



National Association of Professional Surplus Lines Offices, Ltd.

200 N.E. 54th Street • Suite 200 • Kansas City, MO 64118 • 816/741-3910 • Fax 816/741-5409

www.napslo.org

Richard M. Bouhan
Executive Director

Via Email
March 4, 2011

State of Alaska
House Labor and Commerce Committee:
Honorable Kurt Olsen, Chairman
Honorable Craig Johnson, Vice Chairman
Honorable Mike Chenault
Honorable Dan Saddler
Honorable Steve Thompson
Honorable Lindsey Holmes
Honorable Bob Miller
Honorable Linda Hall, Director of Insurance

RE: HB 164

The National Association of Professional Surplus Lines Offices (NAPSLO) represents surplus lines brokers and surplus lines insurance companies in all fifty states and the District of Columbia. Our members consist of local, regional and national brokers and insurers, including in Alaska. We are writing you regarding HB 164 and the Nonadmitted and Reinsurance Reform Act (the "NRRA") that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. NRRA's overall legislative purpose is to streamline the regulation of surplus lines and other nonadmitted insurance and provide nationwide uniformity to avoid the state to state inconsistencies that will continue to exist until July 21, 2011 when the NRRA takes effect. NAPSLO is grateful for the opportunity to comment on the captioned proposed legislation.

Sharing Alaska Premium Tax Revenues with Other States

We first must state that nothing requires Alaska to share taxes with other states. We believe any tax sharing determination and methodology should be a choice made by the legislature in a statute that is clear, unambiguous, and free standing legislation. HB 164 would delegate policymaking and/or taxing authority to a state agency. Any tax sharing agreement should be specifically set out in legislation and approved by the legislature. This proposal is not adequate to apprise policyholders, brokers or legislators of how burdensome and expensive the tax sharing proposal or a similar proposal will be.

HB164 would result in a tax increase on some policyholders, would result in Alaska tax revenue being redirected to another state, and would result in surcharges on Alaska residents. All of these issues must be decided by the legislature after they are vetted through the legislative process. Decisions such as these cannot be delegated to an administrative agency. Attached is an opinion from compact experts at the National Center for Interstate Compacts that it would not be legally adequate for a state to enter into an interstate agreement if the statute simply authorized a state agency, at its discretion, to either enter or decide not to enter the agreement. Another multi-state

insurance agreement, the Interstate Insurance Product Regulation Compact (IIPRC), that governs the filing and approval of life and health products, has been adopted by 38 states and it was entered in its entirety into state statutes. It is not clear why something that is clearly a legislative issue such as taxes would be decided outside of the legislative process, while insurance product filing and approval requirements were vetted through the legislative process.

The proposed legislation would require brokers placing insurance for an Alaska home state insured with multistate risks to apply the varying tax rates of each of the states where the insured has exposures. Varying rates would apparently be required even if the other states where those exposures are located have not agreed to share its premium taxes with Alaska. We oppose any provision taxing Alaska policyholders at tax rates of other states as imposing administrative burdens on NAPSLO members. If this issue is addressed at all, it should be addressed in connection with separate legislation authorizing a tax sharing agreement, if any is adopted.

It is very difficult to compare the revenue amounts that Alaska would receive under a tax sharing scenario versus the current system. We believe the difference to be *de minimis*. We have seen as a general rule that somewhere between 90 and 95 per cent of the surplus lines business in a state is for local risks, for “home state insureds” as defined. There is no tax sharing of that portion currently or under NRRA. This tax currently is paid to the state not a clearinghouse or other entity that incurs additional costs to collect the tax. We are then left with the remaining 5 to 10 per cent of policies that are multistate. Will Alaska be a net gainer or loser in revenue if it simply retains the tax on its own policyholders rather than shares it with other states? We believe that is impossible to tell unless you first know which states are in a compact with Alaska. Alaska will receive additional revenue only if those states with a large premium volume in multistate policies that cover Alaska participate in tax sharing. It is not likely they will, if they conclude that they gain revenue by not sharing it with other states.

There is another consideration. For Alaska home state insureds with risks in other states, should there be premium tax sharing, these residents might see an increase to their taxes where states impose additional taxation based on other factors such as catastrophe surcharges. We do not believe that the NRRA intended for the states to implement a tax increase on policyholders.

Adoption of NRRA Mandates

A number of changes must be made for a state to conform its nonadmitted insurance laws to the NRRA. These will be necessary regardless of whether Alaska decides to allocate and share premium taxes with other states. These include clarifying that all provisions of Alaska’s laws governing nonadmitted insurance apply only when Alaska is the home state of the insured, as the term “home state” is defined by the NRRA. The attached draft provides an option: a broad limitation to home state insureds in the revised “Purpose and Scope” section, 21.34.010. In the alternative the draft provides for home state regulation in each relevant code section.

The laws should also be amended to clarify that the diligent search requirement for seeking coverage in the admitted market first before exporting the coverage to the surplus lines market is not required

when the insured qualifies as an “exempt commercial purchaser” as defined by the NRRA. In addition, the NRRA provides for nationwide uniform eligibility standards for surplus lines insurers by preempting eligibility requirements for U.S. domestic insurers other than maintaining a certificate of authority in the insurer's state of domicile and minimum capital and surplus, and by prohibiting a state from imposing any eligibility requirements on a non-U.S. insurer if that insurer is on the quarterly listing of non-U.S. insurers maintained by the NAIC's International Insurance Department (IID). We believe some of the terms providing for removal of eligibility are inappropriate as are some additional requirements for eligibility.

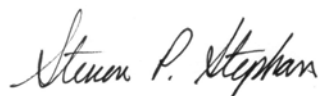
We have taken the liberty of enclosing these proposed amendments, including the related definitions and deletions, for your consideration, along with other proposed amendments to conform Alaska law to the NRRA. For your convenience the unchanged surplus lines provisions are in normal print with changes in revision mode, or "track changes". We have also limited the copy to the relevant surplus lines provisions of HB164. We hope this is of value to you.

Whether or not Alaska ultimately decides to participate in a tax sharing system with other states, the nonadmitted insurance laws should clarify that the premium tax imposed on nonadmitted insurance when Alaska is the home state applies to 100% of the premium paid for such insurance, regardless of whether the insurance covers exposures in multiple states. This will protect the tax revenues that Alaska is entitled to as the home state and allow Alaska to share those revenues with other states if it decides to do so, in accordance with the NRRA. Only then should the Alaska legislature decide that, after collecting the tax based on 100% of the gross premium, that Alaska should share the tax with other states.

NAPSLO respectfully requests that should Alaska wish to determine as a matter of public policy to share taxes, that it be covered in legislation so the brokers and policyholders can clearly understand from a review of the code how the state intends for them to allocate taxes.

Thank you for the opportunity to comment. We would be pleased to discuss with you at your convenience and to answer any questions.

Regards

A handwritten signature in cursive script, reading "Steven P. Stephan".

Steve Stephan
NAPSLO Director of Government Relations