

HOUSE BILL 72

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 56,  
relative to insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-2-104(a)(5)(A), is amended by deleting the phrase “and primary executive, administrative and home offices are” and replacing it with the word “is”.

SECTION 2. Tennessee Code Annotated, Section 56-2-104(a)(5), is amended by adding the following, appropriately designated subdivision:

( ) The commissioner, in the commissioner’s sole discretion, may waive the requirement in subdivision (a)(5)(A) for any company.

SECTION 3. Tennessee Code Annotated, Section 56-2-411, is amended by deleting the section in its entirety and substituting instead the following:

(a) Under §§ 56-2-409, 56-2-410, and this section are also included citizens of this state procuring and holding insurance contracts or policies on the types of coverage listed in § 56-2-201 upon property situated or located in this state in companies not authorized to transact business in this state.

(b) The procuring or accepting policies or contracts of the insurance from unauthorized companies or associations makes every citizen of this state, including industrial insureds as defined in § 56-2-105(7), holding the contracts or policies liable for taxes, the same as if each company or association were transacting business in this state as a surplus lines insurer. The taxes shall be paid at the same time, in the same manner, and at the same rate as the tax levied on surplus lines insurance in §§ 56-14-106 and 56-14-113.

SECTION 4. Tennessee Code Annotated, Section 56-4-205(a)(2), is amended by deleting the language “The taxes shall be payable on a quarterly basis with payments being due on or before June 1, August 20, December 1, and March 1. The taxes shall be payable on sworn return forms, which shall be furnished to the companies by the commissioner.” and substituting instead the following language:

The taxes shall be reported and payable in an electronic format approved by the commissioner on a quarterly basis with payments being due on or before June 1, August 20, December 1, and March 1. The taxes shall be reported and payable on electronic return forms approved by the commissioner.

SECTION 5. Tennessee Code Annotated, Section 56-4-210(a), is amended by adding the phrase “, and other short-term investments,” after the phrase “the cash deposits in regular established national or state banks or trust companies in this state” and before the phrase “on the basis of average daily balances”.

SECTION 6. Tennessee Code Annotated, Section 56-4-210(b)(1), is amended by deleting the phrase “the amount that the company had invested on December 31 of the year preceding, and, on September 1 of each year, the amount the company had invested as of the preceding June 30, in Tennessee securities, and the amount that it had invested on that date” and substituting instead the phrase “the amount that the company had invested on March 31, June 30, September 30, and December 31 of the year preceding in Tennessee securities, and the amount that it had invested on those dates”.

SECTION 7. Tennessee Code Annotated, Section 56-4-210(b)(2), is amended by deleting the phrase “If the report of the insurance company shows that the company, as of December 31 of the year preceding, or as of the preceding June 30 with respect to taxes due to be paid on September 1,” and substituting instead the phrase “If the report of the insurance company shows that the company, as of March 31, June 30, September 30, and December 31 of the year preceding”.

SECTION 8. Tennessee Code Annotated, Section 56-4-210(b)(5), is amended by deleting the word “annual” after the phrase “extended at” and before the phrase “statement value” and substituting instead the words “each quarterly”.

SECTION 9. Tennessee Code Annotated, Section 56-4-210(c)(1)(C), is amended by adding the phrase “, and other short-term investments,” after the phrase “national or state banks or trust companies” and before the phrase “in such other state”.

SECTION 10. Tennessee Code Annotated, Section 56-4-210(e)(2), is amended by adding the phrase “with cash and short-term investments based on average daily balances” at the end of the sentence.

SECTION 11. Tennessee Code Annotated, Section 56-4-212, is amended by deleting the section in its entirety and substituting instead the following:

The taxes imposed under this part shall be for the privilege of transacting business for each calendar quarter of each year but shall be measured by the gross premiums and consideration received by the respective companies during the quarter immediately preceding.

SECTION 12. Tennessee Code Annotated, Section 56-4-216(a), is amended by adding the following subdivision:

(3) For good cause shown, the commissioner may grant an exemption from the electronic reporting requirements of § 56-4-205 and permit timely filings and payments by nonelectronic means upon application made in advance of the delinquency date.

SECTION 13. Tennessee Code Annotated, Section 56-4-216(c), is amended by deleting the subsection in its entirety and substituting instead the following:

(c) Notwithstanding any other statutes of this state, no grace period for the filing of returns and payments shall be allowed.

(d) A premium tax return and payment made to the department shall not be considered as paid on or before the due date unless the premium tax return and payment are received in the office of the commissioner, in the electronic manner approved by the commissioner, on or before the due date.

(e) If an exemption is granted pursuant to subdivision (a)(3), a premium tax return and payment made to the department shall not be considered as paid on or before the due date unless:

(1) The premium tax return and payment are received in the office of the commissioner on or before the due date;

(2) The premium tax return and payment bear a post office cancellation mark stamped by the United States postal service on or before the due date, or are mailed by certified or registered mail, or have a certificate of mailing on or before the due date. A premium tax return and payment received by the department bearing a metered mail stamp and no post office cancellation mark stamped by the United States postal service shall be deemed filed and received on the date the premium tax return arrives at the department;

(3) In the event a premium tax return and payment are mailed, but not received by the department, or received, and the cancellation mark is illegible or omitted, the return and payment shall be deemed filed and received, on the date they were mailed, if the sender establishes that the premium tax return and payment were deposited in the United States mail. In order to establish proof of mailing under these circumstances, a record authenticated by the United States postal service that the original mailing was sent registered mail, certified mail, or by certificate of mailing, shall be the only proof accepted by the department; or

(4) The premium tax and payment are received in a manner established by the commissioner by rules. The rules may provide for the filing of premium tax returns and payments to be made through electronic means. The commissioner is also authorized to promulgate rules that provide for a convenience fee to cover the cost of accepting electronic premium tax returns and payments. Any fee set by rule under the authority of this subdivision (e)(4) may be assessed in addition to any applicable penalty and interest. In no event shall the convenience fee exceed the actual costs incurred by the department in accepting electronic premium tax returns and payments.

SECTION 14. Tennessee Code Annotated, Section 56-4-218(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) The time, period and manner of payment of the retaliatory tax shall be the same in all cases as that of the gross premium tax provided for in § 56-4-205, and no interest charges or credits shall be made or allowed for use or loss of use of funds due to any conflict of the time, period or manner of payment in this state and the time, period or manner in a foreign state or country.

SECTION 15. Tennessee Code Annotated, Section 56-14-106(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) On a quarterly basis, the surplus lines agent shall promptly file with the commissioner on or before February 15 for the quarter ending the preceding December 31, on or before May 15 for the quarter ending the preceding March 31, on or before August 15 for the quarter ending the preceding June 30, and on or before November 15 for the quarter ending the preceding September 30, on forms and in the manner prescribed by the commissioner, a verified report of all surplus lines insurance

transactions during the preceding quarter placed, procured, or effected for, or on behalf of, an insured whose home state is this state, showing:

- (1) Aggregate gross premiums written;
- (2) Aggregate return premiums;
- (3) Amount of tax remitted to this state; and
- (4) Except for insurance placed or procured on behalf of an exempt

commercial purchaser, a sworn statement by the agent with regard to the coverages described in the report that, to the best of the agent's knowledge and belief, the agent could not reasonably procure such coverages from an admitted insurer.

SECTION 16. Tennessee Code Annotated, Section 56-14-106(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Within thirty (30) days of placing any new or renewal surplus lines contract endorsements to surplus lines contracts, the surplus lines agent shall make an affidavit for every new or renewed surplus lines insurance contract placed, procured or effected for, or on behalf of, an insured whose home state is this state within such calendar month, in the form prescribed by the commissioner. The affidavit shall be promptly filed with the commissioner or the commissioner's designee and shall include an affirmation that the agent is, after diligent effort, unable to procure from an admitted company or admitted companies the full amount of insurance required to protect the interest of the insured for each surplus lines insurance transaction except those procured or placed for exempt commercial purchasers.

SECTION 17. Tennessee Code Annotated, Section 56-14-113(b)(5), is amended by deleting the subdivision in its entirety and substituting instead the following:

(5) On or before February 15 for the quarter ending the preceding December 31, on or before May 15 for the quarter ending the preceding March 31, on or before August 15 for the quarter ending the preceding June 30, and on or before November 15 for the quarter ending the preceding September 30, at the time of filing the reports as set forth in § 56-14-106, each surplus lines licensee shall pay the premium tax due for the policies written during the period covered by the report in the manner prescribed by the commissioner.

SECTION 18. Tennessee Code Annotated, Section 56-32-115(b), is amended by deleting the phrase “once every four (4) years” and substituting instead the phrase “once every five (5) years”.

SECTION 19. Tennessee Code Annotated, Section 56-32-124(b), is amended by adding the phrase “in an electronic format approved by the commissioner” after the phrase “shall be due and payable” and before the phrase “on a quarterly basis”.

SECTION 20. Tennessee Code Annotated, Section 56-35-107(b), is amended by adding the phrase “in an electronic format approved by the commissioner,” after the phrase “on or before March 1 of each year,” and before the phrase “shall be subject to penalty”.

SECTION 21. Sections 1, 2, 3, 11, and 18 of this act shall take effect upon becoming a law, the public welfare requiring it. The remaining sections of this act shall take effect January 1, 2016, the public welfare requiring it.