



November 7, 2019

Chair Daire Rendon
House Insurance Committee
124 North Capitol Avenue
Lansing, MI 48933

Re: House Bill 5174

Dear Chair Rendon, Vice Chair Markkanen and members of the committee,

The H.W. Kaufman Group¹ and the Wholesale & Specialty Insurance Association (WSIA)² appreciate the opportunity to provide our testimony in strong support of HB 5174, which will allow surplus lines insurance brokers to assess a reasonable per policy fee for surplus lines insurance policies.

Michigan allows a broker fee but it is capped based on a statutorily prescribed formula, which is currently \$64. Michigan's fee cap is the most restrictive in the nation. Passage of HB 5174 will modernize Michigan's regulation of the policy fee and make it consistent with the majority of the nation that already allows a reasonable policy fee to be charged.

Attached as Exhibit I is an overview of the surplus lines broker policy fee and its treatment across the nation, but we would also like to provide a brief explanation that helps outline why we strongly support

¹ Fifty years ago and headquartered in Farmington Hills, Michigan, H.W. Kaufman Group was founded on the principles of partnership, integrity and excellence. With thousands of dedicated professionals across an extensive network of over 60 offices around the world (15% of our global workforce sits in one of our three Michigan offices), we lead by offering innovative solutions that are at the forefront of the industry. From brokerage, underwriting, premium financing and real estate to claims, loss control and risk management services, our depth of services is unrivaled. Burns & Wilcox, Ltd., the flagship organization of H.W. Kaufman Group, is a leading wholesale insurance broker and underwriting manager. Annually, B&W captures more than \$1 billion in premium by placing the world's most sophisticated and complex risks. Clients and partners continue to trust in the company's commitment to the wholesale business. They seek the global expertise of Burns & Wilcox and rely on the team's counsel and unmatched vertical depth. In turn, Burns & Wilcox is tenacious about delivering exemplary results.

² The Wholesale & Specialty Insurance Association (WSIA) is the non-profit association of insurance professionals and specialty market leaders dedicated to the wholesale distribution system. WSIA represents the interests of its members and the valuable role they play in the insurance market through networking, education, talent recruitment and development, regulatory and legislative advocacy for surplus lines, and by promoting the value of the wholesale distribution channel. WSIA is a world-class member service organization representing the entirety of the wholesale, specialty and surplus lines industry. The Wholesale & Specialty Insurance Association was formed in 2017 through the merger of the American Association of Managing General Agents (AAMGA) and the National Association of Professional Surplus Lines Offices (NAPSLO).

this legislation. A policy fee is a fee that directly related to the process of securing a surplus lines policy for a consumer. The fee is in recognition of the unique and additional responsibilities specific to the procurement and binding of surplus lines policies, which differ substantially from a standard insurance policy procurement. While property & casualty coverages are offered through the surplus lines market, it is a completely separate *market* from the standard market. The surplus lines market functions as a supplemental market, a safety valve to ensure that unusual and often complex risks have insurance coverage. The market is accessed only after it is determined by the consumer's insurance agent, in a process called a diligent search, that the standard market is unable or unwilling to cover that consumer's specific risk. Once that determination is made, a consumer's retail agent will typically seek the assistance of a specially licensed agent, a surplus lines broker, who can access the secondary market to seek coverage.

Since the coverage is deemed to be unavailable from the standard insurance carriers approved to do business in Michigan, for example, and in order to provide coverage to their consumer, the coverage must be exported to an insurer that has specialized expertise but is not admitted (also referred to as the nonadmitted market) in the insured's home state, such as Michigan. This means that the entity directly regulated by Michigan in this transaction is the surplus lines broker and because of that, it is those surplus lines brokers that are responsible for regulatory compliance. It also means that a number of the services typically required to be performed by the insurer are now the responsibility of the surplus lines broker. One significant difference between the markets is the responsibility for the premium taxes. In the standard market, it is the insurance carrier that is responsible for paying taxes on their annual premiums. These taxes are not separately invoiced to the consumer, rather they are included in the premium and paid to each state based on the amount of premium written in that state. Many of the specific costs associated with this and other traditional services and responsibilities are assimilated into the rates and premium charged to the consumer. However, in the surplus lines transaction, it is the specialized surplus lines broker that must perform these types of duties along with additional services and requirements associated with procuring the policy, one of which is reporting and paying the premium tax, which is specifically collected from the consumer.

Surplus lines risks are typically complex, unique, innovative, emerging risks and the complexity of these risks is why the traditional admitted market is unable to respond and surplus lines brokers are necessary to seek out and craft effective insurance solutions for consumers.

To place the risk in the surplus lines market, the surplus lines broker performs traditional agent duties but also manages additional tasks that are unique to surplus lines transactions, including but not limited to:

- Property inspections
- Risk selection analyses
- Capturing and modeling additional catastrophe data for increased exposures in state, resulting in increased underwriting data capture requirements
- Premium tax reporting and filing
- Diligent effort reporting requirements
- Mandatory automation of policy filings
- Regular required audits (compliance, reconciliation, etc.)
- Costs of required system configuration for filings

These are tasks and costs that are necessary to procure the surplus lines policy. Since they are not made a part of the premium, as is the case in a standard admitted market transaction, the brokers bear these expenses; and to be made whole, a broker policy fee is assessed. This is separate and apart from commission, which is compensatory in nature.

Surplus lines is not the market most commonly accessed by Michigan consumers. It is a market that is accessed as a safety valve for the consumer when the standard market cannot respond. AM Best Company reports that the 2018 national direct written premium for surplus lines was \$49.9 billion, which equals approximately 7.4% of the total U.S. property and casualty market and according to the National Association of Insurance Commissioners, the surplus lines market is only 3.1% of the total Michigan property and casualty market. An estimated 85% of the national surplus lines premium occurred in commercial lines, where the surplus lines market represents nearly 16% of the total commercial insurance market. These figures show that surplus lines exists as part of the broader U.S. property & casualty insurance market to serve as a safety valve and supplement to the market. Unique, new and innovative risks often start in the surplus lines market and then transition to the standard market as admitted carriers become comfortable and knowledgeable regarding the risks. This system allows consumers to remain in the private market rather than go without insurance, into a residual market, or worst case, not be able to start or continue a business because they cannot procure insurance. Performing these critical functions require special services and the broker fee allows them to more efficiently and effectively complete them.

We are grateful for the opportunity to testify before the committee today and we look forward to working with the Michigan legislature and the Michigan Department of Insurance and Financial Services on legislation that will allow surplus lines brokers to adequately service Michigan consumers and make Michigan statutes consistent with the majority of states. Thank you for hearing our testimony and we will now stand for questions.

Sincerely,

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