



Senate

General Assembly

File No. 580

January Session, 2011

Substitute Senate Bill No. 1217

Senate, April 19, 2011

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING NONADMITTED INSURERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-277 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage and*
3 *applicable to nonadmitted insurance coverage procured, continued or renewed*
4 *on or after July 1, 2011*):

5 (a) Every insured who in this state procures or causes to be
6 procured or continues or renews insurance with any unauthorized
7 insurer, or any insured or self-insurer who so procures or continues
8 excess loss, catastrophe or other insurance, upon a subject of insurance
9 resident, located or to be performed within this state, other than
10 insurance procured through a surplus lines broker pursuant to the
11 surplus lines law of this state, shall, within sixty days after the date
12 such insurance was so procured, continued or renewed, file a report of
13 the same with the Commissioner of Revenue Services in writing and
14 upon forms designated by the Commissioner of Revenue Services and

15 furnished to such insured upon request. The report shall show the
16 name and address of the insured or insureds, the name and address of
17 the insurer, the subject of the insurance, a general description of the
18 coverage, the amount of premium currently charged therefor and such
19 additional pertinent information as is reasonably requested by the
20 Commissioner of Revenue Services. The provisions of this subsection
21 shall not apply to nonadmitted insurance, as defined in subsection (f)
22 of this section, that is procured, continued or renewed on or after July
23 1, 2011.

24 (b) Any insurance by an unauthorized insurer of a subject of
25 insurance resident, located or to be performed within this state
26 procured through negotiations or an application, in whole or in part
27 occurring or made within or from within or outside of this state, or for
28 which premiums in whole or in part are remitted directly or indirectly
29 from within or outside of this state, shall be deemed to be insurance
30 procured, or continued or renewed in this state within the intent of
31 subsection (a) of this section.

32 (c) There is [hereby] levied upon the obligation, chose in action or
33 right represented by the premium charged for such insurance a
34 premium receipts tax of four per cent of gross premiums charged for
35 such insurance other than wet marine and transportation insurance.
36 The term "premium" shall include all premiums, membership fees,
37 assessments, dues and any other consideration for insurance. Such tax
38 shall be in lieu of all other taxes. The insured shall, on or before March
39 first next succeeding the calendar year in which the insurance was so
40 procured, continued or renewed, pay the amount of the tax to the
41 Commissioner of Revenue Services in accordance with procedures
42 established and on forms provided by said Commissioner of Revenue
43 Services. In the event of cancellation and rewriting of any such
44 insurance contract the premium for premium receipts tax purposes
45 shall be the premium in excess of the unearned premium of the
46 cancelled insurance contract. The provisions of this subsection shall
47 not apply to nonadmitted insurance, as defined in subsection (f) of this
48 section, that is procured, continued or renewed on or after July 1, 2011.

49 (d) If a policy covers risks or exposures only partially in this state,
50 the tax payable shall be computed on the portions of the premium
51 which are properly allocable to the risks or exposures located in this
52 state. The provisions of this subsection shall not apply to nonadmitted
53 insurance, as defined in subsection (f) of this section, that is procured,
54 continued or renewed on or after July 1, 2011.

55 (e) If the insured fails to withhold from the premium the amount of
56 tax herein levied, the insured shall be liable for the amount thereof and
57 shall pay the same to the Commissioner of Revenue Services within
58 the time stated in subsection (c) of this section. Any person who fails to
59 pay the tax within the time stated in subsection (c) of this section shall
60 pay a penalty of ten per cent thereof or seventy-five dollars, whichever
61 is greater, which penalty shall be paid at the time of paying such tax.
62 Interest shall be added to the tax at the rate of one per cent per month
63 or fraction thereof from the date such payment was due to the date
64 paid. Subject to the provisions of section 12-3a, the Commissioner of
65 Revenue Services may waive all or part of the penalties provided
66 under this section when it is proven to said commissioner's satisfaction
67 that the failure to pay any tax was due to reasonable cause and was not
68 intentional or due to neglect. The provisions of this subsection shall
69 not apply to nonadmitted insurance, as defined in subsection (f) of this
70 section, that is procured, continued or renewed on or after July 1, 2011.

71 (f) For purposes of this subsection and subsections (g) to (l),
72 inclusive, of this section:

73 (1) "Home state" means home state, as defined in Section 527 of the
74 Nonadmitted and Reinsurance Reform Act of 2010;

75 (2) "Independently procured insurance" means independently
76 procured insurance, as defined in Section 527 of the Nonadmitted and
77 Reinsurance Reform Act of 2010;

78 (3) "Nonadmitted and Reinsurance Reform Act of 2010" means
79 Sections 511 to 542, inclusive, of the Dodd-Frank Wall Street Reform
80 and Consumer Protection Act, P.L. 111-203, as amended from time to

81 time;

82 (4) "Nonadmitted insurance" means nonadmitted insurance, as
83 defined in Section 527 of the Nonadmitted and Reinsurance Reform
84 Act of 2010; and

85 (5) "Nonadmitted insurer" means a nonadmitted insurer, as defined
86 in Section 527 of the Nonadmitted and Reinsurance Reform Act of
87 2010.

88 (g) (1) With respect to independently procured insurance, where
89 such coverage is procured, continued or renewed on or after July 1,
90 2011, and where this state is an insured's home state, there is levied
91 upon the obligation, chose in action or right represented by the
92 premium charged for independently procured insurance an
93 independently procured insurance premiums tax of four per cent of
94 the gross premiums charged for such insurance, irrespective of the fact
95 that the independently procured insurance policy may cover
96 properties, risks or exposures located or to be performed both within
97 and without this state. The term "premium" shall include all
98 premiums, membership fees, assessments, dues and any other
99 consideration for insurance. Such tax shall be due and payable to this
100 state by the insured and shall be in lieu of all other taxes on such
101 nonadmitted insurance.

102 (2) (A) With respect to independently procured insurance, for the
103 period beginning on July 1, 2011, and ending September 30, 2011, the
104 insured shall pay to the Commissioner of Revenue Services, on or
105 before November 15, 2011, in accordance with procedures established
106 and on forms provided by said commissioner, a sum equal to four per
107 cent of the gross premiums charged the insured by a nonadmitted
108 insurer during such period.

109 (B) With respect to independently procured insurance, for the
110 period beginning on October 1, 2011, and ending December 31, 2011,
111 the insured shall pay to the Commissioner of Revenue Services, on or
112 before February 15, 2012, in accordance with procedures established

113 and on forms provided by said commissioner, a sum equal to four per
114 cent of the gross premiums charged the insured by a nonadmitted
115 insurer during such period.

116 (3) For calendar years beginning on or after January 1, 2012, the
117 insured shall pay to the Commissioner of Revenue Services, on
118 independently procured insurance, in accordance with procedures
119 established and on forms provided by said commissioner, (A) on or
120 before May fifteenth of each year in which nonadmitted insurance was
121 procured, continued or renewed, a sum equal to four per cent of the
122 gross premiums charged the insured by a nonadmitted insurer during
123 the period from January first to March thirty-first of that year; (B) on or
124 before August fifteenth of each year in which nonadmitted insurance
125 was procured, continued or renewed, a sum equal to four per cent of
126 the gross premiums charged the insured by a nonadmitted insurer
127 during the period from April first to June thirtieth of that year; (C) on
128 or before November fifteenth of each year in which nonadmitted
129 insurance was procured, continued or renewed, a sum equal to four
130 per cent of the gross premiums charged the insured by a nonadmitted
131 insurer during the period from July first to September thirtieth of that
132 year; and (D) on or before February fifteenth of each year succeeding a
133 year in which nonadmitted insurance was procured, continued or
134 renewed, a sum equal to four per cent of the gross premiums charged
135 the insured by a nonadmitted insurer during the period from October
136 first to December thirty-first of the preceding year.

137 (4) In the event of cancellation and rewriting of any nonadmitted
138 insurance contract, the premium for purposes of this section shall be
139 the premium in excess of the unearned premium of the cancelled
140 insurance contract.

141 (5) If, pursuant to subsection (l) of this section, the Commissioner of
142 Revenue Services enters into a cooperative agreement, reciprocal
143 agreement or compact with another state or states, and if the
144 provisions set forth in such agreement or compact are different from
145 provisions prescribed by this subsection, then the provisions set forth

146 in such agreement or compact shall prevail.

147 (h) Any insured, who fails to pay the tax within the time stated in
148 subsection (g) of this section, shall pay a penalty of ten per cent of the
149 tax not paid within the time so stated. Interest shall be added to the tax
150 at the rate of one per cent per month or fraction of such month from
151 the date such tax was due to the date paid. Subject to the provisions of
152 section 12-3a, the Commissioner of Revenue Services may waive all or
153 part of the penalties provided under this section if it is proven to said
154 commissioner's satisfaction that the failure to pay any tax was due to
155 reasonable cause and was not intentional or due to neglect.

156 [(f)] (i) The Attorney General, upon request of the Commissioner of
157 Revenue Services, shall proceed in the courts of this or any other state
158 or in any federal court or agency to recover such tax not paid within
159 the time prescribed in this section, and any interest and penalty related
160 to such tax.

161 [(g)] (j) This section shall not be construed or deemed to abrogate or
162 modify any provision of section 38a-27 or 38a-271 to [38a-278,
163 inclusive] 38a-276, inclusive, as amended by this act, or section 38a-
164 278, but shall be construed in such a manner as to avoid preemption
165 under the Nonadmitted and Reinsurance Reform Act of 2010. This
166 section does not apply to individual life or individual disability
167 insurance or to wet marine or transportation insurance.

168 [(h)] (k) The provisions of sections 12-548 to 12-554, inclusive, and
169 section 12-555a shall apply to the provisions of this section in the same
170 manner and with the same force and effect as if the language of said
171 sections had been incorporated in full into this section and had
172 expressly referred to the tax under this section, except to the extent
173 that any such provision is inconsistent with a provision in this section.

174 (l) (1) The Commissioner of Revenue Services may enter into a
175 cooperative agreement, reciprocal agreement or compact with another
176 state or states to allocate among the states the nonadmitted insurance
177 premiums taxes paid to an insured's home state, as provided by

178 Section 521 of the Nonadmitted and Reinsurance Reform Act of 2010.

179 (2) The agreement or compact that the Commissioner of Revenue
180 Services is authorized to enter under this subsection shall include, but
181 shall not be limited to, the National Association of Insurance
182 Commissioners' Nonadmitted Insurance Multistate Agreement.

183 (3) The agreement or compact that the Commissioner of Revenue
184 Services is authorized to enter under this subsection may provide that,
185 where this state is an insured's home state and where the
186 independently procured insurance covers properties, risks or
187 exposures located or to be performed both within and without this
188 state, (A) the sum payable by the insured to this state under subsection
189 (g) of this section shall be computed based on that portion of the gross
190 premiums allocated to this state, based on a standardized premium
191 allocation adopted by the states under such agreement or compact,
192 multiplied by four per cent, (B) the sum payable by the insured to
193 another state shall be computed based on that portion of the gross
194 premiums allocated to such state, based on a standardized premium
195 allocation adopted by the states under such agreement or compact,
196 multiplied by such state's tax rate, and (C) to the extent that another
197 state where properties, risks or exposures are located has failed to
198 enter into an agreement or compact with this state, the portion of the
199 gross premiums otherwise allocable to such other state shall be
200 allocated to this state.

201 (4) The agreement or compact that the Commissioner of Revenue
202 Services is authorized to enter under this subsection may provide for
203 (A) recordkeeping requirements, (B) audit procedures, (C) exchange of
204 information, (D) collection of taxes not paid by insureds within the
205 time required under subsection (g) of this section, (E) disbursements of
206 funds to other states that are parties to such agreement or compact,
207 and (F) any additional provisions which will facilitate the
208 administration of the agreement or compact.

209 (5) Notwithstanding the provisions of section 12-15, the
210 Commissioner of Revenue Services may, under the terms of the

211 agreement or compact entered into under this subsection, disclose
212 return information, as defined in section 12-15, relating to insureds to
213 any official of another state that is a party to such agreement or
214 compact whose official duties require such disclosure.

215 (6) The Commissioner of Revenue Services may enter into
216 cooperative agreements with processing entities located in this state or
217 other states related to the capturing and processing of nonadmitted
218 insurance premiums and nonadmitted insurance premiums tax data.
219 Notwithstanding the provisions of section 12-15, the Commissioner of
220 Revenue Services may, under the terms of any such cooperative
221 agreement, disclose return information, as defined in section 12-15,
222 relating to insureds to any official of the processing entity whose
223 duties require such disclosure.

224 Sec. 2. Section 38a-743 of the general statutes is repealed and the
225 following is substituted in lieu thereof (*Effective from passage and*
226 *applicable to nonadmitted insurance coverage procured, continued or renewed*
227 *on or after July 1, 2011*):

228 (a) Every person, firm, association or corporation licensed pursuant
229 to the provisions of sections 38a-741 to 38a-744, inclusive, 38a-777 and
230 38a-794 shall pay to the commissioner on May first of each year a sum
231 equal to four per cent of the gross premiums charged the insureds by
232 the insurers during the period from January first to March thirty-first
233 of that year, and on August first of each year a sum equal to four per
234 cent of the gross premiums charged the insured by the insurers during
235 the period from April first to June thirtieth of that year, on November
236 first of each year a sum equal to four per cent of the gross premiums
237 charged the insureds by the insurers during the period from July first
238 to September thirtieth of that year and on February first of each year a
239 sum equal to four per cent of the gross premiums charged the insureds
240 by the insurers during the period from October first to December
241 thirty-first of the preceding year, for insurance procured by such
242 licensee pursuant to such license, less the amount of such premiums
243 returned to such insureds, except that the premium tax shall not apply

244 to any policy issued to the state of Connecticut or any agency [thereof]
245 of the state or to any policy issued to any town, or agency of such town
246 or special taxing district when said town, agency or department
247 thereof or special taxing district appears in the policy as the named
248 insured and as such is responsible for the payment of premiums
249 shown on said policy. Each licensee shall also file on May first, August
250 first, November first, and February first a return, in the form described
251 by the commissioner, showing such information as the commissioner
252 deems necessary. The provisions of this subsection shall not apply to
253 nonadmitted insurance, as defined in subsection (b) of this section, that
254 is procured, continued or renewed on or after July 1, 2011.

255 (b) For purposes of this subsection and subsections (c) to (g),
256 inclusive, of this section:

257 (1) "Home state" means home state, as defined in Section 527 of the
258 Nonadmitted and Reinsurance Reform Act of 2010;

259 (2) "Licensee" means a person, firm, association or corporation that
260 is licensed pursuant to the provisions of sections 38a-741 to 38a-744,
261 inclusive, 38a-777 and 38a-794 and that is a surplus lines broker, as
262 defined in Section 527 of the Nonadmitted and Reinsurance Reform
263 Act of 2010;

264 (3) "Nonadmitted and Reinsurance Reform Act of 2010" means
265 Sections 511 to 542, inclusive, of the Dodd-Frank Wall Street Reform
266 and Consumer Protection Act, P.L. 111-203, as amended from time to
267 time;

268 (4) "Nonadmitted insurance" means nonadmitted insurance, as
269 defined in Section 527 of the Nonadmitted and Reinsurance Reform
270 Act of 2010; and

271 (5) "Nonadmitted insurer" means a nonadmitted insurer, as defined
272 in Section 527 of the Nonadmitted and Reinsurance Reform Act of
273 2010.

274 (c) (1) With respect to nonadmitted insurance, where such coverage

275 is procured, continued or renewed for an insured by a licensee on or
276 after July 1, 2011, and where this state is an insured's home state, such
277 licensee shall pay a tax equal to the sum of four per cent of the gross
278 premiums charged such insureds by nonadmitted insurers,
279 irrespective of the fact that the insurance policy may cover properties,
280 risks or exposures located or to be performed both within and without
281 this state.

282 (2) (A) For the period beginning on July 1, 2011, and ending
283 September 30, 2011, each licensee shall pay to the Insurance
284 Commissioner, on or before November 15, 2011, in accordance with
285 procedures established and on forms provided by said commissioner,
286 a tax on nonadmitted insurance equal to the sum of four per cent of the
287 gross premiums charged insureds by nonadmitted insurers during
288 such period.

289 (B) For the period beginning on October 1, 2011, and ending
290 December 31, 2011, each licensee shall pay to the Insurance
291 Commissioner, on or before February 15, 2012, in accordance with
292 procedures established and on forms provided by said commissioner,
293 a tax on nonadmitted insurance equal to the sum of four per cent of the
294 gross premiums charged insureds by nonadmitted insurers during
295 such period.

296 (3) For calendar years beginning on or after January 1, 2012, each
297 licensee shall pay to the Insurance Commissioner, in accordance with
298 procedures established and on forms provided by said commissioner,
299 (A) on or before May fifteenth of each year in which nonadmitted
300 insurance was procured, continued or renewed, a tax on such
301 insurance equal to the sum of four per cent of the gross premiums
302 charged insureds by nonadmitted insurers during the period from
303 January first to March thirty-first of that year; (B) on or before August
304 fifteenth of each year in which nonadmitted insurance was procured,
305 continued or renewed, a tax on such insurance equal to the sum of four
306 per cent of the gross premiums charged insureds by nonadmitted
307 insurers during the period from April first to June thirtieth of that year;

308 (C) on or before November fifteenth of each year in which
309 nonadmitted insurance was procured, continued or renewed, a tax on
310 such insurance equal to the sum of four per cent of the gross premiums
311 charged insureds by nonadmitted insurers during the period from July
312 first to September thirtieth of that year; and (D) on or before February
313 fifteenth of each year succeeding a year in which nonadmitted
314 insurance was procured, continued or renewed, a tax on such
315 insurance equal to the sum of four per cent of the gross premiums
316 charged insureds by nonadmitted insurers during the period from
317 October first to December thirty-first of the preceding year.

318 (4) In the event of cancellation and rewriting of any nonadmitted
319 insurance contract, the premium for purposes of this subsection shall
320 be the premium in excess of the unearned premium of the cancelled
321 insurance contract.

322 (5) If, pursuant to subsection (g) of this section, the Insurance
323 Commissioner enters into a cooperative agreement, reciprocal
324 agreement or compact with another state or states, and if the
325 provisions set forth in such agreement or compact are different from
326 provisions prescribed by this subsection, then the provisions set forth
327 in such agreement or compact shall prevail.

328 [(b)] (d) Upon failure of any person to pay the premium tax due the
329 commissioner on its due date, there shall be added thereto a penalty
330 and interest, which interest shall [not be less than] be at the rate of one
331 per cent per month or fraction of a month which elapses from the due
332 date of such premium tax to the date of payment, and which penalty
333 shall be in the amount of ten per cent of the whole or such part of the
334 principal of the premium tax as is unpaid.

335 (e) This section shall be construed in such a manner as to avoid
336 preemption under the Nonadmitted and Reinsurance Reform Act of
337 2010.

338 (f) This section shall not apply to any policy issued to the state of
339 Connecticut or any agency of the state, or to any policy issued to any

340 Connecticut town, or agency of such town or special taxing district
341 when said town, agency or department thereof or special taxing
342 district appears in the policy as the named insured and as such is
343 responsible for the payment of premiums shown on said policy.

344 (g) (1) The Insurance Commissioner may enter into a cooperative
345 agreement, reciprocal agreement or compact with another state or
346 states to allocate among the states the nonadmitted insurance
347 premiums taxes paid to an insured's home state, as provided by
348 Section 521 of the Nonadmitted and Reinsurance Reform Act of 2010.

349 (2) The agreement or compact that the Insurance Commissioner is
350 authorized to enter under this subsection shall include, but shall not be
351 limited to, the National Association of Insurance Commissioners'
352 Nonadmitted Insurance Multistate Agreement.

353 (3) The agreement or compact that the Insurance Commissioner is
354 authorized to enter under this subsection may provide that, where this
355 state is an insured's home state and where the nonadmitted insurance
356 covers properties, risks or exposures located or to be performed both
357 within and without this state, (A) the sum payable by a licensee to this
358 state under this section shall be computed based on that portion of the
359 gross premiums allocated to this state, based on a standardized
360 premium allocation adopted by the states under such agreement or
361 compact, multiplied by four per cent, (B) the sum payable by the
362 licensee to another state shall be computed based on that portion of the
363 gross premiums allocated to such state, based on a standardized
364 premium allocation adopted by the states under such agreement or
365 compact, multiplied by such state's tax rate, and (C) to the extent that
366 another state where properties, risks or exposures are located has
367 failed to enter into an agreement or compact with this state, the portion
368 of the gross premiums otherwise allocable to such other state shall be
369 allocated to this state.

370 (4) The agreement or compact that the Insurance Commissioner is
371 authorized to enter under this subsection may provide for (A)
372 recordkeeping requirements, (B) audit procedures, (C) exchange of

373 information, (D) collection of taxes not paid by licensees within the
374 time required under subsection (c) of this section, (E) disbursements of
375 funds to other states that are parties to such agreement or compact,
376 and (F) any additional provisions that will facilitate the administration
377 of the agreement or compact.

378 (5) Notwithstanding any provision of section 12-15, the Insurance
379 Commissioner may, under the terms of the agreement or compact
380 entered into under this subsection, disclose information relating to
381 surplus lines brokers or nonadmitted insurance permitted to be placed
382 through surplus lines brokers to any official of another state that is a
383 party to such agreement or compact whose official duties require such
384 disclosure.

385 (6) The Insurance Commissioner may enter into cooperative
386 agreements with processing entities located in this state or other states
387 related to the capturing and processing of nonadmitted insurance
388 premiums and nonadmitted insurance premiums tax data.
389 Notwithstanding any provision of section 12-15, the Insurance
390 Commissioner may, under the terms of any such cooperative
391 agreement, disclose information relating to surplus lines brokers or
392 nonadmitted insurance permitted to be placed through surplus lines
393 brokers to any official of the processing entity whose duties require
394 such disclosure.

395 Sec. 3. Subsections (b) and (c) of section 38a-271 of the general
396 statutes are repealed and the following is substituted in lieu thereof
397 (*Effective from passage*):

398 (b) The provisions of sections 38a-271 to 38a-278, inclusive, as
399 amended by this act, other than section 38a-277, as amended by this
400 act, do not apply to: (1) The lawful transaction of surplus lines
401 insurance; (2) the lawful transaction of reinsurance by insurers; (3)
402 transactions, in this state, involving a policy lawfully solicited, written
403 and delivered outside of this state covering only subjects of insurance
404 not resident, located or expressly to be performed in this state at the
405 time of issuance, and which transactions are subsequent to the

406 issuance of such policy; (4) transactions involving contracts of
407 insurance independently procured pursuant to the unsolicited
408 application of the insured or his agent which are reported and on
409 which a premium tax is paid in accordance with section 38a-277, as
410 amended by this act; (5) attorneys acting in the ordinary relation of
411 attorney-client in the adjustment of claims or losses; (6) transactions, in
412 this state, involving contracts of insurance issued to one or more
413 industrial insureds, provided nothing herein shall relieve an industrial
414 insured from the taxation imposed upon independently procured
415 insurance in [subsection (c) of] section 38a-277, as amended by this act.
416 For the purpose of this subdivision, an "industrial insured" shall mean
417 an insured (i) which procures the insurance of any risk by the use of
418 the services of a full-time employee acting as an insurance manager or
419 buyer, or the services of a regularly and continuously retained
420 qualified insurance consultant and (ii) whose aggregate annual
421 premiums for insurance, excluding life, accident and health insurance,
422 total at least fifty thousand dollars; (7) transactions involving contracts
423 issued by a life insurance or annuity company, organized and operated
424 without profit, to any private shareholder or individual exclusively for
425 the purpose of aiding and strengthening educational institutions or
426 charitable, health and welfare organizations by issuing insurance and
427 annuity contracts only to or for the benefit of such institutions or
428 organizations and individuals engaged in the service of such
429 institutions or organizations; (8) transactions in this state involving
430 group life and group sickness and accident or franchise sickness and
431 accident insurance or group annuities where the master policy of such
432 groups was lawfully issued and delivered in and pursuant to the laws
433 of a state in which the insurer was authorized to do an insurance
434 business to a group organized for purposes other than the
435 procurement of insurance, and where the policyholder is domiciled or
436 otherwise has a bona fide situs; (9) transactions in this state involving
437 any policy of insurance or annuity contract issued prior to January 1,
438 1970.

439 (c) The provisions of section 38a-27 do not apply to: (1) The lawful
440 transaction of surplus lines insurance; (2) transactions, in this state,

441 involving a policy lawfully solicited, written and delivered outside of
442 this state covering only subjects of insurance not resident, located or
443 expressly to be performed in this state at the time of issuance, and
444 which transactions are subsequent to the issuance of such policy; (3)
445 transactions involving contracts of insurance independently procured
446 pursuant to the unsolicited application of the insured or his agent
447 which are reported and on which a premium tax is paid in accordance
448 with section 38a-277, as amended by this act; (4) attorneys acting in the
449 ordinary relation of attorney-client in the adjustment of claims or
450 losses; (5) transactions, in this state, involving contracts of insurance
451 issued to one or more industrial insureds, provided nothing in this
452 section shall relieve an industrial insured from the taxation imposed
453 upon independently procured insurance in [subsection (c) of] section
454 38a-277, as amended by this act; (6) transactions involving contracts
455 issued by a life insurance or annuity company, organized and operated
456 without profit, to any private shareholder or individual exclusively for
457 the purpose of aiding and strengthening educational institutions or
458 charitable, health and welfare organizations by issuing insurance and
459 annuity contracts only to or for the benefit of such institutions or
460 organizations and individuals engaged in the service of such
461 institutions or organizations; (7) transactions in this state involving
462 group life and group sickness and accident or franchise sickness and
463 accident insurance or group annuities where the master policy of such
464 group was lawfully issued and delivered in and pursuant to the laws
465 of a state in which the insurer was authorized to do an insurance
466 business to a group organized for purposes other than the
467 procurement of insurance, and where the policyholder is domiciled or
468 otherwise has a bona fide situs; (8) transactions in this state involving
469 any policy of insurance or annuity contract, other than a reinsurance
470 contract, issued prior to January 1, 1970. For the purposes of
471 subdivision (5) of this subsection, an "industrial insured" means an
472 insured (A) which procures the insurance of any risk by the use of the
473 services of a full-time employee acting as an insurance manager or
474 buyer, or the services of a regularly and continuously retained
475 qualified insurance consultant, and (B) whose aggregate annual

476 premiums for insurance, excluding life, accident and health insurance,
 477 total at least fifty thousand dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to nonadmitted insurance coverage procured, continued or renewed on or after July 1, 2011</i>	38a-277
Sec. 2	<i>from passage and applicable to nonadmitted insurance coverage procured, continued or renewed on or after July 1, 2011</i>	38a-743
Sec. 3	<i>from passage</i>	38a-271(b) and (c)

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Resources of the General Fund	GF - Precludes Revenue Loss	17.5 million	17.5 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill allows the Department of Insurance (DOI) and the Department of Revenue Services (DRS) to take actions necessary to carry out provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010. Conformance with this federal statute will allow the state to continue to collect approximately \$17.5 million in current surplus lines premium and unauthorized insurers premium taxes annually. Of these funds, \$11.3 million is collected by DOI from surplus lines brokers and \$6.2 million is collected by DRS from those who procure insurance from an unauthorized insurer.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1217*****AN ACT CONCERNING NONADMITTED INSURERS.*****SUMMARY:**

To carry out the provisions of the 2010 federal Nonadmitted and Reinsurance Reform Act (NRRRA), this bill (1) makes various changes to the premium taxes on nonadmitted (i.e., unauthorized) insurance policies and (2) allows the revenue services and insurance commissioners to enter into an agreement with other states regarding the allocation of such premium taxes among the states. Under the NRRRA, states must adopt, by July 21, 2011, uniform requirements and procedures for allocating and collecting premium taxes on nonadmitted insurance policies in order to continue collecting the tax.

Under current law, the state imposes a 4% tax on gross premiums charged by nonadmitted insurers on insurance policies procured directly or through licensed surplus lines brokers. To conform the tax to the NRRRA, the bill applies that tax only to nonadmitted insurance policies where Connecticut is the insured's "home state." These changes apply to any nonadmitted insurance policy procured, continued, or renewed on or after July 1, 2011.

Among other things, the bill also:

1. modifies the timeline for individuals and brokers to file returns and remit tax payments;
2. amends the late filing penalty and interest for delinquent taxpayers;
3. allows the revenue services and insurance commissioners to enter into an agreement with other states that provides a

formula for allocating premium taxes and establishes other administrative requirements and procedures; and

4. allows the commissioners to disclose to certain individuals tax return and other information that is otherwise confidential under state law, pursuant to their interstate agreement.

EFFECTIVE DATE: Upon passage and applicable to nonadmitted insurance coverage procured, continued, or renewed on or after July 1, 2011.

NONADMITTED INSURANCE PREMIUM TAX

Applicability

Under current law, the premium tax on independently procured unauthorized insurance (i.e., policies not purchased through a broker) applies to any individual procuring, continuing, or renewing insurance with an unauthorized insurer on an insured risk that (1) resides, (2) is located, or (3) is performed in the state. The premium tax on policies procured through a licensed surplus lines broker applies to the gross premiums for all policies the broker sells, minus any premium amounts returned to policyholders.

To conform to NRRRA provisions, the bill instead applies the tax to any nonadmitted insurance policy procured directly or through a licensed surplus lines broker where Connecticut is the insured's home state. Under the NRRRA, an insured's "home state" is the state in which an insured maintains its principal place of business or residence. If the insured risk is located entirely outside of the state in which the insured resides or maintains its principal place of business, the "home state" is the state to which the greatest percentage of the insured's taxable premium is allocated. In the case of an affiliated group that is insured on a single nonadmitted insurance contract, the "home state" is the state to which the largest percentage of premium is allocated.

The bill provides that the tax applies even if the policy covers an insured risk that is only partially in Connecticut.

As under current law, the tax on surplus lines broker premiums does not apply to policies issued to (1) the state, (2) any town, or (3) any special taxing district if any of these are named on the policy and responsible for paying its premiums. Also, as under current law, the tax on independently procured policies does not apply to (1) individual life or disability, (2) wet marine, or (3) transportation insurance.

Tax Administration

Under current law, individuals who procure an insurance policy from a nonadmitted insurance company must withhold 4% of the premium for premium taxes, file an annual tax return, and remit the tax by March 1st to the Department of Revenue Services (DRS). Licensed surplus lines brokers, on the other hand, must file quarterly tax returns and remit the tax to the Department of Insurance (DOI) by the first day of February, May, August, and November. The bill requires both individuals and brokers to file quarterly tax returns and remit the tax to DRS and DOI, respectively, by the 15th day of these months.

Late Filing Penalty and interest

Under current law, surplus lines brokers that fail to pay the premium tax are subject to a penalty of 10% of the tax due plus at least 1% interest for each full or partial month that the tax remains unpaid. The bill makes the interest rate 1% and subjects individuals who fail to pay the tax on independently procured policies to the same penalty and interest. Currently, these taxpayers are subject to a penalty of 10% of the tax due or \$75, whichever is greater, plus 1% interest.

Under current law, the DRS commissioner may ask the attorney general to recover any delinquent taxes on independently procured policies. The bill authorizes the attorney general to also recover any related interest and penalties. As under current law, the DRS commissioner may waive all or part of the penalty if he finds that the taxpayer's failure to pay the tax has a reasonable cause and is not intentional or due to neglect.

Preemption

The bill requires that its provisions be construed so as to avoid preemption under the NRRRA.

NONADMITTED INSURANCE PREMIUM AGREEMENT

The bill allows the DRS and DOI commissioners to enter into a cooperative or reciprocal agreement or compact with other states to allocate nonadmitted insurance premium taxes among them in accordance with the NRRRA's requirements. The agreement may include, but is not limited to, the National Association of Insurance Commissioners' (NAIC) Nonadmitted Insurance Multistate Agreement (NIMA). Under the bill, if the agreement's provisions differ from those in the bill, the agreement prevails.

Premium Allocation

The agreement may provide a formula for allocating nonadmitted insurance premiums for policies that cover insured risks that are only partially in the state. For such policies, premiums allocated to Connecticut are subject to the state's 4% tax, while premiums allocated to other states that are a party to the agreement are subject to each state's respective tax rate. To the extent that a policy covers an insured risk in a state that is not a party to the agreement, the portion of gross premiums otherwise allocable to that state must be allocated to Connecticut.

Administrative Requirements

The agreement may include requirements or procedures for (1) recordkeeping, (2) audits, (3) information-sharing, (4) collecting delinquent taxes, (5) disbursing funds to other states in the agreement, and (6) any additional provisions that will facilitate its administration.

Cooperative Agreements with Processing Entities

The commissioners may enter into cooperative agreements with processing entities in this or other states concerning the collection and processing of nonadmitted insurance tax premiums and data.

Disclosing Confidential Information

Although the DRS and DOI commissioners are generally prohibited from disclosing tax return information, the bill allows them to disclose return information related to insured individuals pursuant to the agreement's terms. "Return information" includes, among other things, a taxpayer's identity and the nature, source, or amount of the taxpayer's income, tax liability, and tax payments. The bill also allows the DOI commissioner to disclose information concerning surplus lines brokers that is otherwise confidential under state law, pursuant to the agreement's terms.

Both commissioners may disclose the information to officials in (1) other states that are a party to the agreement and (2) entities that collect and process nonadmitted insurance premiums and related data, if their official duties require such information.

BACKGROUND***NRRA***

The NRRA was signed into law on July 21, 2010 as part of The Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (P. L. 111-203, 124 Stat. 1376 (2010)). Its provisions, most of which take effect on July 21, 2011, preempt state surplus lines laws on premium tax collection, allocation, and distribution.

Nonadmitted Insurance Multistate Agreement

This agreement establishes procedures for participating states' payment and allocation of premium tax revenue. It also establishes a clearinghouse for the coordination and dissemination of premium tax and transaction data related to nonadmitted insurance multi-state risks. States participating in NIMA must share tax revenue they are authorized to collect under the NRRA as the home state on a nonadmitted insurance placement.

Surplus Lines Insurance

Surplus lines insurance is property and casualty insurance coverage that is not available from licensed Connecticut insurers (also called

admitted companies) and must be purchased from a nonadmitted carrier. Nonadmitted insurers are not licensed to transact business in the state but may still offer a line of insurance or a particular type of coverage in the state through a surplus lines broker. Examples of surplus lines insurance include commercial general liability insurance, fire insurance, mobile home policies, and medical malpractice insurance.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 52 Nay 0 (04/07/2011)