

By: Duncan

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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 received by the  
12 insurer [written by the insurer] in a calendar year from any kind of  
13 insurance written by the insurer on each kind of property or risk  
14 [~~risks~~] located in 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;

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- 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:

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

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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 who performs acts outside the scope of  
8 its 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 insurance 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 tax  
4       information related. In addition, the comptroller may enter into  
5       cooperative agreements with processing entities located in this  
6       state or other states related to the capturing and processing of  
7       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

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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. Section 401.151(e), Insurance Code, is amended  
26 to read as follows:

27 (e) The amount of all examination and evaluation fees paid

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1 to the state by an insurer in each taxable year shall be allowed as a  
2 credit on the amount of premium taxes due [~~under this subchapter~~].

3 SECTION 14. Section 401.154, Insurance Code, is amended to  
4 read as follows:

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

13 SECTION 15. Section 1502.053, Insurance Code, is amended to  
14 read as follows:

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

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

24 SECTION 16. Section 2210.058(c), Insurance Code, is amended  
25 to read as follows:

26 (c) An insurer may credit an amount paid in accordance with  
27 Subsection (a)(4) in a calendar year against the insurer's premium

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

10 SECTION 17. (a) Article 4.11A, Insurance Code, is repealed.

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

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