

SENATE BILL NO. 209—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

FEBRUARY 27, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to insurance.
(BDR 57-485)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurance; authorizing the Commissioner of Insurance to accept an independent audit in lieu of an examination of a nonprofit organization of surplus lines brokers; limiting when a surplus lines broker may charge a fee; authorizing the Commissioner to adopt regulations for the charging and collection of certain fees for the purchase of individual or group life or health insurance or an individual or group annuity; authorizing an employee or authorized representative of a vendor to receive certain compensation relating to offering portable electronics insurance; revising provisions relating to the termination of the membership of a member of an association of self-insured public or private employers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Commissioner of Insurance to make an examination of the affairs, transactions, accounts, records and assets of a nonprofit organization of surplus lines brokers. (NRS 685A.075) **Section 7** of this bill authorizes the Commissioner to accept the report of an independent audit in lieu of an examination if the Commissioner deems an independent audit to be in the best interest of the residents of this State.

Existing law authorizes a surplus lines broker to charge a fee for procuring surplus lines coverage. (NRS 685A.155) **Section 8** of this bill limits existing law by only authorizing a broker who places any insurance coverage with an authorized insurer to charge a fee for procuring surplus lines coverage.

Existing law authorizes the Commissioner to adopt regulations to allow for the charging and collection of a fee by an insurance broker, consultant or financial



planner for consultation or related advice on the purchase of life or health insurance or an annuity. (NRS 686A.230) **Section 11** of this bill clarifies existing law by authorizing the Commissioner to adopt regulations to allow for the charging and collection of a fee by an insurance broker, consultant or financial planner for consultation or related advice on the purchase of individual or group life or health insurance or an individual or group annuity.

Section 12 of this bill authorizes an employee or authorized representative of a vendor to receive from the vendor certain incidental compensation relating to offering coverage and enrolling a customer under a policy of portable electronics insurance. **Section 6** of this bill makes conforming changes.

Existing law authorizes the Commissioner, with the approval of the State Board of Examiners, to enter into a multi-state agreement to preserve the ability of this State to collect premium tax on multi-state risks. (NRS 685A.185) **Section 13** of this bill repeals this provision. **Sections 9 and 10** of this bill make conforming changes.

Existing law sets forth that an employer who is a member of an association of self-insured public or private employers may terminate his or her membership at any time, as long as the member submits to the association a notice of intent to withdraw from the association at least 120 days before the effective date of withdrawal. Existing law further requires this notice of intent to withdraw to include a statement indicating that the member has replaced his or her membership in the association with a certain other type of insurance. (NRS 616B.386) **Section 12.5** of this bill amends existing law by requiring that the notice of intent to withdraw be deemed rescinded if the member does not provide to the association before the expiration of the 120-day period proof that the member has replaced his or her membership in the association with a certain other type of insurance.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. NRS 683A.325 is hereby amended to read as follows:

683A.325 1. Except as otherwise provided in NRS 683A.3687 ~~H~~ *or 691D.220*, a producer of insurance who is appointed as an agent may pay a commission or compensation for or on account of the selling, soliciting, procuring or negotiating of insurance in this State only to a licensed and appointed producer of insurance of the insurer with whom insurance was placed or to a licensed producer acting as a broker.

2. A licensee shall not accept any commission or compensation to which the licensee is not entitled pursuant to the provisions of this title.

Sec. 7. NRS 685A.075 is hereby amended to read as follows:

685A.075 1. A nonprofit organization of surplus lines brokers may be formed to:



(a) Facilitate and encourage compliance by its members with the laws of this State and the rules and regulations of the Commissioner concerning surplus lines insurance;

(b) Provide a means for the review of all surplus lines coverage written in this State;

(c) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market;

(d) Receive and disseminate to brokers information relative to surplus lines coverages; and

(e) Charge members a filing fee, approved by the Commissioner, for the review of surplus lines coverages.

2. Every such organization shall exercise its powers through a board of directors and shall file with the Commissioner:

(a) A copy of its constitution, articles of agreement or association or certificate of incorporation;

(b) A copy of its bylaws, rules and regulations governing its activities;

(c) A copy of its plan of operations established and approved by the Commissioner;

(d) A current list of its members;

(e) The name and address of a resident of this State upon whom notices or orders of the Commissioner or processes issued at the direction of the Commissioner may be served; and

(f) An agreement that the Commissioner may examine the organization in accordance with the provisions of this section.

3. The Commissioner shall make an examination of the affairs, transactions, accounts, records and assets of such an organization and any of its members as often as the Commissioner deems necessary for the protection of the interests of the people of this State, but no less frequently than once every 3 years. The officers, managers, agents and employees of such an organization may be examined at any time, under oath, and shall provide to the Commissioner all books, records, accounts, documents or agreements governing its method of operation. The Commissioner shall furnish two copies of the examination report to the organization examined and shall notify the organization that it may, within 20 days thereof, request a hearing on the report or on any facts or recommendations set forth therein. If the Commissioner finds such an organization or any member thereof to be in violation of this chapter, the Commissioner may, in addition to any administrative fine or penalty imposed pursuant to this Code, issue an order requiring the discontinuance of such violations. *In lieu of an examination conducted pursuant to this subsection, the Commissioner may accept the report of an independent audit of such an organization if the Commissioner deems that an*



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independent audit is in the best interest of the residents of this State.

4. The board of directors of such an organization must consist of not fewer than five persons. The members of the board must be appointed by the Commissioner and serve at the pleasure of the Commissioner.

5. A broker must be a member of such an organization as a condition of continued licensure under this chapter.

Sec. 8. NRS 685A.155 is hereby amended to read as follows:

685A.155 A broker *who places any insurance coverage with an authorized insurer pursuant to subsection 3 of NRS 685A.060* may charge a fee for procuring surplus lines coverage. Except as otherwise provided by agreement between the insurer and broker, the fee must not exceed 20 percent of the premium charged, after deduction of any other commissions, fees and charges payable to the broker.

Sec. 9. NRS 685A.175 is hereby amended to read as follows:

685A.175 1. A broker who has written coverage for which this State is the insured's home state shall pay, by the date described in subsection 2, the tax for each calendar quarter as directed by the Commissioner and shall file as directed by the Commissioner a copy of a quarterly report which includes an accounting of:

(a) The aggregate gross premiums for the quarter;

(b) The aggregate of the return premiums received; *and*

(c) The amount of tax remitted to the Commissioner. ~~†; and~~

~~—(d) The distribution of the exposures of insureds by state in accordance with the requirements of any multi-state agreement entered into by the Commissioner pursuant to NRS 685A.185.†~~

➔ The report must be on a form approved by the Commissioner.

2. The tax filings and payments required by subsection 1 must be submitted by:

(a) February 15 for the calendar quarter ending the preceding December 31.

(b) May 15 for the calendar quarter ending the preceding March 31.

(c) August 15 for the calendar quarter ending the preceding June 30.

(d) November 15 for the calendar quarter ending the preceding September 30.

Sec. 10. NRS 685A.180 is hereby amended to read as follows:

685A.180 1. ~~†Except as otherwise provided in subsection 6,~~
~~on†~~ *On* or before the date described in subsection 2 of NRS 685A.175 for each quarter, each broker shall pay as directed by the Commissioner a tax on surplus lines coverages for which this State is the insured's home state written by the broker in



1 unauthorized insurers during the preceding calendar quarter at the
2 same rate of tax as imposed by law on the premiums of similar
3 coverages written by authorized insurers, in addition to any fees
4 imposed pursuant to NRS 685A.075.

5 2. ~~{Except as otherwise provided in subsection 6, on}~~ **On** or
6 before the date described in subsection 2 of NRS 685A.175 for each
7 quarter, each insured for which this State is the home state shall pay
8 as directed by the Commissioner a tax on independently procured
9 insurance written for the insured by an unauthorized insurer during
10 the preceding calendar quarter at the same rate of tax as imposed by
11 law on the premiums of similar coverages written by authorized
12 insurers, in addition to any fees imposed pursuant to
13 NRS 685A.075.

14 3. For the purposes of this section, the "premium" on surplus
15 lines coverages includes:

16 (a) The gross amount charged by the insurer for the insurance,
17 less any return premium;

18 (b) Any fee allowed by NRS 685A.155;

19 (c) Any policy fee;

20 (d) Any membership fee;

21 (e) Any inspection fee; and

22 (f) Any other fees or assessments charged by the insurer as
23 consideration for the insurance.

24 ➤ Premium does not include any additional amount charged for
25 state or federal tax, or for executing or completing affidavits or
26 reports of coverage.

27 4. All taxes collected as directed by the Commissioner
28 pursuant to this section ~~{and not intended for disbursement to other~~
29 ~~states by a clearinghouse established through any multi state~~
30 ~~agreement entered into by the Commissioner pursuant to NRS~~
31 ~~685A.185}~~ must be promptly deposited with the State Treasurer ~~{~~
32 to the credit of the State General Fund.

33 5. A broker who receives a credit for tax paid shall refund to
34 each insured the amount of the credit attributable to the insured
35 when the insurer pays a return premium or within 30 days,
36 whichever is earlier.

37 ~~{6. If the Commissioner has entered into a multi state~~
38 ~~agreement pursuant to NRS 685A.185, the Commissioner may~~
39 ~~require that each broker who has written surplus line coverages for~~
40 ~~multi state risks for which this State is the insured's home state and~~
41 ~~each insured for which this State is the home state who has obtained~~
42 ~~independently procured insurance for multi state risks pay a~~
43 ~~premium tax:~~



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~~(a) For the portion of the premium allocated to Nevada, at the tax rate applicable to nonadmitted insurance pursuant to this chapter;~~

~~(b) For the portion of the premium allocated to any other state that also participates in the multi-state agreement, at the tax rate applicable to nonadmitted insurance as established by that state; and~~

~~(c) For the portion of the premium allocated to any other state that does not participate in the multi-state agreement, at the tax rate applicable to nonadmitted insurance pursuant to this chapter. The tax for this portion of the premium must be deposited with the State Treasurer, to the credit of the State General Fund, after it is processed by the clearinghouse established through the multi-state agreement.]~~

Sec. 11. NRS 686A.230 is hereby amended to read as follows:

686A.230 1. A person shall not willfully collect any sum as a premium or charge for insurance which is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by this Code.

2. Except as otherwise provided in subsection 3, a person shall not willfully collect as a premium or charge for insurance any sum in excess of the premium or charge applicable to the insurance and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the Commissioner. In cases where classifications, premiums or rates are not required by this Code to be so filed and approved, the premiums and charges must not be in excess of those specified in the policy and as fixed by the insurer. This subsection does not prohibit:

(a) The charging and collection by surplus lines brokers licensed under chapter 685A of NRS of the amount permitted by chapter 685A of NRS and regulations adopted by the Commissioner.

(b) The charging and collection by a life insurer of amounts actually to be expended for the medical examination of any applicant for life insurance or for reinstatement of a life insurance policy.

3. The Commissioner may adopt regulations to allow the charging and collection of a fee by an insurance broker, consultant or financial planner:

(a) In lieu of any other charge or commission for solicitation, negotiation or procurement of a policy of insurance which covers commercial or business risks;

(b) For consultation or any related advice on the insuring of commercial or business risks which does not result in the procurement of a policy of insurance; and



(c) For consultation or related advice on the purchase of *individual or group* life or health insurance or an *individual or group* annuity, whether or not it results in the purchase of a policy of insurance or annuity. In such a case, the fee must be set forth in a written contract signed by the client before the consultation begins.

4. An agent or broker who provides consultation or related advice pursuant to this section shall do so pursuant to a written contract specifying the compensation the agent or broker will receive. The compensation may be in addition to or in lieu of a commission and is not a premium as defined in NRS 679A.115.

Sec. 12. NRS 691D.220 is hereby amended to read as follows:

691D.220 1. Notwithstanding any other provision of law, an employee or authorized representative of a vendor that holds a license as a producer of insurance in portable electronics insurance issued by the Commissioner pursuant to NRS 683A.261 or 683A.271 may, without a license issued by the Commissioner, sell or offer coverage under a policy of portable electronics insurance at any location at which the vendor does business if:

(a) The employee or authorized representative of the vendor sells or offers coverage under a policy of portable electronics insurance only on behalf of, and under the supervision of, the vendor; and

(b) Before the employee or authorized representative of the vendor sells or offers coverage under a policy of portable electronics insurance, he or she completes a program of training provided by the vendor pursuant to NRS 691D.300.

2. An employee or authorized representative of a vendor who sells or offers coverage under a policy of portable electronics insurance pursuant to this section shall not advertise, represent or otherwise hold himself or herself out as a licensed producer of insurance unless the person is licensed as a producer of insurance.

3. An employee or authorized representative of a vendor who offers to a customer coverage under a policy of portable electronics insurance pursuant to this section and enrolls the customer under the policy may receive from the vendor compensation that is:

(a) Incidental to the overall compensation received by the employee or authorized representative of the vendor; and

(b) Relating to the offering of the coverage and the enrolling of the customer under the policy of portable electronics insurance.

Sec. 12.5. NRS 616B.386 is hereby amended to read as follows:

616B.386 1. If an employer wishes to become a member of an association of self-insured public or private employers, the employer must:



1 (a) Submit an application for membership to the board of
2 trustees or third-party administrator of the association; and

3 (b) Enter into an indemnity agreement as required by
4 NRS 616B.353.

5 2. The membership of the applicant becomes effective when
6 each member of the association approves the application or on a
7 later date specified by the association. The application for
8 membership and the action taken on the application must be
9 maintained as permanent records of the board of trustees.

10 3. Each member who is a member of an association during the
11 12 months immediately following the formation of the association
12 must:

13 (a) Have a tangible net worth of at least \$500,000; or

14 (b) Have had a reported payroll for the previous 12 months
15 which would have resulted in a manual premium of at least \$15,000,
16 calculated in accordance with a manual prepared pursuant to
17 subsection 4 of NRS 686B.1765.

18 4. An employer who seeks to become a member of the
19 association after the 12 months immediately following the formation
20 of the association must meet the requirement set forth in paragraph
21 (a) or (b) of subsection 3 unless the Commissioner adjusts the
22 requirement for membership in the association after conducting an
23 annual review of the actuarial solvency of the association pursuant
24 to subsection 1 of NRS 616B.353.

25 5. An association of self-insured private employers may apply
26 to the Commissioner for authority to determine the amount of
27 tangible net worth and manual premium that an employer must have
28 to become a member of the association. The Commissioner shall
29 approve the application if the association:

30 (a) Has been certified to act as an association for at least the 3
31 consecutive years immediately preceding the date on which the
32 association filed the application with the Commissioner;

33 (b) Has, as determined by the Commissioner, either:

34 (1) A combined tangible net worth of all members in the
35 association of at least \$5,000,000; or

36 (2) Combined net cash flows from operating activities plus
37 net cash flows from financing activities of all members in the
38 association of five times the average of claims paid for each of the
39 last 3 years or \$7,500,000, whichever is less;

40 (c) Has at least 15 members; and

41 (d) Has not been required to meet informally with the
42 Commissioner pursuant to subsection 1 of NRS 616B.431 during
43 the 18-month period immediately preceding the date on which the
44 association filed the application with the Commissioner or, if the
45 association has been required to attend such a meeting during that



1 period, has not had its certificate withdrawn before the date on
2 which the association filed the application.

3 6. An association of self-insured private employers may apply
4 to the Commissioner for authority to determine the documentation
5 demonstrating solvency that an employer must provide to become a
6 member of the association. The Commissioner shall approve the
7 application if the association:

8 (a) Has been certified to act as an association for at least the 3
9 consecutive years immediately preceding the date on which the
10 association filed the application with the Commissioner;

11 (b) Has, as determined by the Commissioner, either:

12 (1) A combined tangible net worth of all members in the
13 association of at least \$5,000,000; or

14 (2) Combined net cash flows from operating activities plus
15 net cash flows from financing activities of all members in the
16 association of five times the average of claims paid for each of the
17 last 3 years or \$7,500,000, whichever is less; and

18 (c) Has at least 15 members.

19 7. The Commissioner may withdraw approval of an application
20 submitted pursuant to subsection 5 or 6 if the Commissioner
21 determines the association has ceased to comply with any of the
22 requirements set forth in subsection 5 or 6, as applicable.

23 8. A member of an association *of self-insured public or*
24 *private employers* may terminate his or her membership at any time.
25 To terminate his or her membership, a member must submit to the
26 association's administrator a notice of intent to withdraw from the
27 association at least 120 days before the effective date of withdrawal.
28 The notice of intent to withdraw ~~must include a statement~~
29 ~~indicating~~ *shall be deemed rescinded if the member does not*
30 *provide to the association before the expiration of the 120-day*
31 *period proof* that the member has:

32 (a) Been certified as a self-insured employer pursuant to
33 NRS 616B.312;

34 (b) Become a member of another association of self-insured
35 public or private employers; or

36 (c) Become insured by a private carrier.

37 9. The members of an association may cancel the membership
38 of any member of the association in accordance with the bylaws of
39 the association.

40 10. The association shall:

41 (a) Within 30 days after the addition of an employer to the
42 membership of the association, notify the Commissioner of the
43 addition and:

44 (1) If the association has not received authority from the
45 Commissioner pursuant to subsection 5 or 6, as applicable, provide



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1 to the Commissioner all information and assurances for the new
2 member that were required from each of the original members of the
3 association upon its organization; or

4 (2) If the association has received authority from the
5 Commissioner pursuant to subsection 5 or 6, as applicable, provide
6 to the Commissioner evidence that is satisfactory to the
7 Commissioner that the new member is a member or associate
8 member of the bona fide trade association as required pursuant to
9 paragraph (a) of subsection 2 of NRS 616B.350, a copy of the
10 indemnity agreement that jointly and severally binds the new
11 member, the other members of the association and the association
12 that is required to be executed pursuant to paragraph (a) of
13 subsection 1 of NRS 616B.353 and any other information the
14 Commissioner may reasonably require to determine whether the
15 amount of security deposited with the Commissioner pursuant to
16 paragraph (d) or (e) of subsection 1 of NRS 616B.353 is sufficient,
17 but such information must not exceed the information required to be
18 provided to the Commissioner pursuant to subparagraph (1);

19 (b) Notify the Commissioner and the Administrator of the
20 termination or cancellation of the membership of any member of the
21 association within 10 days after the termination or cancellation; and

22 (c) At the expense of the member whose membership is
23 terminated or cancelled, maintain coverage for that member for 60
24 days after notice is given pursuant to paragraph (b), unless the
25 association first receives notice from the Administrator that the
26 member has:

27 (1) Been certified as a self-insured employer pursuant to
28 NRS 616B.312;

29 (2) Become a member of another association of self-insured
30 public or private employers; or

31 (3) Become insured by a private carrier.

32 11. If a member of an association changes his or her name or
33 form of organization, the member remains liable for any obligations
34 incurred or any responsibilities imposed pursuant to chapters 616A
35 to 617, inclusive, of NRS under the member's former name or form
36 of organization.

37 12. An association is liable for the payment of any
38 compensation required to be paid by a member of the association
39 pursuant to chapters 616A to 616D, inclusive, or chapter 617 of
40 NRS during the member's period of membership. The insolvency or
41 bankruptcy of a member does not relieve the association of liability
42 for the payment of the compensation.

43 **Sec. 13.** NRS 685A.185 is hereby repealed.

44 **Sec. 14.** This act becomes effective on July 1, 2017.



TEXT OF REPEALED SECTION

685A.185 Multi-state agreement to collect premium tax on multi-state risks.

1. The Commissioner may, with the approval of the State Board of Examiners, on behalf of the State enter into a multi-state agreement to preserve the ability of this State to collect premium tax on multi-state risks.

2. If, within 18 months after the Commissioner enters into a multi-state agreement pursuant to subsection 1, the Commissioner conducts a hearing pursuant to the provisions of chapter 233B of NRS concerning participation in the multi-state agreement, the Commissioner shall submit to the State Board of Examiners and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report concerning the findings of the Commissioner pursuant to the hearing.

3. The State Board of Examiners shall review and may accept the findings of the Commissioner. If the Commissioner finds and the State Board of Examiners accepts that because of the effect of the multi-state agreement on the gross receipt of premiums collected in this State:

(a) It is in the best interest of the State to continue to participate in the multi-state agreement, the State Board of Examiners may approve the State's continued participation in the multi-state agreement.

(b) It is not in the best interest of the State to continue to participate in the multi-state agreement, the State Board of Examiners may approve the State's withdrawal from the multi-state agreement.

