

By: Keffer

H.B. No. 3315

Substitute the following for H.B. No. 3315:

By: Bonnen

C.S.H.B. No. 3315

A BILL TO BE ENTITLED

1

AN ACT

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

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

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

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

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

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

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

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

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

26 (a) An annual tax is imposed on all [~~each title insurance~~
27 ~~company that receives~~] premiums from the business of title

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

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

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

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

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

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

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

22 SECTION 6. Section 226.003, Insurance Code, is amended by
23 adding Subsection (d-1) to read as follows:

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

27 (1) if the insured's home office or state of domicile

1 or residence is located in this state; or

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

5 SECTION 7. Section 226.053, Insurance Code, is amended by
6 adding Subsection (b-1) to read as follows:

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

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

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

15 SECTION 8. Subtitle B, Title 3, Insurance Code, is amended
16 by adding Chapter 228 to read as follows:

17 CHAPTER 228. COOPERATIVE AGREEMENTS WITH OTHER STATES

18 Sec. 228.001. DEFINITIONS. In this chapter:

19 (1) "Agent" includes:

20 (A) a surplus lines agent, as defined by Section
21 981.002;

22 (B) a person licensed as a surplus lines agent by
23 another state; and

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

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

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

5 (B) an eligible surplus lines insurer; and

6 (C) an insurer that holds a certificate of
7 authority in this state but performs acts outside the scope of its
8 authority under the certificate.

9 (3) "Premium" includes:

10 (A) any consideration for insurance, including:

11 (i) a premium;

12 (ii) a membership fee;

13 (iii) an assessment; and

14 (iv) dues; or

15 (B) any other meaning of the term adopted in a
16 cooperative agreement.

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

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

21 Sec. 228.002. COOPERATIVE AGREEMENTS WITH OTHER STATES.

22 (a) The comptroller may enter into a cooperative agreement,
23 reciprocal agreement, or compact with another state for the
24 collection of insurance premium taxes imposed by Chapters 225 and
25 226 on a multistate basis. An agreement or amendment of an
26 agreement takes effect according to its terms, except that an
27 agreement or amendment may not take effect until the proposed

1 agreement or amendment is published in the Texas Register.

2 (b) An agreement may provide for:

3 (1) determining a base state and multistate allocation
4 of insurance premiums;

5 (2) tax reporting requirements;

6 (3) audit and refund claim procedures;

7 (4) exchange of information;

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

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

10 (7) penalties, fees, administrative costs, and
11 interest rates;

12 (8) audit assessment and refund claim limitation
13 periods;

14 (9) procedures for collecting amounts due from
15 agents, insurers, or other persons and for collecting and
16 forwarding the amounts due to the jurisdiction to which the amount
17 is owed;

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

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

24 (12) other provisions to facilitate the
25 administration of the agreement.

26 (c) The comptroller may, as required by the terms of an
27 agreement, provide to an officer of another state any information

1 that relates to the solicitation, negotiation, procurement,
2 placement, issuance, receipt, or collection of premiums by an
3 agent, insurer, or other person for an insurance contract or policy
4 that may be subject to the premium taxes imposed by Chapter 225 or
5 226.

6 (d) An agreement may provide for each state to audit the
7 records of an agent, insurer, or other person based in this state to
8 determine if insurance premium taxes due each state that is a party
9 to the agreement are properly reported and paid. An agreement may
10 provide for each state to forward the findings of an audit performed
11 on an agent, insurer, or other person based in this state to each
12 other state in which the person has an allocation of taxable
13 premiums.

14 (e) For an agent, insurer, or other person who has an
15 allocation of taxable premiums in this state, the comptroller may
16 use an audit performed by another state that is a party to an
17 agreement with this state to make an assessment of insurance
18 premium taxes against the agent, insurer, or other person. An
19 assessment made by the comptroller under this subsection is prima
20 facie evidence that the amount shown as due is correct.

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

24 (g) An agreement entered into under this section prevails
25 over an inconsistent rule of the comptroller. Except as otherwise
26 provided by this section, a statute of this state prevails over an
27 inconsistent provision of an agreement entered into under this

1 section.

2 (h) The comptroller may segregate in a separate fund or
3 account the amount estimated to be due to other jurisdictions,
4 amounts subject to refund during the fiscal year, fees, and other
5 costs collected under the agreement. On a determination of an
6 amount held that is due to be remitted to another jurisdiction, the
7 comptroller may issue a warrant or make an electronic transfer of
8 the amount as necessary to carry out the purposes of the agreement.
9 An auditing cost, membership fee, or other cost associated with the
10 agreement may be paid from interest earned on funds segregated
11 under this subsection. Any interest earnings in excess of the costs
12 associated with the agreement shall be credited to general revenue.

13 (i) The legislature finds that it is in the public interest
14 to enter into insurance tax and regulatory agreements with other
15 jurisdictions that may provide for the temporary remittal of
16 amounts due other jurisdictions that exceed the amounts collected
17 and for cooperation with other jurisdictions for the collection of
18 taxes imposed by this state under Chapters 225 and 226 and similar
19 taxes imposed under statutes of other jurisdictions on insurance
20 premiums. The comptroller shall ensure that reasonable measures
21 are developed to recover insurance taxes and other amounts due this
22 state during each biennium.

23 (j) The comptroller may enter into a cooperative agreement,
24 reciprocal agreement, or compact with another state to provide for
25 the collection of taxes imposed by this state and the other states
26 on insurances taxes that may be due the states and this state based
27 on a standardized premium allocation adopted by the states under

1 the agreement. The comptroller may also enter into other
2 cooperative agreements with surplus lines stamping offices located
3 in this state and other states in the reporting and capturing of
4 related tax information. In addition, the comptroller may enter
5 into cooperative agreements with processing entities located in
6 this state or other states related to the capturing and processing
7 of insurance premium and tax data.

8 (k) The comptroller may adopt rules as necessary to
9 implement this chapter.

10 SECTION 9. Section 252.003, Insurance Code, is amended to
11 read as follows:

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

- 16 (1) bombardment;
- 17 (2) civil war or commotion;
- 18 (3) cyclone;
- 19 (4) earthquake;
- 20 (5) excess or deficiency of moisture;
- 21 (6) explosion as defined by Article 5.52;
- 22 (7) fire;
- 23 (8) flood;
- 24 (9) frost and freeze;
- 25 (10) hail, including loss by hail on farm crops;
- 26 (11) insurrection;
- 27 (12) invasion;

- 1 (13) lightning;
- 2 (14) military or usurped power;
- 3 (15) an order of a civil authority made to prevent the
- 4 spread of a conflagration, epidemic, or catastrophe;
- 5 (16) rain;
- 6 (17) riot;
- 7 (18) the rising of the waters of the ocean or its
- 8 tributaries;
- 9 (19) smoke or smudge;
- 10 (20) strike or lockout;
- 11 (21) tornado;
- 12 (22) vandalism or malicious mischief;
- 13 (23) volcanic eruption;
- 14 (24) water or other fluid or substance resulting from
- 15 the breakage or leakage of sprinklers, pumps, or other apparatus
- 16 erected for extinguishing fires, water pipes, or other conduits or
- 17 containers;
- 18 (25) weather or climatic conditions; [~~or~~]
- 19 (26) windstorm;
- 20 (27) an event covered under a home warranty insurance
- 21 policy; or
- 22 (28) an event covered under an inland marine insurance
- 23 policy.

24 SECTION 10. Section 254.003, Insurance Code, is amended to
25 read as follows:

26 Sec. 254.003. PREMIUMS SUBJECT TO TAXATION. An insurer
27 shall pay maintenance taxes under this chapter on the correctly

1 reported gross premiums from writing motor vehicle insurance in
2 this state, including personal and commercial automobile
3 insurance.

4 SECTION 11. Section 257.001, Insurance Code, is amended to
5 read as follows:

6 Sec. 257.001. MAINTENANCE TAX IMPOSED. (a) A maintenance
7 tax is imposed on each authorized insurer, including a group
8 hospital service corporation, managed care organization, local
9 mutual aid association, statewide mutual assessment company,
10 stipulated premium company, and stock or mutual insurance company,
11 that collects from residents of this state gross premiums or gross
12 considerations subject to taxation under Section 257.003. The tax
13 required by this chapter is in addition to other taxes imposed that
14 are not in conflict with this chapter.

15 (b) In this section, "managed care organization" means an
16 organization authorized under this code to engage in the business
17 of issuing health benefit plans that is not authorized as a health
18 maintenance organization, preferred provider organization, or
19 insurance company and the taxation of which is not preempted by
20 federal law.

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

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

25 SECTION 13. Subchapter A, Chapter 281, Insurance Code, is
26 amended by adding Section 281.008 to read as follows:

27 Sec. 281.008. RECIPROCITY AGREEMENTS. The comptroller by

1 rule may enter into a reciprocity agreement with another state
2 under which the parties agree to mutually set aside retaliatory
3 provisions in situations in which this state and the other state
4 determine that retaliation is not the preferred approach to protect
5 their domestic insurers from excessive taxation or other financial
6 obligations.

7 SECTION 14. Section 401.151(e), Insurance Code, is amended
8 to read as follows:

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

12 SECTION 15. Section 401.154, Insurance Code, is amended to
13 read as follows:

14 Sec. 401.154. TAX CREDIT AUTHORIZED. An insurer is
15 entitled to a credit on the amount of premium [~~or other~~] taxes to be
16 paid by the insurer for all examination fees paid under Section
17 401.153. The insurer may take the credit for the taxable year
18 during which the examination fees are paid and may take the credit
19 to the same extent the insurer may take a credit for examination
20 fees paid when a salaried department examiner conducts the
21 examination.

22 SECTION 16. Section 1502.053, Insurance Code, is amended to
23 read as follows:

24 Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The
25 issuer of a children's health benefit plan approved under Section
26 1502.051 is not subject to the premium tax or the tax on revenues
27 imposed under Chapter 222 with respect to money received for

1 coverage provided under that plan.

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

6 SECTION 17. Section 2210.058(c), Insurance Code, is amended
7 to read as follows:

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

19 SECTION 18. (a) Article 4.11A, Insurance Code, is repealed.

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

21 SECTION 19. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2007.