

By: Keffer

H.B. No. 3315

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the imposition and collection of certain insurance  
3 taxes, the adoption of certain reciprocal or multistate agreements  
4 relating to those taxes, and the adoption of rules relating to those  
5 taxes.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 221.002(b), Insurance Code, is amended  
8 to read as follows:

9 (b) Except as provided by Subsection (c), in determining an  
10 insurer's taxable premium receipts, the insurer shall include the  
11 total gross amounts of premiums, membership fees, assessments,  
12 dues, revenues, and any other considerations for insurance written  
13 by the insurer in a calendar year from any kind of insurance written  
14 by the insurer on each kind of property or risk [~~risks~~] located in  
15 this state, including:

- 16 (1) fire insurance;
- 17 (2) ocean marine insurance;
- 18 (3) inland marine insurance;
- 19 (4) accident insurance;
- 20 (5) credit insurance;
- 21 (6) livestock insurance;
- 22 (7) fidelity insurance;
- 23 (8) guaranty insurance;
- 24 (9) surety insurance;

- 1 (10) casualty insurance;
- 2 (11) workers' compensation insurance;
- 3 (12) employers' liability insurance; ~~and~~
- 4 (13) crop insurance written by a farm mutual insurance
- 5 company; and
- 6 (14) home warranty insurance.

7 SECTION 2. Section 222.002(b), Insurance Code, is amended  
8 to read as follows:

9 (b) Except as otherwise provided by this section, in  
10 determining an insurer's taxable gross premiums or a health  
11 maintenance organization's taxable gross revenues, the insurer or  
12 health maintenance organization shall include the total gross  
13 amounts of premiums, membership fees, assessments, dues, revenues,  
14 and other considerations received by the insurer or health  
15 maintenance organization in a calendar year from any kind of health  
16 maintenance organization certificate or contract or insurance  
17 policy or contract covering risks on individuals or groups [~~a~~  
18 ~~person~~] located in this state and arising from the business of a  
19 health maintenance organization or the business of life insurance,  
20 accident insurance, health insurance, life and accident insurance,  
21 life and health insurance, health and accident insurance, life,  
22 health, and accident insurance, including variable life insurance,  
23 credit life insurance, and credit accident and health insurance for  
24 profit or otherwise or for mutual benefit or protection.

25 SECTION 3. Section 223.003(a), Insurance Code, is amended  
26 to read as follows:

27 (a) An annual tax is imposed on all [~~each title insurance~~

1 ~~company that receives]~~ premiums from the business of title  
2 insurance. The rate of the tax is 1.35 percent of [~~the~~] title  
3 insurance [~~company's~~] taxable premiums for a calendar year,  
4 including any premiums retained by a title insurance agent as  
5 provided by Section 223.005. For purposes of this chapter, a person  
6 engages in the business of title insurance if the person engages in  
7 an activity described by Section 2501.005.

8 SECTION 4. Section 225.004, Insurance Code, is amended by  
9 adding Subsection (d-1) to read as follows:

10 (d-1) Notwithstanding Subsections (b) through (d), the  
11 comptroller by rule may establish that all premiums are considered  
12 to be on risks located in this state:

13 (1) if the insured's home office or state of domicile  
14 or residence is located in this state; or

15 (2) to accommodate changes in federal statutes or  
16 regulations that would otherwise limit the comptroller's ability to  
17 directly collect the taxes due under this section.

18 SECTION 5. Section 225.009, Insurance Code, is amended by  
19 adding Subsection (c) to read as follows:

20 (c) The comptroller by rule may change the accrued tax  
21 amount for which prepayment is required under Subsection (a) and  
22 the prepayment deadline under Subsection (b).

23 SECTION 6. Chapter 225, Insurance Code, is amended by  
24 adding Section 225.014 to read as follows:

25 Sec. 225.014. LIMITATION ON RULEMAKING. In adopting rules  
26 under this chapter, the comptroller may not adopt a rule that  
27 exceeds the requirements of this chapter.

1 SECTION 7. Section 226.003, Insurance Code, is amended by  
2 adding Subsection (d-1) to read as follows:

3 (d-1) Notwithstanding Subsections (b) through (d), the  
4 comptroller by rule may establish that all premiums are considered  
5 to be on risks located in this state:

6 (1) if the insured's home office or state of domicile  
7 or residence is located in this state; or

8 (2) to accommodate changes in federal statutes or  
9 regulations that would otherwise limit the comptroller's ability to  
10 directly collect the taxes due under this section.

11 SECTION 8. Subchapter A, Chapter 226, Insurance Code, is  
12 amended by adding Section 226.006 to read as follows:

13 Sec. 226.006. LIMITATION ON RULEMAKING. In adopting rules  
14 under this subchapter, the comptroller may not adopt a rule that  
15 exceeds the requirements of this chapter.

16 SECTION 9. Section 226.053, Insurance Code, is amended by  
17 adding Subsection (b-1) to read as follows:

18 (b-1) Notwithstanding Subsections (a) and (b), the  
19 comptroller by rule may establish that all premiums are considered  
20 to be on risks located in this state:

21 (1) if an insured's home office or state of domicile or  
22 residence is located in this state; or

23 (2) to accommodate changes in federal statutes or  
24 regulations that would otherwise limit the comptroller's ability to  
25 directly collect the taxes due under this section.

26 SECTION 10. Subchapter B, Chapter 226, Insurance Code, is  
27 amended by adding Section 226.057 to read as follows:

1       Sec. 226.057. LIMITATION ON RULEMAKING. In adopting rules  
2 under this subchapter, the comptroller may not adopt a rule that  
3 exceeds the requirements of this chapter.

4       SECTION 11. Subtitle B, Title 3, Insurance Code, is amended  
5 by adding Chapter 228 to read as follows:

6       CHAPTER 228. COOPERATIVE AGREEMENTS WITH OTHER STATES

7       Sec. 228.001. DEFINITIONS. In this chapter:

8           (1) "Agent" includes:

9                   (A) a surplus lines agent, as defined by Section  
10 981.002;

11                   (B) a person licensed as a surplus lines agent by  
12 another state; and

13                   (C) any other person who performs the acts of an  
14 agent, whether through an oral, written, electronic, or other form  
15 of communication, by soliciting, negotiating, procuring, or  
16 collecting a premium on an insurance contract.

17           (2) "Insurer" has the meaning assigned by Section  
18 101.002 and includes:

19                   (A) an insurer that does not hold a certificate  
20 of authority in this state;

21                   (B) an eligible surplus lines insurer; and

22                   (C) an insurer that holds a certificate of  
23 authority in this state but performs acts outside the scope of its  
24 authority under the certificate.

25           (3) "Premium" includes:

26                   (A) any consideration for insurance, including:

27                           (i) a premium;

1                   (ii) a membership fee;

2                   (iii) an assessment; and

3                   (iv) dues; or

4                   (B) any other meaning of the term adopted in a  
5 cooperative agreement.

6                   (4) "Processing entity" means a processing center or  
7 clearinghouse established under a cooperative agreement.

8                   (5) "Stamping office" means the Surplus Lines Stamping  
9 Office of Texas or similar stamping offices in other states.

10                   Sec. 228.002. COOPERATIVE AGREEMENTS WITH OTHER STATES.

11 (a) The comptroller may enter into a cooperative agreement,  
12 reciprocal agreement, or compact with another state for the  
13 collection of insurance premium taxes imposed by Chapters 225 and  
14 226 on a multistate basis. An agreement or amendment of an  
15 agreement takes effect according to its terms, except that an  
16 agreement or amendment may not take effect until the proposed  
17 agreement or amendment is published in the Texas Register.

18                   (b) An agreement may provide for:

19                   (1) determining a base state and multistate allocation  
20 of insurance premiums;

21                   (2) tax reporting requirements;

22                   (3) audit and refund claim procedures;

23                   (4) exchange of information;

24                   (5) requirements for reporting on a multistate basis;

25                   (6) insurance and tax related terms and definitions;

26                   (7) penalties, fees, administrative costs, and  
27 interest rates;

1           (8) audit assessment and refund claim limitation  
2 periods;

3           (9) procedures for collecting amounts due from  
4 agents, insurers, or other persons and for collecting and  
5 forwarding the amounts due to the jurisdiction to which the amount  
6 is owed;

7           (10) procedures for verifying refund claims by agents,  
8 insurers, or other persons and for collecting those amounts from  
9 the jurisdiction owing the refund amount;

10           (11) the temporary remittal of funds equal to the  
11 amounts due to another jurisdiction, subject to appropriation of  
12 funds for that purpose; and

13           (12) other provisions to facilitate the  
14 administration of the agreement.

15           (c) The comptroller may, as required by the terms of an  
16 agreement, provide to an officer of another state any information  
17 that relates to the solicitation, negotiation, procurement,  
18 placement, issuance, receipt, or collection of premiums by an  
19 agent, insurer, or other person for an insurance contract or policy  
20 that may be subject to the premium taxes imposed by Chapter 225 or  
21 226.

22           (d) An agreement may provide for each state to audit the  
23 records of an agent, insurer, or other person based in this state to  
24 determine if insurance premium taxes due each state that is a party  
25 to the agreement are properly reported and paid. An agreement may  
26 provide for each state to forward the findings of an audit performed  
27 on an agent, insurer, or other person based in this state to each

1 other state in which the person has an allocation of taxable  
2 premiums.

3 (e) For an agent, insurer, or other person who has an  
4 allocation of taxable premiums in this state, the comptroller may  
5 use an audit performed by another state that is a party to an  
6 agreement with this state to make an assessment of insurance  
7 premium taxes against the agent, insurer, or other person. An  
8 assessment made by the comptroller under this subsection is prima  
9 facie evidence that the amount shown as due is correct.

10 (f) An agreement entered into under this section does not  
11 affect the comptroller's authority to audit any person under any  
12 other law.

13 (g) An agreement entered into under this section prevails  
14 over an inconsistent rule of the comptroller. Except as otherwise  
15 provided by this section, a statute of this state prevails over an  
16 inconsistent provision of an agreement entered into under this  
17 section.

18 (h) The comptroller may segregate in a separate fund or  
19 account the amount estimated to be due to other jurisdictions,  
20 amounts subject to refund during the fiscal year, fees, and other  
21 costs collected under the agreement. On a determination of an  
22 amount held that is due to be remitted to another jurisdiction, the  
23 comptroller may issue a warrant or make an electronic transfer of  
24 the amount as necessary to carry out the purposes of the agreement.  
25 An auditing cost, membership fee, or other cost associated with the  
26 agreement may be paid from interest earned on funds segregated  
27 under this subsection. Any interest earnings in excess of the costs



1 associated with the agreement shall be credited to general revenue.

2 (i) The legislature finds that it is in the public interest  
3 to enter into insurance tax and regulatory agreements with other  
4 jurisdictions that may provide for the temporary remittal of  
5 amounts due other jurisdictions that exceed the amounts collected  
6 and for cooperation with other jurisdictions for the collection of  
7 taxes imposed by this state under Chapters 225 and 226 and similar  
8 taxes imposed under statutes of other jurisdictions on insurance  
9 premiums. The comptroller shall ensure that reasonable measures  
10 are developed to recover insurance taxes and other amounts due this  
11 state during each biennium.

12 (j) The comptroller may enter into a cooperative agreement,  
13 reciprocal agreement, or compact with another state to provide for  
14 the collection of taxes imposed by this state and the other states  
15 on insurances taxes that may be due the states and this state based  
16 on a standardized premium allocation adopted by the states under  
17 the agreement. The comptroller may also enter into other  
18 cooperative agreements with surplus lines stamping offices located  
19 in this state and other states in the reporting and capturing of  
20 related tax information. In addition, the comptroller may enter  
21 into cooperative agreements with processing entities located in  
22 this state or other states related to the capturing and processing  
23 of insurance premium and tax data.

24 (k) The comptroller may adopt rules as necessary to  
25 implement this chapter. In adopting rules under this chapter, the  
26 comptroller may not adopt a rule that does not specifically  
27 implement this section.

1 SECTION 12. Section 252.003, Insurance Code, is amended to  
2 read as follows:

3 Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer  
4 shall pay maintenance taxes under this chapter on the correctly  
5 reported gross premiums [~~collected~~] from writing insurance in this  
6 state against loss or damage by:

- 7 (1) bombardment;
- 8 (2) civil war or commotion;
- 9 (3) cyclone;
- 10 (4) earthquake;
- 11 (5) excess or deficiency of moisture;
- 12 (6) explosion as defined by Article 5.52;
- 13 (7) fire;
- 14 (8) flood;
- 15 (9) frost and freeze;
- 16 (10) hail, including loss by hail on farm crops;
- 17 (11) insurrection;
- 18 (12) invasion;
- 19 (13) lightning;
- 20 (14) military or usurped power;
- 21 (15) an order of a civil authority made to prevent the  
22 spread of a conflagration, epidemic, or catastrophe;
- 23 (16) rain;
- 24 (17) riot;
- 25 (18) the rising of the waters of the ocean or its  
26 tributaries;
- 27 (19) smoke or smudge;

- 1           (20) strike or lockout;  
2           (21) tornado;  
3           (22) vandalism or malicious mischief;  
4           (23) volcanic eruption;  
5           (24) water or other fluid or substance resulting from  
6 the breakage or leakage of sprinklers, pumps, or other apparatus  
7 erected for extinguishing fires, water pipes, or other conduits or  
8 containers;  
9           (25) weather or climatic conditions; [~~or~~]  
10           (26) windstorm;  
11           (27) an event covered under a home warranty insurance  
12 policy; or  
13           (28) an event covered under an inland marine insurance  
14 policy.

15           SECTION 13. Section 254.003, Insurance Code, is amended to  
16 read as follows:

17           Sec. 254.003. PREMIUMS SUBJECT TO TAXATION. An insurer  
18 shall pay maintenance taxes under this chapter on the correctly  
19 reported gross premiums from writing motor vehicle insurance in  
20 this state, including personal and commercial automobile  
21 insurance.

22           SECTION 14. Section 257.001, Insurance Code, is amended to  
23 read as follows:

24           Sec. 257.001. MAINTENANCE TAX IMPOSED. (a) A maintenance  
25 tax is imposed on each authorized insurer, including a group  
26 hospital service corporation, managed care organization, local  
27 mutual aid association, statewide mutual assessment company,

1 stipulated premium company, and stock or mutual insurance company,  
2 that collects from residents of this state gross premiums or gross  
3 considerations subject to taxation under Section 257.003. The tax  
4 required by this chapter is in addition to other taxes imposed that  
5 are not in conflict with this chapter.

6 (b) In this section, "managed care organization" means an  
7 organization authorized under this code to engage in the business  
8 of issuing health benefit plans that is not authorized as a health  
9 maintenance organization, preferred provider organization, or  
10 insurance company and the taxation of which is not preempted by  
11 federal law.

12 SECTION 15. Section 271.002(a), Insurance Code, is amended  
13 to read as follows:

14 (a) A maintenance fee is imposed on all [~~each insurer with~~  
15 ~~gross~~] premiums subject to assessment under Section 271.006.

16 SECTION 16. Subchapter A, Chapter 281, Insurance Code, is  
17 amended by adding Section 281.008 to read as follows:

18 Sec. 281.008. RECIPROCITY AGREEMENTS. The comptroller by  
19 rule may enter into a reciprocity agreement with another state  
20 under which the parties agree to mutually set aside retaliatory  
21 provisions in situations in which this state and the other state  
22 determine that retaliation is not the preferred approach to protect  
23 their domestic insurers from excessive taxation or other financial  
24 obligations. In adopting rules under this section, the comptroller  
25 may not adopt a rule that does not specifically implement this  
26 section.

27 SECTION 17. Section 401.151(e), Insurance Code, is amended

1 to read as follows:

2 (e) The amount of all examination and evaluation fees paid  
3 to the state by an insurer in each taxable year shall be allowed as a  
4 credit on the amount of premium taxes due [~~under this subchapter~~].

5 SECTION 18. Section 401.154, Insurance Code, is amended to  
6 read as follows:

7 Sec. 401.154. TAX CREDIT AUTHORIZED. An insurer is  
8 entitled to a credit on the amount of premium [~~or other~~] taxes to be  
9 paid by the insurer for all examination fees paid under Section  
10 401.153. The insurer may take the credit for the taxable year  
11 during which the examination fees are paid and may take the credit  
12 to the same extent the insurer may take a credit for examination  
13 fees paid when a salaried department examiner conducts the  
14 examination.

15 SECTION 19. Section 1502.053, Insurance Code, is amended to  
16 read as follows:

17 Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The  
18 issuer of a children's health benefit plan approved under Section  
19 1502.051 is not subject to the premium tax or the tax on revenues  
20 imposed under Chapter 222 with respect to money received for  
21 coverage provided under that plan.

22 (b) The issuer of a children's health benefit plan approved  
23 under Section 1502.051 is not subject to the retaliatory tax  
24 imposed under Chapter 281 with respect to money received for  
25 coverage provided under that plan.

26 SECTION 20. Section 2210.058(c), Insurance Code, is amended  
27 to read as follows:

1           (c) An insurer may credit an amount paid in accordance with  
2 Subsection (a)(4) in a calendar year against the insurer's premium  
3 tax under Chapter 221. The tax credit authorized under this  
4 subsection shall be allowed at a rate not to exceed 20 percent per  
5 year for five or more successive years beginning [~~following~~] the  
6 calendar year that the assessments under this section are paid [~~of~~  
7 ~~payment of the claims~~]. The balance of payments made by the insurer  
8 and not claimed as a premium tax credit may be reflected in the  
9 books and records of the insurer as an admitted asset of the insurer  
10 for all purposes, including exhibition in an annual statement under  
11 Section 862.001.

12           SECTION 21. (a) Article 4.11A, Insurance Code, is repealed.

13           (b) Section 281.006(a), Insurance Code, is repealed.

14           SECTION 22. This Act takes effect immediately if it  
15 receives a vote of two-thirds of all the members elected to each  
16 house, as provided by Section 39, Article III, Texas Constitution.  
17 If this Act does not receive the vote necessary for immediate  
18 effect, this Act takes effect September 1, 2007.