

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 23-1111

BY REPRESENTATIVE(S) Bird, Duran, Lindsay, Lindstedt, Mauro, Ricks, Snyder, McCluskie;
also SENATOR(S) Hansen, Liston.

CONCERNING HARMONIZATION OF THE UNAUTHORIZED INSURANCE PREMIUM
TAX RATE WITH THE SURPLUS LINES INSURANCE PREMIUM TAX RATE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) There is a policy interest in ensuring tax parity so that insureds are subject to the same rates of taxation;

(b) The current tax rate for unauthorized insurance premiums is a different rate than the rate of taxation on premiums for surplus line coverage from nonadmitted insurers;

(c) Increasing the tax rate for unauthorized insurance premiums to 3% to achieve tax parity is an incidental change because the purpose of the change is to achieve tax parity and not to raise revenue;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(d) Increasing the tax rate for unauthorized insurance premiums to 3% is also a de minimis change because the cost of an election on the question of increasing the unauthorized insurance premium tax rate by 0.75% from 2.25% to 3% would exceed the additional revenue obtained by the tax rate increase; and

(e) Because increasing the tax rate for unauthorized insurance premiums from 2.25% to 3% is both incidental and de minimis, the Colorado supreme court's holdings in *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519 (Colo. 2009), and *TABOR Found. v. Reg'l Transp. Dist.*, 2018 CO 29, make clear that requiring voter approval for the increase would reflect an interpretation of the Taxpayer's Bill of Rights, article X, section 20 of the state constitution, that would unreasonably curtail the everyday functions of government and yield an absurd result that the voters who approved that constitutional provision could not have intended.

SECTION 2. In Colorado Revised Statutes, 10-3-909, **amend** (1) as follows:

10-3-909. Unauthorized insurance premium tax. (1) Except as to premiums that are subject to a federal premium, excise, or stamp tax equal to or in excess of ~~two and one-fourth~~ THREE percent of net premiums, and except as to premiums on independently procured insurance on which tax has been paid pursuant to section 10-3-209, 10-5-111, or 10-5-111.5, every insured under a contract procured from an unauthorized insurer shall pay to the division of insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed a premium tax of ~~two and one-quarter~~ THREE percent of net premiums charged for the insurance. Such insurance on subjects resident, located, or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, is deemed to be insurance procured, continued, or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax is increased by a penalty of twenty-five percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date the

payment was due to the date paid.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2024; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to policies for unauthorized insurance issued on or after the applicable effective date of this act.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO