15.0551.02000

FISCAL NOTE
Requested by Legislative Council
01/09/2015

Revised
Bill/Resolution No.: HB 1146

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$(3,333)		$(66,879)		$(73,567)	
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill repeals 26.1-44-11 which would have allowed the state to share a premium tax with other compacting states. The bill changes the tax rate charged for out-of-state placement of risk.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The removal on page 4, lines 5-9, removes the requirement to pay a rate different than the North Dakota tax rate on an out-of-state placement of insurance.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Surplus lines premium taxes are directly deposited into the state general fund. If this bill passes, producers will have to report and pay taxes on all insurance placements, in and out of state, but pay a tax rate of 1.75% on all, instead of 1.75% on North Dakota placements and another state's tax rate on out-of-state placements. The reduction in taxes indicated each biennium is based on a 10% growth in premium tax each year.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Rebecca L. Ternes

Agency: Insurance Department

Telephone: 328-2440

Date Prepared: 01/22/2015

15.0551.02000

FISCAL NOTE
Requested by Legislative Council
01/09/2015

Bill/Resolution No.: HB 1146

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$(60,799)		$(66,879)		$(73,567)	
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill repeals 26.1-44-11 which would have allowed the state to share a premium tax with other compacting states. The bill changes the tax rate charged for out-of-state placement of risk.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The removal on page 4, lines 5-9, removes the requirement to pay a rate different than the North Dakota tax rate on an out-of-state placement of insurance.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Surplus lines premium taxes are directly deposited into the state general fund. If this bill passes, producers will have to report and pay taxes on all insurance placements, in and out of state, but pay a tax rate of 1.75% on all, instead of 1.75% on North Dakota placements and another state's tax rate on out-of-state placements. The reduction in taxes indicated each biennium is based on a 10% growth in premium tax each year.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Rebecca L. Ternes

Agency: Insurance Department

Telephone: 328-2440

Date Prepared: 01/15/2015

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1146

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1146
1/19/2015
22124

☐ Subcommittee
☐ Conference Committee

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surplus lines insurance multistate compliance compact; to provide an effective date; and to declare an emergency.

Minutes: 2 Attachments

Chairman Keiser: Opens the hearing on HB 1146.

3:00

Chairman Keiser: Introduces HB 1146. This bill was dealt with in last session. It deals with surplus lines and they are items that can't be insured normally. The type of funding behind surplus lines varies significantly, for example Lloyd's of London. Instead of actual insurance policies as traditionally, when Lloyd's covers a risk, it through letters of credit and other financial products. Surplus lines is essential for industry in North Dakota. When you get into oil development and risks associated with that industry is the source of providing insurance coverage. That is the surplus lines market. Prior to last session, we had basically what I would call a state based system. Each state had their own section of the code and that state would have its individual tax rate for surplus lines. NCOIL working with the surplus line industry, attempted prior to last session, to create a compact, which was known as SLIMPACT. SLIMPACT was a compact that a state had to have legislation join SLIMPACT. But there was a provision placed that 8 states that had to become members of SLIMPACT before SLIMPACT would become operational. We had 7 states that joined SLIMPACT. SLIMPACT never became operational. At the same time NAIC was starting NEEMA, similar concept but not a compact. It was a letter of agreement between the states to join in and share. They came to NCOIL, pleading to simplify it and that's what we attempted to do.

We were told that we were going to make extra money doing this because we were losing an opportunity to collect premium risks associated with our state. The industry said, we don't mind paying more premium tax, but we would like a simplified system. We joined and put in the language, the ability for us to start collecting the tax even though under NEEMA and SLIMPACT, there would have been a need to establish a clearinghouse. The clearing housing would have managed these transactions. The surplus line carrier would simply make a payment to the clearing house and the clearing house would do all the accounting and make the distribution. That was the hope for the simplification. The bottom line is the very large states, they have a significant amount of surplus line underwriting in their state said, if we are sharing, all we are doing is collecting money to give to someone else. We will keep our own tax and be happy. What this legislation does is, takes us back to where we were prior to last session in terms of making North Dakota a state based surplus line state along with the other states.

There is a fiscal note and we take a $60,000 hit which suggest we were right, we should have been collecting some of that premium tax from outside the state covering inside the state.

Representative Ruby: The fee that was passed on in the premiums, would that now be reduced?

Chairman Keiser: I can't really answer that.

Keri Kish~Director of Government Relations-National Association of Professional Surplus Lines Office. (Attachment 1).

20:31

Representative Kasper: Home state, does it mean home state where the insurer is buying the insurance is located and we collect the tax, even though their headquarters are located out of state?

Kish: If their headquarters is out of state and that's their principle place of business, then most likely their purchasing the insurance and according to the definition of home state that tax is going out of state.

Chairman Keiser: Say it in your own words.

Kish: Home state is, if you have a business and its here in North Dakota, that's the home state and it will be a North Dakota risk. We were asked about all the risks outside, multi-state, and then you look at where the greatest percentage of risk is located at.

Chairman Keiser: There is an oil developer operating in our state, their headquarters is in Houston, if less than 50% of their risk in North Dakota, the tax goes to them. If its 51% or more of the risk unwritten in North Dakota, we become the home state?

Kish: Most likely but there are nuances that develop.

Rebecca Ternes~Deputy ND Insurance Commissioner: We are in support of HB 1146 and it clarifies our language and laws for the industry. It does not touch the tax rate and change any reporting requirements.

Representative Kasper: This bill takes us back to pre-SLIMPACT?

Ternes: Yes.

Chairman Keiser: Other than increasing taxes, is there any way we can get that money back?

Ternes: The only way would be to increase fee specific to surplus lines.

Chairman Keiser: Do you have an amendment?

Ternes: No.

25:00

Chairman Keiser: Is there anyone here to testify on HB 1146 in support, opposition, neutral? What are the wishes of the committee?

Representative Ruby: Moves a Do Pass with a rerefer to appropriations.

Vice Chairman Sukut: Second.

Roll call was taken on HB 1146 for a Do Pass with 14 yes, 0 no, 1 absent and Representative Kasper is the carrier.

Bernd Heinze~Executive Director for North Dakota AAMGA: Testimony sent by email, printed out. (Attachment 2).

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1146
1/20/2015
22251

☐ Subcommittee
☐ Conference Committee

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surplus lines insurance multistate compliance compact; to provide an effective date and to declare an emergency.

Minutes: No Attachments

Chairman Keiser: Opens the work session on HB 1146. We passed HB 1146 with a rerefer to appropriations, but it doesn't need to be rerefered. We need to reconsider our action, bring it back, and put the motion to Do Pass without the referral to appropriations.

Representative Ruby: Moves to reconsider our actions.

Vice Chairman Sukut: Second.

Voice vote to reconsider our action. Motion passes.

Representative Ruby: Moves a Do Pass.

Sukut: Second.

Roll call was taken on HB 1146 for a Do Pass with 11 yes, 0 no, 4 absent and Representative Kasper is the carrier.

Date: Jan 19, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1146

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☒ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐

Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Represenative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Keiser

If the vote is on an amendment, briefly indicate intent:

Date: Jan 20, 2014

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1146

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: Does not need to be rerefer.

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☒ Reconsider ☐ ______

Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Represenative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

If the vote is on an amendment, briefly indicate intent:

reconsider our action

Voice roll call motion passes

Date: Jan 20, 2014

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1146

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Ruby Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	Ab		Representative Ruby	x	
Representative Becker	Ab		Represenative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	Ab	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 11 No 0

Absent 4

Floor Assignment Rep Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1146: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1146 was placed on the Eleventh order on the calendar.

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1146

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1146
3/4/2015
Job Number 24290

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to the surplus lines insurance multistate compliance compact

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Representative Keiser: Introduced the bill and explained the surplus lines, SLIMPACT. Despite efforts they failed to make it work. The larger states chose to remain state based. The industry said all they want was uniformity. What this legislation does is reverse what was passed last session and put the state back into the position of being regulated as a signal state. (:12-4:38)

Chairman Klein: What are we are discussing today is happening in other states that either joined SLIMPACT or NIMA, they are going back to state regulation?

Representative Keiser: I don't have the exact numbers but NIMA got up to fourteen member states and of that they are down to nine or eight member states. (5:00-5:50)

Senator Burckhard: How is this bill different than the one we passed on the senate side for surplus lines of insurance?

Representative Keiser: I don't know. I haven't seen that bill. This bill simply takes us out of SLIMPACT.

Senator Campbell: What would keep this from happening again?

Representative Keiser: It will not go back. (6:45-7:20)

Senator Murphy: What happens if we don't do this?

Representative Keiser: We need the other states to collect this tax and then share it with us and have a clearing house. (7:42-7:57)

Keri A. Kish, Director of Government Relations: In support. Written Testimony Attached (1). (8:33-13:54)

Senator Campbell: This won't mean that they don't have to comply with our state insurance laws?

Keri Kish: No surplus lines are a small part of the industry. Overall it is almost exclusively in commercial lines. (14:18-16:27)

Rebecca Ternes, Deputy Insurance Commissioner: The department is in support of this bill. This tax goes directly into the general fund. (17:10-18:58)

Senator Poolman: Moved a do pass.

Senator Campbell: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Klein will carry the bill.

Date: 3-4-15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1146

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: ______

Recommendation:
☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions:
☐ Reconsider ☐ ______

Motion Made By Poolman Seconded By Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Klein	✓		Senator Murphy	✓	
Vice Chairman Campbell	✓		Senator Sinner	✓	
Senator Burckhard	✓				
Senator Miller	✓				
Senator Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1146: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1146 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1146

NAPSLO

National Association of Professional Surplus Lines Offices, Ltd.

4131 N. Mulberry Dr., Ste. 200
Kansas City, MO 64116
816.741.3910
F 816.741.5409

January 19, 2015

The Honorable Representative George Keiser
House Committee on Industry, Business and Labor
600 East Boulevard
Bismarck, ND 58505-0360

Re: Testimony on HB 1146 – Surplus Lines Premium Tax Simplification SUPPORT

Chairman Keiser and Members of the House Industry, Business and Labor Committee:

On behalf of the National Association of Professional Surplus Lines Offices (NAPSLO)[1] we thank Representative Keiser for allowing us to submit testimony in strong support of HB 1146 and to thank him for introducing this much needed bill. We also would like to thank him for being a leader on issues that improve the regulation and uniformity of surplus lines insurance, especially since the enactment of the Nonadmitted and Reinsurance Reform Act of 2010.

The Nonadmitted and Reinsurance Reform Act (NRRA)

In passing the NRRA, the U.S. Congress sought to achieve a simpler and more efficient system of regulation and taxation of the surplus lines industry by establishing the insured's "home state" as the one and only jurisdiction to regulate and tax surplus lines transactions. In the law, Congress also clearly expressed its intent that states establish a uniform, nationwide approach to the regulation and taxation of the surplus lines industry. The changes brought about by the states through the NRRA's implementation continue to promote administrative efficiency for the surplus lines industry. By providing a national framework for efficiency, clarity and uniformity in the regulation and taxation of surplus lines insurance nationwide, states' implementation of the NRRA has dramatically simplified the tax filing and compliance process for multi-state risks. Instead of trying to comply with as many sets of rules, disclosures and requirements as there are states, and the filings to document compliance with them, there is now one state, the home state of the insured, with the sole and exclusive authority to tax and regulate a surplus lines transaction.

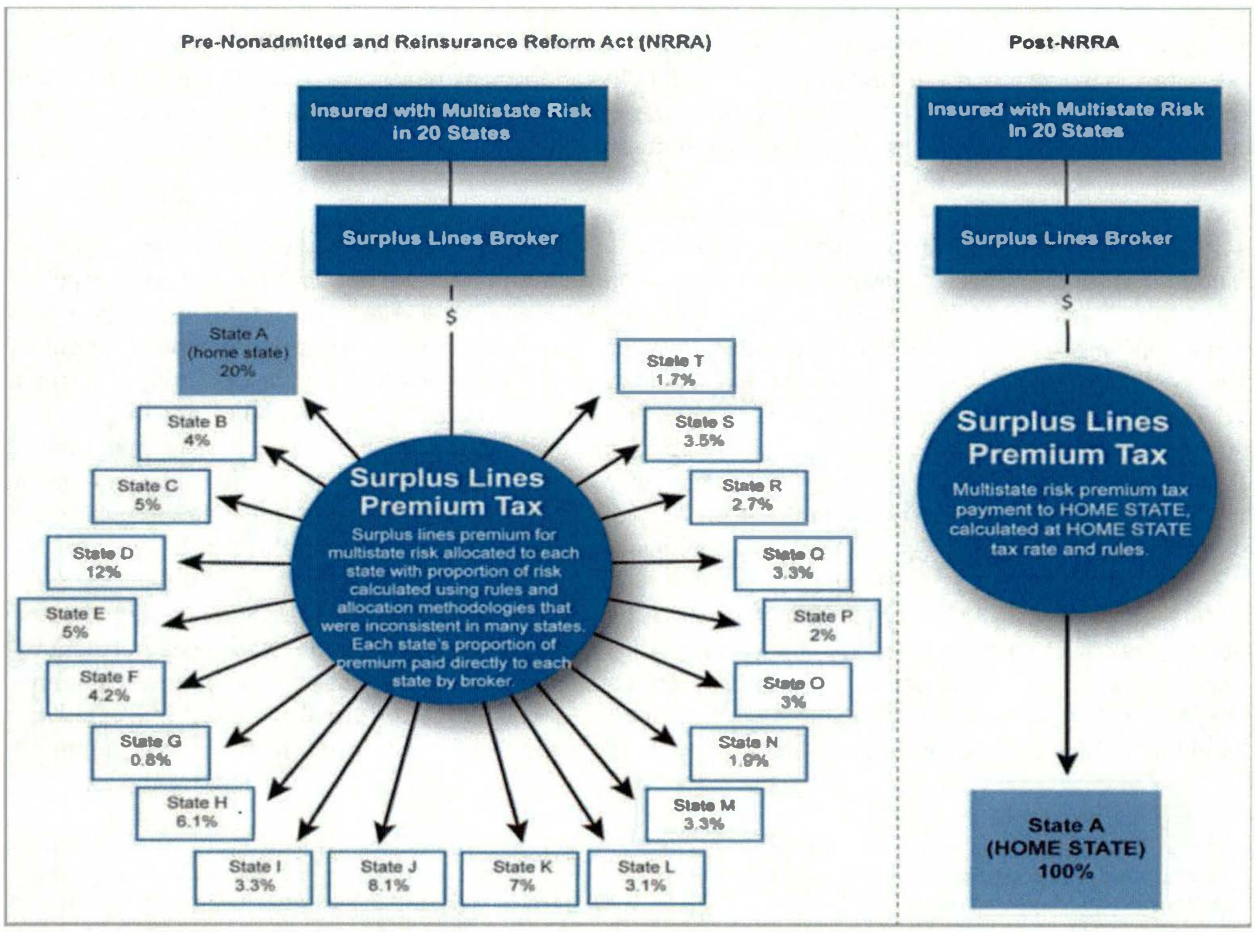
Prior to the passage of the NRRA, a surplus lines broker placing a multi-state surplus lines risk was required to determine the amount of tax owed to each state based on the proportion of risk/premium allocable to each state pursuant to each state's premium allocation methodology and requirements. Each state may tax a risk using non-uniform requirements—not just tax rates. For example, if a risk involved multiple apartment complexes in North Dakota and South Dakota, each state would determine the tax based on different premium allocation factors. South Dakota may have required the tax

[1] NAPSLO is the national professional trade association representing the surplus lines industry and the wholesale insurance distribution system. NAPSLO's membership consists of approximately 400 brokerage member firms, 100 company member firms and 200 associate member firms, all of whom operate over 1,500 offices representing approximately 15,000 to 20,000 individual brokers, insurance company professionals, underwriters and other insurance professionals in the 50 states and the District of Columbia. NAPSLO is unique in that both surplus lines brokers and surplus lines companies are full members of the association; thus NAPSLO represents and speaks for the surplus lines wholesale marketplace.

to be calculated based on the number of apartment units whereas North Dakota may have required the tax to be calculated on the square footage of each apartment building. Each state would also have different tax rates and different dates and requirements for the filing and remittance of the taxes. The more states involved in a multi-state risk, the more differences added to the equation.

The NRRA shepherded in a new era for the surplus lines broker, greatly improving brokers' processes and procedures for calculating and remitting taxes. The NRRA provided reforms on a national basis to a number of problems that historically challenged the surplus lines industry. The core of the NRRA is the requirement that only the "home state" of the insured may require the tax payment for a nonadmitted insurance transaction. Post-NRRA, the tax is calculated at and paid to the home state of the insured using only that state's regulatory requirements, tax laws and tax rate. This "home state approach" works to eliminate the multiple filings and separate regulatory requirements for multi-state insurance risks and dramatically improves the process and reduces the administrative cost of surplus lines compliance. It is a much more clear and efficient approach.

The January 2014 report of the U.S. Government Accountability Office, "Effects of the Nonadmitted and Reinsurance Reform Act of 2010," noted the home state provision has produced significant benefits for the surplus lines industry by reducing the need for brokers and insurers to comply with differing sets of rules, disclosures and requirements. NAPSLO provided the below graphic to illustrate the significant improvement resulting from the implementation of the home state provision.



Currently, forty-six states, *including North Dakota*, representing more than 80% of nationwide surplus lines premium, now collect and retain 100% of the surplus lines premium tax paid to them as the "home state" of the insured. The remaining states, and the key exception to this more efficient, clear and uniform system, participate in the Nonadmitted Insurance Multi-state Agreement (NIMA), and require those jurisdiction to share taxes on multi-state risks. Although the NRRA stated that "the states may enter into a compact or establish other procedures" to allocate the premium taxes paid to the insured's home state, Congress did not mandate or require the states to create a compact or tax sharing mechanism.

Repeal of the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT)
Immediately following the NRRA's enactment, many states began important work towards its implementation, focusing primarily on the development of uniform national tax sharing mechanisms. Many industry representatives, including NAPSLO, worked hard and collaborated extensively to develop the SLIMPACT proposal as an option for uniformity in national tax sharing and uniformity in other areas of surplus lines regulation. However, data quickly developed and indicated the cost of tax allocation exceeded the actual amount of taxes shared among participating states, negating states' need to participate in tax sharing. What did became clear is that the only viable national solution to uniform surplus lines taxation is implementation of home state taxation based on the home state's tax rate. **We believe this is a key reason SLIMPACT did not reached the requisite number of states to become operational and therefore we strongly support North Dakota's repeal of the SLIMPACT statutes.**

Taxation of Surplus Lines Premiums
NAPSLO strongly supports the home state approach to the taxation of surplus lines premium. This means the state is taxing 100% of the surplus lines premium on a policy at their home state rate, including any premium allocable to risks located outside the home state, and retaining 100% of the taxes they collect. NAPSLO members believe this is the most beneficial approach and best demonstrates the spirit of the NRRA. Within the forty-six jurisdictions mentioned above, a small handful still require a surplus lines broker to allocate multi-state premiums and remit taxes at the each respective state's tax rate, but do not share the tax with the other states. Currently, North Dakota is one of those states, along with Hawaii, Kansas, Massachusetts, Nebraska, New Hampshire, and Vermont. This requirement is unnecessary, costly and administratively burdensome for the broker, with no benefit to the broker, insurer, consumer or the state.

This tax methodology was implemented in anticipation of SLIMPACT becoming operational and North Dakota's participation in a national tax sharing system. Since SLIMPACT will not become operational, there is no need to collect taxes in this manner. **We strongly encourage you to amend the statute and come in line with the majority of states and tax 100% of the surplus lines multi-state premium at your 1.75% tax rate.**

Conclusion
NAPSLO strongly supports the home state approach that would be codified by HB 1146 and we believe it is the only approach to supporting the uniform national solution to the NRRA's implementation. The home state approach simplifies and reduces the regulatory burden for surplus lines brokers, but also simplifies the process for state regulators.

We would once again like to thank Chairman Keiser for his leadership on efforts toward national uniformity related to surplus lines regulation and taxation. We would also like to thank him and the entire House Committee on Industry, Business and Labor for the opportunity to submit testimony on HB 1146 and we would urge your support for this bill.

Sincerely,

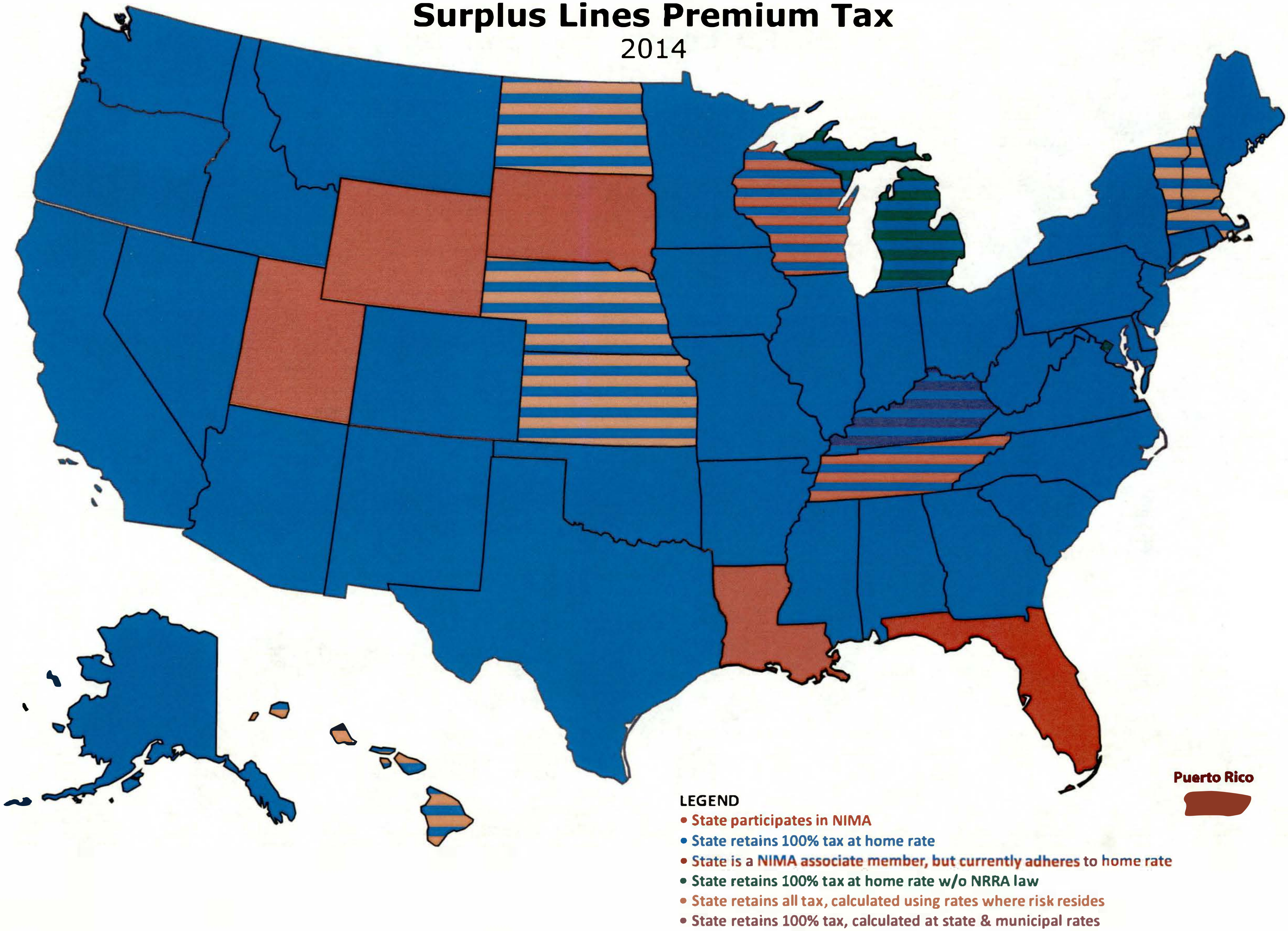
Keri A. Kish

Keri A. Kish
Director of Government Relations

John H. Meetz
State Relations Manager

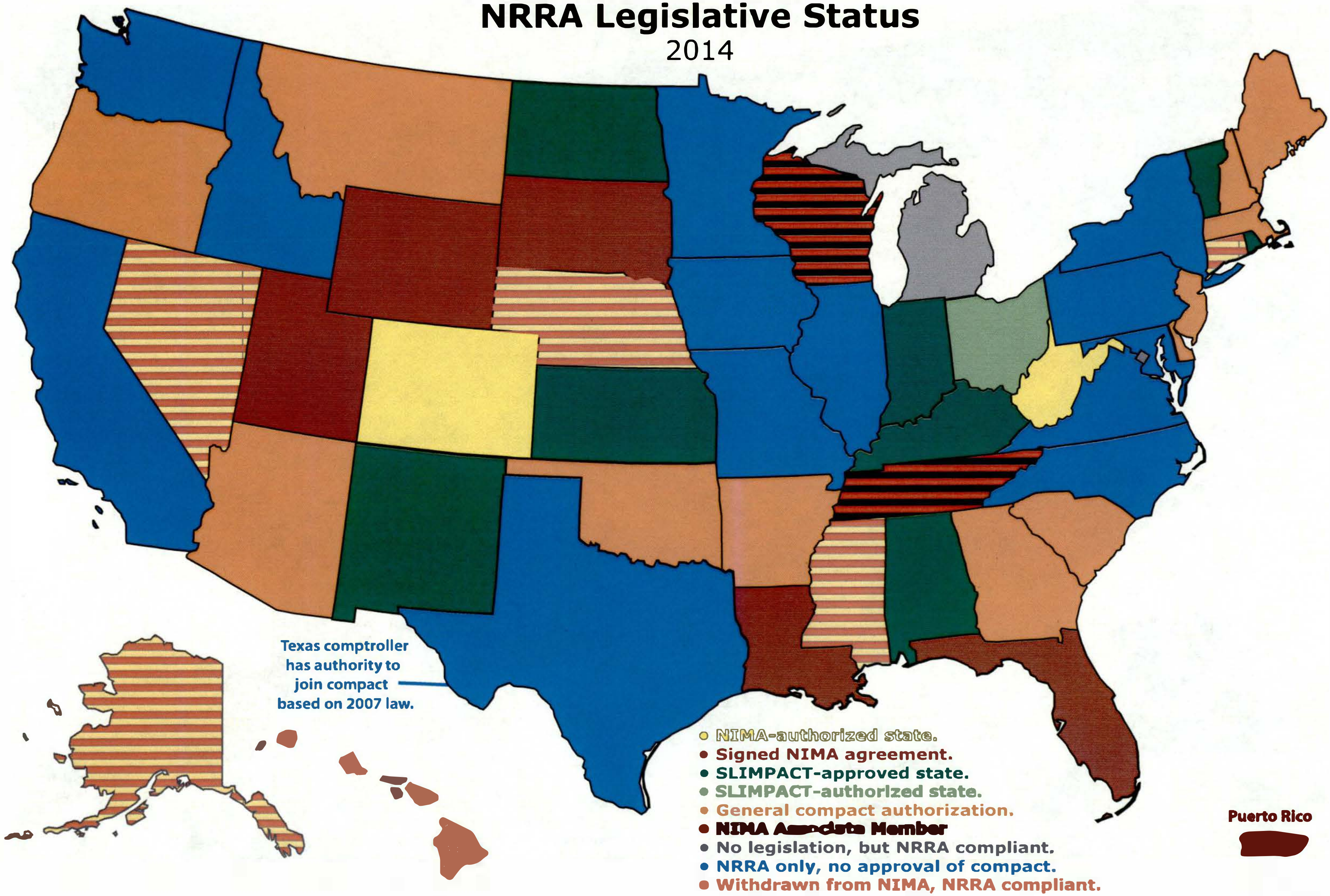
Surplus Lines Premium Tax

2014



NRRA Legislative Status

2014



2

AAMGA

American Association of Managing General Agents

610 Freedom Business Center | Suite 110
King of Prussia, PA 19406
ph 610.992.0022 | fax 610.992.0021
www.aamga.org

January 19, 2015

Honorable Representative George Keiser
House Committee on Industry, Business and Labor
600 East Boulevard
Bismarck, ND 58505-0360

Re: **Testimonial Comments on HB 1146:**
Surplus Lines Premium Tax Simplification - SUPPORT

Dear Chairman Keiser and Members of the House Industry, Business and Labor Committee:

Kindly allow this letter to serve as our strong and unqualified testimonial support of House Bill 1146. We wish to thank Chairman Keiser for his leadership in introducing this essential legislation that will further improve modernizing the regulatory framework in North Dakota, and afford more uniformity in respect of surplus lines insurance following the enactment of the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA").

Given the passage and signing into law last week of the National Association of Registered Agents & Brokers Act ("NARAB II"), the passage of HB 1146 becomes even more important.

The American Association of Managing General Agents[1] is aligned and continues to work with its colleagues like the National Association of Professional Surplus Lines Offices (NAPSLO); Council of Insurance Agents and Brokers (CIAB); the Independent Insurance Agents and Brokers Association (Big I); and other state and national trade associations in advancing legislative and regulatory changes to make our marketplace more transparent, seamless and competitive. This benefits the consumer as well as insurance professionals who work daily to ensure consumers have access to those markets and innovative products that will protect their homes and businesses.

[1] The AAMGA is an international professional trade association comprised of over 480 corporate wholesale agencies, brokers, program administrators, insurance companies, reinsurers, captive insurers, Lloyd's managing agents, underwriters and syndicates, and London Market Insurance Companies, all engaged in underwriting commercial and personal property and casualty insurance through delegated binding authorities in the United States and Canada. The agent and broker members write a combined $25.97 billion in annual written premium. The Association has represented the entire wholesale insurance marketplace since 1926.

HB 1146 has been introduced in both Chambers of the Legislature by Representative Keiser and Senator Klein for the purpose of amending and reenacting sections 26.1-44-01.1, 26.1-44-03.1, and 26.1-44-06.1 of the North Dakota Century Code, relating to surplus lines of insurance, and repeal section 26.1-44-11 of the North Dakota Century Code, relating to the surplus lines insurance multistate compliance compact ("SLIMPACT"). If passed by the Legislature, and signed by Governor Jack Dalrymple, the Act would become effective on June 1, 2015.

One of the fundamental purposes of the Bill will be to further augment the efficiencies of a growing surplus lines marketplace in the State of North Dakota. As reported by Commissioner Adam Hamm and the North Dakota Insurance Department, the importance of the surplus lines marketplace in the state continues can also be specifically depicted by examining the volume of surplus lines insurance premium and taxes collected as noted in the chart we have prepared below:

North Dakota Surplus Lines Premium and Taxes Collected

Item	2013	2012	2011
Premiums	$88,839,680	$84,321,385	$58,747,972
Taxes Collected	$1,712,862	$1,571,680	$1,045,251

Note: 2014 surplus lines premiums and taxes have not yet been reported. The surplus lines premium tax in North Dakota is 1.75%.

As noted above, the increase in 51.2% in premium and 63.9% in taxes collected in 2013 since 2011 underscore the importance of the surplus lines market to consumers and businesses within North Dakota. In order to facilitate the seamless and expedient calculation and collection of surplus lines premium taxes, it is similarly essential to provide agents and brokers with the ability to have an efficient manner in which to do so.

The NRRA was a prudent method by which to provide the needed reciprocity on multistate surplus lines insurance transactions. While SLIMPACT was one method to utilize an interstate compact to effectuate the provisions of the federal law, the marketplace and 46 states have adopted the more efficient and uniform methodology by collecting and retaining 100% of the surplus lines premium tax paid to them as the "Home State" of the insured. We are advised our colleagues with NAPSLO and CIAB are also in support of HB 1146, and we hereby adopt and incorporate their comments and testimony by reference as though set forth fully herein at length.

The AAMGA has been a strong supporter of the consistent and efficient Home State methodology by which to allow each state to tax 100% of the surplus lines premium for those insureds whose principal domicile is within the State but also have risks located outside of the Home State. This framework accomplishes the ability of uniformly taxing the allocable share of out of state and Home State premium at the Home State's rate, and to retain 100% of those taxes collected. HB 1146 will allow North Dakota to accomplish this more common sense objective.

The surplus lines market is essential to North Dakota's and our nation's economic infrastructure. It provides protection and security to industrial and local commercial businesses, those associated with operation of major public facilities like airports, schools, municipal utilities, and some of the largest port facilities in the country.

In the private sector, key commercial enterprises and consumers similarly rely on the surplus lines marketplace. In North Dakota, AAMGA members, like the Concorde General Agency in Fargo, ND, are directly underwriting oil and gas production and exploration, habitational (including apartments and "man camps" on the oil patch), pollution and contractor risks, as well as heavy construction, private aviation, trucking companies, restaurants and small businesses, nursing homes and day care centers, large and small commercial and residential construction projects.

The passage and adoption of HB 1146 will not only accomplish efficiencies and seamless surplus lines transactions, but also continue to afford the consumers and businesses of North Dakota with a more vibrant and competitive marketplace and the unique products and services offered by surplus lines insurance companies.

On behalf of the entire Wholesale Insurance Network℠ we thank Chairman Kaiser and this Committee for the efforts behind advancing national uniformity of surplus lines taxation and regulation. We respectfully request the House Committee on Industry, Business and Labor to support and approve HB 1146, and move it to the Floor of the House for a vote and adoption.

Thank you for the opportunity to provide our comments and testimony in support of HB 1146. We will be pleased to provide any additional data, information and assistance the Committee may require in further advancing this important legislation, and to work with the Committee when the matter comes before the Senate.

Respectfully submitted,

Bernd G. Heinze
Executive Director

Distribution:

Chairman George J. Keiser
Vice Chairman Gary R. Sukut
Representative Bill Amerman
Representative Thomas Beadle
Representative Rick Becker
Representative Joshua A. Boschee
Representative Robert Frantsvog
Representative Ed Gruchalla
Representative Nancy Johnson
Representative Jim Kasper
Representative Curtiss Kreun
Representative Scott Louser
Representative Marvin E. Nelson
Representative Dan Ruby
Representative Don Vigesaa

3/4/2015

#1

NAPSLO

National Association of Professional Surplus Lines Offices, Ltd.

4131 N. Mulberry Dr., Ste. 200
Kansas City, MO 64116
816.741.3910
F 816.741.5409

March 2, 2015

The Honorable Senator Jerry Klein
Senate Committee on Industry, Business and Labor
600 East Boulevard
Bismarck, ND 58505-0360

Re: Testimony on HB 1146 – Surplus Lines Premium Tax Simplification
SUPPORT

Chairman Klein and Members of the Senate Industry, Business and Labor Committee:

On behalf of the National Association of Professional Surplus Lines Offices (NAPSLO)[1] we thank Senator Klein for allowing us to submit testimony in strong support of HB 1146 and to thank him for introducing this much needed bill. We also would like to thank him for being a leader on issues that improve the regulation and uniformity of surplus lines insurance, especially since the enactment of the Nonadmitted and Reinsurance Reform Act of 2010.

The Nonadmitted and Reinsurance Reform Act (NRRA)
In passing the NRRA, the U.S. Congress sought to achieve a simpler and more efficient system of regulation and taxation of the surplus lines industry by establishing the insured's "home state" as the one and only jurisdiction to regulate and tax surplus lines transactions. In the law, Congress also clearly expressed its intent that states establish a uniform, nationwide approach to the regulation and taxation of the surplus lines industry. The changes brought about by the states through the NRRA's implementation continue to promote administrative efficiency for the surplus lines industry. By providing a national framework for efficiency, clarity and uniformity in the regulation and taxation of surplus lines insurance nationwide, states' implementation of the NRRA has dramatically simplified the tax filing and compliance process for multi-state risks. Instead of trying to comply with as many sets of rules, disclosures and requirements as there are states, and the filings to document compliance with them, there is now one state, the home state of the insured, with the sole and exclusive authority to tax and regulate a surplus lines transaction.

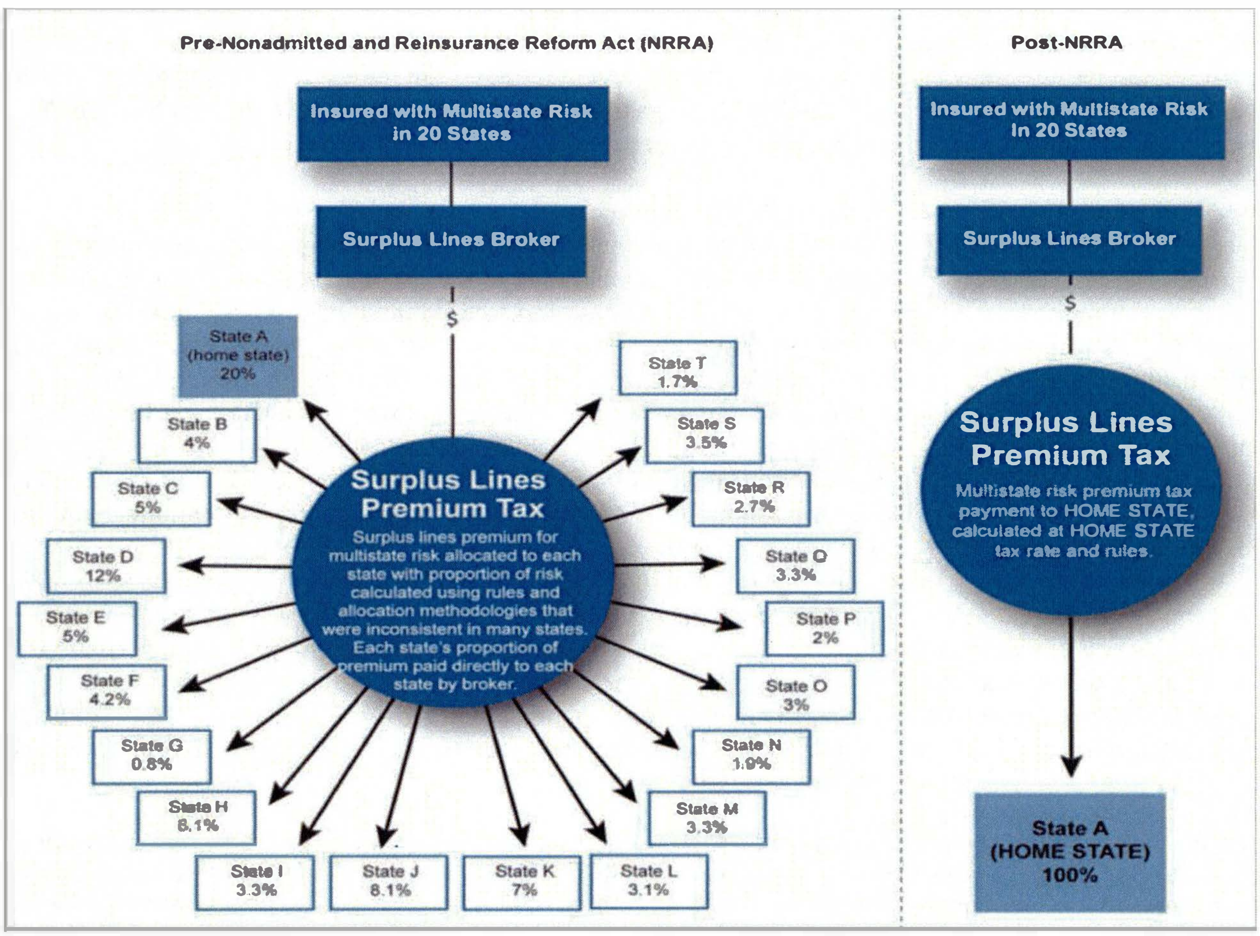
Prior to the passage of the NRRA, a surplus lines broker placing a multi-state surplus lines risk was required to determine the amount of tax owed to each state based on the proportion of risk/premium allocable to each state pursuant to each state's premium allocation methodology and requirements. Each state may tax a risk using non-uniform requirements—not just tax rates. For example, if a risk involved multiple apartment complexes in North Dakota and South Dakota, each state would determine the tax based on different premium allocation factors. South Dakota may have required the tax

[1] NAPSLO is the national professional trade association representing the surplus lines industry and the wholesale insurance distribution system. NAPSLO's membership consists of approximately 400 brokerage member firms, 100 company member firms and 200 associate member firms, all of whom operate over 1,500 offices representing approximately 15,000 to 20,000 individual brokers, insurance company professionals, underwriters and other insurance professionals in the 50 states and the District of Columbia. NAPSLO is unique in that both surplus lines brokers and surplus lines companies are full members of the association; thus NAPSLO represents and speaks for the surplus lines wholesale marketplace.

to be calculated based on the number of apartment units whereas North Dakota may have required the tax to be calculated on the square footage of each apartment building. Each state would also have different tax rates and different dates and requirements for the filing and remittance of the taxes. The more states involved in a multi-state risk, the more differences added to the equation.

The NRRA shepherded in a new era for the surplus lines broker, greatly improving brokers' processes and procedures for calculating and remitting taxes. The NRRA provided reforms on a national basis to a number of problems that historically challenged the surplus lines industry. The core of the NRRA is the requirement that only the "home state" of the insured may require the tax payment for a nonadmitted insurance transaction. Post-NRRA, the tax is calculated at and paid to the home state of the insured using only that state's regulatory requirements, tax laws and tax rate. This "home state approach" works to eliminate the multiple filings and separate regulatory requirements for multi-state insurance risks and dramatically improves the process and reduces the administrative cost of surplus lines compliance. It is a much more clear and efficient approach.

The January 2014 report of the U.S. Government Accountability Office, "Effects of the Nonadmitted and Reinsurance Reform Act of 2010," noted the home state provision has produced significant benefits for the surplus lines industry by reducing the need for brokers and insurers to comply with differing sets of rules, disclosures and requirements. NAPSLO provided the below graphic to illustrate the significant improvement resulting from the implementation of the home state provision.



#1

Currently, forty-six states, *including North Dakota*, representing more than 80% of nationwide surplus lines premium, now collect and retain 100% of the surplus lines premium tax paid to them as the "home state" of the insured. The remaining states, and the key exception to this more efficient, clear and uniform system, participate in the Nonadmitted Insurance Multi-state Agreement (NIMA), and require those jurisdiction to share taxes on multi-state risks. Although the NRRA stated that "the states may enter into a compact or establish other procedures" to allocate the premium taxes paid to the insured's home state, Congress did not mandate or require the states to create a compact or tax sharing mechanism.

Repeal of the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT)
Immediately following the NRRA's enactment, many states began important work towards its implementation, focusing primarily on the development of uniform national tax sharing mechanisms. Many industry representatives, including NAPSLO, worked hard and collaborated extensively to develop the SLIMPACT proposal as an option for uniformity in national tax sharing and uniformity in other areas of surplus lines regulation. However, data quickly developed and indicated the cost of tax allocation exceeded the actual amount of taxes shared among participating states, negating states' need to participate in tax sharing. What did became clear is that the only viable national solution to uniform surplus lines taxation is implementation of home state taxation based on the home state's tax rate. **We believe this is a key reason SLIMPACT did not reached the requisite number of states to become operational and therefore we strongly support North Dakota's repeal of the SLIMPACT statutes.**

Taxation of Surplus Lines Premiums
NAPSLO strongly supports the home state approach to the taxation of surplus lines premium. This means the state is taxing 100% of the surplus lines premium on a policy at their home state rate, including any premium allocable to risks located outside the home state, and retaining 100% of the taxes they collect. NAPSLO members believe this is the most beneficial approach and best demonstrates the spirit of the NRRA. Within the forty-six jurisdictions mentioned above, a small handful still require a surplus lines broker to allocate multi-state premiums and remit taxes at the each respective state's tax rate, but do not share the tax with the other states. Currently, North Dakota is one of those states, along with Hawaii, Kansas, Massachusetts, Nebraska, New Hampshire, and Vermont. This requirement is unnecessary, costly and administratively burdensome for the broker, with no benefit to the broker, insurer, consumer or the state.

This tax methodology was implemented in anticipation of SLIMPACT becoming operational and North Dakota's participation in a national tax sharing system. Since SLIMPACT will not become operational, there is no need to collect taxes in this manner. **We strongly encourage you to amend the statute and come in line with the majority of states and tax 100% of the surplus lines multi-state premium at your 1.75% tax rate.**

Conclusion
NAPSLO strongly supports the home state approach that would be codified by HB 1146 and we believe it is the only approach to supporting the uniform national solution to the NRRA's implementation. The home state approach simplifies and reduces the regulatory burden for surplus lines brokers, but also simplifies the process for state regulators.

We would once again like to thank Chairman Klein and the entire Senate Committee on Industry, Business and Labor for the opportunity to submit testimony on HB 1146 and we would urge your support for this bill.

Sincerely,

Keri A. Kish

Keri A. Kish
Director of Government Relations

John H. Meetz
State Relations Manager