

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

DRAFT
9.2.22

BILL 9

LLS NO. 23-0130.01 Megan McCall x4215

INTERIM COMMITTEE BILL

Legislative Oversight Committee Concerning Tax Policy

BILL TOPIC: "Unauthorized Insurance Premium Tax Rate"

A BILL FOR AN ACT

101 **CONCERNING HARMONIZATION OF THE UNAUTHORIZED INSURANCE**
102 **PREMIUM TAX RATE WITH THE SURPLUS LINES INSURANCE**
103 **PREMIUM TAX RATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Legislative Oversight Committee Concerning Tax Policy. The bill increases the unauthorized insurance premium tax rate from 2.25% to 3% in parity with the surplus lines insurance tax rate.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

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

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

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

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

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

12 (d) Increasing the tax rate for unauthorized insurance premiums
13 to 3% is also a de minimis change because the cost of an election on the
14 question of increasing the unauthorized insurance premium tax rate by
15 0.75% from 2.25% to 3% would exceed the additional revenue obtained
16 by the tax rate increase; and

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

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

1 as follows:

2 **10-3-909. Unauthorized insurance premium tax.** (1) Except as
3 to premiums that are subject to a federal premium, excise, or stamp tax
4 equal to or in excess of ~~two and one-fourth~~ THREE percent of net
5 premiums, and except as to premiums on independently procured
6 insurance on which tax has been paid pursuant to section 10-3-209,
7 10-5-111, or 10-5-111.5, every insured under a contract procured from an
8 unauthorized insurer shall pay to the division of insurance before March
9 1 next succeeding the calendar year in which the insurance was so
10 effectuated, continued, or renewed a premium tax of ~~two and one-quarter~~
11 THREE percent of net premiums charged for the insurance. Such insurance
12 on subjects resident, located, or to be performed in this state procured
13 through negotiations or an application, in whole or in part occurring or
14 made within or from within or outside of this state, or for which
15 premiums in whole or in part are remitted directly or indirectly from
16 within or outside of this state, is deemed to be insurance procured,
17 continued, or renewed in this state. The term "premium" includes all
18 premiums, membership fees, assessments, dues, and any other
19 consideration for insurance. If the tax prescribed by this section is not
20 paid within the time stated, the tax is increased by a penalty of
21 twenty-five percent and by the amount of an additional penalty computed
22 at the rate of one percent per month or any part thereof from the date the
23 payment was due to the date paid.

24 **SECTION 3. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect January 1, 2024; except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within the ninety-day period after final adjournment of the general
2 assembly, then the act, item, section, or part will not take effect unless
3 approved by the people at the general election to be held in November
4 2024 and, in such case, will take effect on the date of the official
5 declaration of the vote thereon by the governor.

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