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SENATE BILL NO. 670

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 38.2-4809 of the Code of Virginia, relating to surplus line broker license tax.

Patron—Pekarsky

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4809 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-4809. Licensees to pay license taxes on insurers.

A. 1. Every licensed surplus lines broker or any person required to be licensed as a surplus lines broker shall be subject to the annual taxes, license taxes, penalties, and other provisions of Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 on each policy of insurance procured by him during the preceding calendar year with an eligible nonadmitted insurer. For policies effective on or after July 1, 2011, such payments shall be made based on the direct gross premium income derived from policies for insureds whose home state is the Commonwealth.

2. Every surplus lines broker or any person required to be licensed as a surplus lines broker subject to the provisions of this chapter shall, on or before March 1 of 2012 and 2013 report under oath to the Commission, and on or before March 1 of each year thereafter, report under oath to the Department of Taxation, upon the prescribed form, the direct gross premium income derived from policies for insureds whose home state is the Commonwealth during the preceding year ending December 31.

3. Every surplus lines broker or any person required to be licensed as a surplus lines broker failing to file the report required by this section shall be fined \$50 for each day's failure to file the report.

4. Upon the failure of any such surplus lines broker or any person required to be licensed as a surplus lines broker to pay the premium license tax within the time required by this section, there shall be added to such tax a penalty of 10 percent of the amount of the tax and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 for the period between the due date and the date of full payment. The Commission or Department of Taxation shall notify the surplus lines broker of all additional amounts owed, and the surplus lines broker shall pay such amounts within 30 days of the date of the notice.

5. Upon good cause shown, the Department of Taxation may accept late payment of the premium license tax exclusive of penalties; however, interest shall be paid on such tax as prescribed in this subsection.

6. If any person overestimates and overpays the annual taxes, the Department of Taxation shall refund the amount of the overpayment to the person. The overpayment shall be refunded out of the state treasury.

B. 1. Each licensed surplus lines broker or any person required to be licensed as a surplus lines broker whose annual premium license tax liability can reasonably be expected to exceed \$1,500 shall file a quarterly tax report with the Department of Taxation. Such report shall be in a form prescribed by the Department of Taxation. This report shall be filed no later than 30 calendar days after the end of each calendar quarter. Notwithstanding any provision to the contrary, each such person shall pay the premium license tax owed for the direct gross premiums adjusted for additional and returned premiums shown by each quarterly tax report when such report is filed with the Department of Taxation.

2. No surplus lines broker or any person required to be licensed as a surplus lines broker shall be subject to any penalty or interest pursuant to Title 58.1 as a result of the failure to timely file a quarterly tax report or make the related quarterly payment when the report is filed pursuant to subdivision 1.

C. In addition to other penalties provided by law, any licensed surplus lines broker or any person required to be licensed as a surplus lines broker who willfully fails or refuses to pay the full amount of the tax or assessment required by this chapter, either by himself or through his agents or employees, or who makes a false or fraudulent return with intent to evade the tax or assessment hereby levied, or who makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor.

D. If any licensed surplus lines broker or any person required to be licensed as a surplus lines broker charges and collects from the insured the taxes and assessments required by this section and § 38.2-4809.1, such person shall be a fiduciary to this Commonwealth for any taxes and assessments owed to this Commonwealth under this chapter.

E. Notwithstanding the provisions of this section and effective for calendar year 2024 and thereafter, any surplus lines broker or any person required to be licensed as a surplus lines broker shall not be subject to the annual taxes, license taxes, penalties, and other provisions of Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 on any policy of insurance procured by such broker during the preceding calendar year on behalf of a commuter rail system jointly operated by the Northern Virginia Transportation Commission established

59 *pursuant to § 33.2-1904 and the Potomac and Rappahannock Transportation District established pursuant to*
60 *the Transportation District Act (§ 33.2-1900 et seq.).*