



EXCESS LINE ASSOCIATION
OF NEW YORK

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July 14, 2023

The Honorable Forrest Bennett
Chair, Financial Services & Multi-Lines Issues Committee
National Council of Insurance Legislators
616 5th Avenue, Suite 106
Belmar, NJ 07719

Re: Resolution in Support of Establishing National Standards and Procedures for the Reporting and Payment of Premium Taxes Due as a Result of Interstate Insurance Transactions

Dear Chairperson Bennett:

On behalf of the Excess Line Association of New York (ELANY), the statutorily created nonprofit industry advisory organization responsible for facilitating and encouraging compliance with New York's excess line insurance laws and regulations, I am writing to oppose the *Resolution in Support of Establishing National Standards and Procedures for the Reporting and Payment of Premium Taxes Due as a Result of Interstate Insurance Transactions*. The resolution raises serious issues from both practical and public policy perspectives and is often vague as to intent and effect.

To put this resolution in context, it was preceded by a presentation at the NCOIL spring meeting. The presentation focused on nonadmitted insurance and in particular independent procurement transactions. State insurance laws require that insurers be licensed to do business in their state to maximize consumer protection. Nonadmitted insurance is an exception to these fundamental licensing requirements.

States generally bar the sale of insurance to their residents by any person on behalf of nonadmitted insurers. However, there are three permissible types of nonadmitted insurance. First, there are exempt transactions for classes of business such as marine, aviation, and transportation risks. In addition, some states have industrial insured exemptions for certain risks. The second type is excess and surplus line (E&S) insurance transactions that permit a specially licensed broker to acquire coverage for an insured whose risk is rejected by licensed insurers in that state.

The third type of nonadmitted insurance is independent procurement, which the Nonadmitted Reinsurance and Reform Act of 2010 (NRRA) defines as, "...insurance procured directly by an insured from a nonadmitted insurer." Under New York Insurance Law 1101, independent procurement transactions must be "...principally negotiated without (outside) the state in a jurisdiction in which the insurer is authorized to do an insurance business." These transactions constitute a narrow subset of nonadmitted insurance, usually involving sophisticated buyers that

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own their own insurance company known as a “captive,” or organizations with expert risk management staff that acquire types of coverage often unavailable from licensed insurers.

The presentation at the spring meeting appeared to promote the greater use of independent procurement insurance. This would mean more policies written by insurers not authorized to sell insurance in the insured’s home state without the insured having the benefit of an insurance broker to represent them. Because coverages in the nonadmitted market tend not to be standard or uniform, it is critical for an insured that chooses to forego the expertise of a broker to possess a high degree of sophistication and expertise itself. This view is shared by state regulators, who have already expressed concerns about the misuse of independent procurement as a means of inappropriately avoiding state insurance laws. Therefore, to the extent this resolution may facilitate the expanded use of independent procurement for less sophisticated insureds, ELANY cautions against going down this path.

Second, the resolution urges states to require each insurance company licensed in any jurisdiction to report to its licensing agency “any premium taxes that are due to other states, irrespective of whether or not the insurer must report and pay taxes directly.” The resolution incorrectly asserts that companies, whether “true” insurance carriers or captives, are required by the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) to “report and remit (or cause to be remitted) all premium taxes due to each state in which an insured is domiciled.” In fact, nonadmitted insurers are not responsible for reporting or paying premium taxes and often do not have the information necessary to effectuate this.

In 2019, the National Association of Insurance Commissioners (NAIC) considered a proposal that would have required nonadmitted insurers writing E&S insurance to report premium on a Home State basis for the purpose of providing state regulators a basis for reconciling broker reported E&S premium with insurer provided information. Following a public comment period and substantive arguments from E&S experts pointing out significant problems the proposal would cause, the NAIC Surplus Lines Task Force tabled the proposal. Many of the arguments that the NAIC based its decision on apply to the resolution that is now under consideration by NCOIL.

Third, the resolution would encourage states to permit insureds that obtain insurance via independent procurement to “assign” premium tax reporting and remittance responsibilities to issuing carriers and third parties, such as third-party administrators or accounting firms. While contracting with a third party for services is not objectionable per se, the use of the word “assign” raises the question of whether the resolution would allow legal responsibility to be shifted to a third party. Permitting this would run counter to established law and remove accountability from the actual responsible party. Moreover, the resolution seeks to establish new reporting obligations and create the opportunity to fulfill those obligations by hiring a third party, increasing overall costs.



Fourth, the resolution states, without evidence, that states are losing at a minimum hundreds of millions of dollars due to lack of national standards and reporting and enforcement mechanisms. If there is concrete data to support this assertion, we respectfully suggest it be cited. If not, we urge NCOIL to be cautious about adopting such a broad and serious statement.

For all these reasons, ELANY opposes the adoption of the resolution.

Sincerely,



Howard Greene

Cc: The Honorable Neil Breslin (New York State Senate)
The Honorable Pamela Helming (New York State Senate)
The Honorable Pamela Hunter (New York State Assembly)
The Honorable David Weprin (New York State Assembly)
John Finston (New York State Department of Financial Services)
Thomas Considine (NCOIL)
William Melofchik (NCOIL)
Janet Pane (ELANY)
Daniel Maher (ELANY)

