

31A-3-305 Agreement related to nonadmitted insurance taxes.

(1) As used in this section:

- (a) "Agreement" means a cooperative agreement, reciprocal agreement, or compact with one or more other states.
- (b)
 - (i) "Home state," except as provided in Subsections (1)(b)(ii) and (iii), with respect to an insured, means:
 - (A) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
 - (B) if 100% of the insured risk is located out of the state described in Subsection (1)(b)(i) (A), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
 - (ii) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state determined under Subsection (1)(b)(i) of the member of the affiliated group that has the largest percentage of premium attributed to it under the nonadmitted insurance contract.
 - (iii)
 - (A) When a group policyholder pays 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group policy holder.
 - (B) When a group policyholder does not pay 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group member.
- (c) "Principal place of business," for purposes of determining the home state of an insured, means:
 - (i) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities;
 - (ii) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or
 - (iii) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- (d) "Principal residence," with respect to determining the home state of an insured, means:
 - (i) the state where the insured resides for the greatest number of days during a calendar year; or
 - (ii) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) The commissioner may enter into an agreement to:

- (a) facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance;
- (b) provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications; and
- (c) share information among states relating to nonadmitted insurance premium taxes.

(3) If the commissioner enters into an agreement under Subsection (2), the following apply:

- (a) In addition to the full amount of gross premiums charged by the insurer for the insurance, a surplus lines producer shall collect and pay to the commissioner a sum based on the total

gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines producer.

- (b) When surplus lines insurance covers property, risks, or exposures located or to be performed in and out of this state, the sum payable is calculated as follows:
 - (i) calculate an amount equal to the applicable tax rates under this part on that portion of the gross premiums allocated to this state pursuant to the agreement;
 - (ii) add to the amount under Subsection (3)(b)(i) an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed outside of this state pursuant to the agreement; and
 - (iii) subtract from the amount under Subsection (3)(b)(ii) the amount of gross premiums allocated to this state and returned to the insured.
- (c) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines producer. A surplus lines producer may not absorb or rebate, for any reason, any part of the tax.
- (4) The commissioner may participate in a clearinghouse established through an agreement described in Subsection (2) for the purpose of collecting or disbursing to reciprocal states any money collected pursuant to Subsection (3) applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into an agreement with this state, the state shall retain the net premium tax collected.
- (5) The commissioner may adopt an allocation schedule included in an agreement described in Subsection (2) for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures reside.
- (6) The commissioner may apply the definition of "home state" in Subsection (1) when implementing an agreement described in Subsection (2).
- (7) The commissioner shall report to the Business and Labor Interim Committee regarding the nature and status of any agreement into which the commissioner enters under Subsection (2).

Enacted by Chapter 275, 2011 General Session