwealth, the premium taxes shall be payable as
2 computed in accordance with section 1621(a).

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

11 insured shall file a copy of the report with the department upon
12 its request.

13 (c) A penalty shall be imposed for failure to file the
14 report required under this section on or before the due date in
15 accordance with the rules of section 403(d) of the act of March
16 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

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

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

26 (4) Failure to make and file required reports.

27 (5) Failure to collect or transmit required tax on surplus
28 lines premiums.

29 (7) Failure to remit premiums due insurers or return
30 premiums due insureds in the normal course of business and

20110SB1096PN1278

- 20 -

1 within reasonable time limits.

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

3 (9) For any other cause for which an insurance producer's

4 license could be denied, revoked or suspended or refused upon
5 renewal.

6 Section 7. This act shall take effect immediately.

20110SB1096PN1278

- 21 -
