

UPDATED
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**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 155**

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

Sub. for SB 155 would create new definitions and amend existing requirements in the Insurance Code pertaining to the regulation of excess lines insurance (also referred to by the term “surplus lines insurance”). Additionally, the bill would repeal the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT). The State of Kansas became a member of the Compact *via* the enactment of 2011 HB 2076.

Definitions

The bill would create new definitions to be applicable to provisions in the Insurance Code relating to the regulation of excess lines insurance coverage. Among the defined terms are:

- Exempt commercial purchaser – any person purchasing commercial insurance that, at the time of placement, meets the following requirements: employs or retains a qualified risk manager to negotiate insurance coverage; has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and this person:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Possesses a net worth in excess of \$20,040,000, except that this amount would be adjusted every five years by rules and regulations of the Insurance Commissioner to account for the percentage change in the Consumer Price Index;
 - Generates annual revenues in excess of \$55,100,000 (this amount also would be adjusted every five years as detailed above);
 - Employs more than 500 full-time or full-time-equivalent employees per insured entity or is a member of an affiliated group employing more than 1,000 employees in the aggregate;
 - Is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$33,060,000 (this amount also would be adjusted every five years as previously detailed); or
 - Is a municipality with a population in excess of 50,000 persons;
- Home state – as the term applies to an insured:
 - The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
 - If 100 percent of the insured risk is located out of the state (its principal place of business), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated;
- Non-admitted insurer – an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state (this

term would not include a risk retention group, as defined in 15 USC § 3901(a)(4)); and

- Surplus lines insurance – insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state. The term also would mean excess lines insurance as may be defined by applicable state law.

***Gross Premiums for Surplus Lines Insurance—
Calculation of Payment to Commissioner***

The bill would simplify the computation method of surplus lines premium provided in current law by instead specifying licensed agents must collect and pay to the Commissioner a tax of 6.0 percent on the total gross premiums charged, less any return premiums, for surplus lines insurance transacted by the licensee pursuant to the license for insureds whose home state is Kansas. (The calculation in current law recognizes multi-state premiums and separately accounts for a tax rate of 6.0 percent for Kansas' risks and exposures and a remittance, for risks located outside of the state, equal to the tax rate and fees assessed in other states and jurisdictions.)

***Signed Affidavit or Statement of Diligent Search—
Exempt Commercial Producer***

The bill would exempt a surplus lines producer seeking to place non-admitted insurance for an exempt commercial purchaser from filing a sworn affidavit or statement with the Kansas Insurance Department, if the surplus lines producer has disclosed to the exempt commercial producer that such insurance may or may not be available from the admitted market and the exempt commercial producer has subsequently requested in writing the surplus lines producer procure or place such insurance from a non-admitted insurer.

Under current law, a statement must be filed annually and specify that, after diligent effort, the agent has been unable to secure the amount of insurance required to protect the property, person, or firm described in the agent's affidavit or statement from loss or damage in regularly admitted companies. (This statement of diligent search requirement in current law would be modified by enactment of the bill.)

Signed Statement of Diligent Search—Maintained by Insurance Agents; Eligibility Standards

The bill would delete from the statute described above a requirement that agents providing excess lines insurance coverage annually file sworn affidavits or statements with the Insurance Department on or before March 1. Instead, agents would be required to maintain a signed statement of diligent search available to the Department, upon request. The bill also would modify a form required to be completed prior to the placing of insurance with an insurer not authorized to do business in the state to remove reference to a list of insurers maintained by the Commissioner and instead specify this insurer meets the eligibility criteria to write excess coverage on risks where Kansas is the home state of the insured.

The bill would amend filing requirements and eligibility criteria for non-admitted insurers. The bill would provide capital requirements and other qualifications the insurer would have to meet. The Commissioner would be authorized to maintain a list of non-admitted insurers eligible to write excess coverage. In order to be included on such list, an insurer domiciled in the United States would be required to file a certified copy of its most recent annual statement with the Commissioner. The Commissioner would be required to include all insurers domiciled outside the United States on this list.

Background

The Senate Committee on Financial Institutions and Insurance recommended the adoption of a substitute bill. The substitute bill incorporates provisions of three bills relating to surplus lines insurance: SB 155 (amended by the Senate Committee), SB 144, and SB 145. The Senate Committee amendments to SB 155 include updates to the definitions of “non-admitted insurer” and “surplus lines insurance”; deletion of two statutes relating to the implementation of SLIMPACT; and removal of a new provision that would have allowed the Commissioner to adopt rules and regulations for the enforcement and administration of excess lines insurance law. Technical amendments also were made to the substitute bill.

Senate bills 144, 145, and 155 were introduced by the Senate Committee on Financial Institutions and Insurance at the request of the National Association of Professional Surplus Lines Offices (NAPSLO). A representative of NAPSLO testified as the only proponent at the bill hearings. The testimony generally indicated support for the repeal of SLIMPACT, as this compact has not become operational and the solution that has emerged is to implement home state taxation based on the home state’s tax rate. This approach, the representative stated, would simplify and reduce the regulatory burden for surplus lines brokers and also would simplify the process for state regulators. Testimony on SB 144 (diligent search affidavits) and SB 145 (insurer eligibility; voluntary list for insurers) also indicated the bills would modernize and simplify the regulatory process for regulators, the industry, and insureds.

A fiscal note was not available on the substitute bill. Fiscal information associated with the bills incorporated into the substitute bill follows.

A revised fiscal note for SB 155 (contents of the original bill only) was issued after the action of the Senate Committee. The revised note stated the Insurance

Department provided updated information, indicating enactment of SB 155 would reduce revenues from insurance premium taxes of approximately \$611,000, which would reduce revenues to the State General Fund by the same amount. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*. (The previous fiscal note indicated the bill would not change insurance tax amounts collected for surplus lines insurance and would have no fiscal effect.)

The fiscal note for SB 144 notes the diligent effort signed statements are maintained by the Department. Enactment of the bill would have a negligible reduction to the agency's cost in maintaining documents, as some would be maintained by individual insurance agents. Any fiscal effect associated with this bill is not reflected in *The FY 2016 Governor's Budget Report*.

The fiscal note for SB 145 indicates, according to the Department, any fiscal effect associated with enactment of the bill could be absorbed within its existing budget and staff and would be negligible.