

SUMMARY ANALYSIS OF AMENDED BILL

Author: Solorio Analyst: John Pavalasky Bill Number: AB 315
 Related Bills: None Telephone: 845-4335 Amended Date: April 7, 2011
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Nonadmitted Insurance/Surplus Line Brokers

SUMMARY

This bill would forestall federal preemption on July 21, 2011, of state statutes pertaining to surplus line insurance taxation, eligibility, and broker licensure by the Nonadmitted and Reinsurance Reform Act (NRRA) of 2010 (Subtitle B of Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, July 21, 2010)).

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

SUMMARY OF AMENDMENTS

The April 7, 2011, amendments delete the enabling authority to enter into a compact or agreement as well as adopt technical amendments identified by the department in the analysis of the bill as introduced February 9, 2011. An update to the "This Bill", "Support/Opposition", and "Arguments" is provided. In addition, a new "Revenue" discussion is provided. For convenience, the "Policy Concern" from the previous analysis is restated. The remaining portions of the department's analysis of the bill as introduced February 9, 2011, still apply and are not restated.

ANALYSIS

THIS BILL

This bill would do the following:

- Authorize the collection of tax on 100 percent of California home state insured policies;
- Provide a common definition of home state insured, including principal place of business and principal residence;
- Conform surplus line eligibility standards to new federal preemption limitations;
- Provide for a permissive list of approved surplus line insurers that meet California's current, higher standards for eligibility;
- Conform surplus line broker licensing provisions to new federal preemption limitations; and
- Make other related changes.

Board Position:	Legislative Director	Date
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ECONOMIC IMPACT

Revenue Estimate

Recent federal legislation creates a uniform system for nonadmitted insurance premium tax payments and encourages states to create a compact or certain agreements for allocating taxes between states. California will continue to collect current "nonadmitted insurance tax" (NIT) levels, but there is the possibility that California may collect more or less revenue.

Franchise Tax Board (FTB) collects, on average, \$10 million in NIT annually. The revenue impact of this bill is dependent on the difference between:

- The additional taxes assessed on taxpayers with California home state insured policies that include out-of-state insurance, at 100 percent of total premiums, and
- The reduction of taxes assessed on policies that have a California insurance component but which would not be subject to tax because they do not meet the definition of a home state policy.

The net revenue impact is unknown but could result in gains or losses in the millions of dollars.

SUPPORT/OPPOSITION

Support:

Department of Insurance (CDI) (Sponsor)
California Insurance Wholesalers Association (CIWA)
Insurance Brokers and Agents of the West (IBA West)
National Association of Professional Surplus Line Offices (NAPSLO)

Opposition:

None at this time.

ARGUMENTS

Pro: **Section 3.5 of Article III of the California Constitution** prohibits an administrative agency, such as the CDI, Board of Equalization (BOE), or FTB, from declaring a statute invalid or unenforceable in the absence of an appellate court determination that the statute is unenforceable or unconstitutional. Therefore, proponents may argue that unless the statute is amended, these departments will be required to continue to enforce current law unless an appellate court rules otherwise.

Con: Opponents may argue that without entering into a uniform nationwide compact or agreement, the uniformity goal of the NRRA would not be achieved.

POLICY CONCERNS

The author may wish to consolidate the collection of the directly acquired insurance subject to the NIT with the collection by the CDI for insurance placed by surplus line brokers. By doing so a single agency would be responsible for the collection of gross premiums tax and thereby increase efficiency and uniformity.

LEGISLATIVE STAFF CONTACT

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