

By: Duncan

S.B. No. 1697

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the distinction between surplus lines insurance and  
3 unauthorized insurance.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (a), Section 101.001, Insurance Code,  
6 is amended to read as follows:

7 (a) It is a state concern that many residents of this state  
8 hold insurance policies issued by persons or insurers who are not  
9 authorized to do insurance business in this state and who are not  
10 qualified as eligible surplus lines insurers under Chapter 981  
11 [~~Article 1.14-2~~]. These residents face often insurmountable  
12 obstacles in asserting legal rights under the policies in foreign  
13 forums under unfamiliar laws and rules of practice.

14 SECTION 2. Section 101.053, Insurance Code, is amended by  
15 amending Subsection (b) and adding Subsection (d) to read as  
16 follows:

17 (b) Sections 101.051 and 101.052 do not apply to:

18 (1) the lawful transaction of surplus lines insurance  
19 [~~under Chapter 981~~];

20 (2) the lawful transaction of reinsurance by insurers;

21 (3) a transaction in this state that:

22 (A) involves a policy that:

23 (i) is lawfully solicited, written, and  
24 delivered outside this state; and

1 (ii) covers, at the time the policy is  
2 issued, only subjects of insurance that are not resident, located,  
3 or expressly to be performed in this state; and

4 (B) takes place after the policy is issued;

5 (4) a transaction:

6 (A) that involves an insurance contract  
7 independently procured by the insured from an insurance company not  
8 authorized to do insurance business in this state through  
9 negotiations occurring entirely outside this state;

10 (B) that is reported; and

11 (C) on which premium tax is paid in accordance  
12 with Chapter 226;

13 (5) a transaction in this state that:

14 (A) involves group life, health, or accident  
15 insurance, other than credit insurance, and group annuities in  
16 which the master policy for the group was lawfully issued and  
17 delivered in a state in which the insurer or person was authorized  
18 to do insurance business; and

19 (B) is authorized by a statute of this state;

20 (6) an activity in this state by or on the sole behalf  
21 of a nonadmitted captive insurance company that insures solely:

22 (A) directors' and officers' liability insurance  
23 for the directors and officers of the company's parent and  
24 affiliated companies;

25 (B) the risks of the company's parent and  
26 affiliated companies; or

27 (C) both the individuals and entities described

1 by Paragraphs (A) and (B);

2 (7) the issuance of a qualified charitable gift  
3 annuity under Chapter 102; or

4 (8) a lawful transaction by a servicing company of the  
5 Texas workers' compensation employers' rejected risk fund under  
6 Section 4.08, Article 5.76-2, as that article existed before its  
7 repeal.

8 (d) For the purposes of Subsection (b)(1), "lawful  
9 transaction of surplus lines insurance" means an insurance  
10 transaction where the surplus lines insurance is procured from an  
11 eligible surplus lines insurer as defined by Section 981.002.  
12 Failure to comply with Chapter 981 may subject the eligible surplus  
13 lines insurer to sanctions pursuant to Section 981.006, but none of  
14 the provisions of Chapter 101 shall apply to the eligible surplus  
15 lines insurer.

16 SECTION 3. Subsection (b), Section 101.201, Insurance Code,  
17 is amended to read as follows:

18 (b) This section does not apply to [~~insurance procured by a~~  
19 ~~licensed surplus lines agent from an eligible surplus lines insurer~~  
20 ~~as defined by Chapter 981 and]~~ independently procured contracts of  
21 insurance, as described in Section 101.053(b)(4), that are reported  
22 and on which premium tax is paid in accordance with Chapter [~~225 or~~  
23 226.

24 SECTION 4. Subsection (c), Section 101.203, Insurance Code,  
25 is amended to read as follows:

26 (c) This section does not apply to:

27 (1) a transaction in this state that:

1 (A) involves a policy that:

2 (i) is lawfully solicited, negotiated,  
3 written, and delivered outside this state; and

4 (ii) covers, at the time the policy is  
5 issued, only subjects of insurance that are not resident, located,  
6 or expressly to be performed in this state; and

7 (B) takes place after the policy is issued; or

8 (2) surplus lines insurance procured through an  
9 eligible surplus lines insurer [~~carriers~~] as defined by Section  
10 981.002 [~~Article 1.14-2~~].

11 SECTION 5. Subsection (b), Section 101.301, Insurance Code,  
12 is amended to read as follows:

13 (b) This section does not apply to:

14 (1) a transaction described by Section 101.053(b)(4);  
15 or

16 (2) surplus lines insurance procured through an  
17 eligible surplus lines insurer [~~carriers~~] as defined by Section  
18 981.002 [~~Article 1.14-2~~].

19 SECTION 6. Section 225.002, Insurance Code, is amended to  
20 read as follows:

21 Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter  
22 applies only to a surplus lines agent who collects gross premiums  
23 for surplus lines insurance.

24 SECTION 7. Section 226.002, Insurance Code, is amended to  
25 read as follows:

26 Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This subchapter  
27 applies only to an unauthorized insurer who charges gross premiums

1 for insurance on a subject resident, located, or to be performed in  
2 this state.

3 SECTION 8. Subsection (g), Section 226.003, Insurance Code,  
4 is amended to read as follows:

5 (g) The following premiums are not subject to the tax  
6 imposed by this subchapter:

7 (1) premiums on insurance procured [~~by a licensed~~  
8 ~~surplus lines agent~~] from an eligible surplus lines insurer as  
9 defined by Section 981.002 [~~Chapter 981 on which premium tax is paid~~  
10 ~~in accordance with Chapter 225~~]; and

11 (2) premiums on an independently procured contract of  
12 insurance on which premium tax is paid in accordance with  
13 Subchapter B.

14 SECTION 9. Section 226.005, Insurance Code, is amended to  
15 read as follows:

16 Sec. 226.005. TAX PAYMENT; DUE DATE. (a) The tax imposed  
17 by this subchapter is due and payable not later than:

18 (1) March 1 after the end of the calendar year in which  
19 the insurance was effectuated, continued, or renewed; or

20 (2) another date prescribed by the comptroller.

21 (b) An unauthorized insurer shall pay the tax imposed by  
22 this subchapter using a form prescribed by the comptroller. An  
23 insured or agent may pay the tax in lieu of the unauthorized  
24 insurer.

25 (c) The tax under this section, if not paid when due, is a  
26 liability of the unauthorized insurer, the agent, and the insured  
27 until paid [~~If an unauthorized insurer defaults in payment of the~~

1 ~~tax imposed by this subchapter, the insured is responsible for~~  
2 ~~paying the tax].~~

3 SECTION 10. Section 226.052, Insurance Code, is amended to  
4 read as follows:

5 Sec. 226.052. APPLICABILITY OF SUBCHAPTER. This subchapter  
6 applies only to an insured who procures an insurance contract in  
7 accordance with Section 101.053(b)(4).

8 SECTION 11. Subdivision (1), Section 981.002, Insurance  
9 Code, is amended to read as follows:

10 (1) "Eligible surplus lines insurer" means an insurer  
11 that is not an unauthorized ~~[authorized]~~ insurer, but that is  
12 eligible under Subchapter B, in which surplus lines insurance is  
13 placed or may be placed under this chapter.

14 SECTION 12. Section 981.004, Insurance Code, is amended by  
15 adding Subsection (c) to read as follows:

16 (c) An eligible surplus lines insurer is not an unauthorized  
17 insurer and is not subject to Chapter 101.

18 SECTION 13. Section 981.005, Insurance Code, is amended to  
19 read as follows:

20 Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a  
21 material and intentional violation of this chapter ~~[or Section 12,~~  
22 ~~Article 1.14-2,~~] exists, an insurance contract obtained from an  
23 eligible surplus lines insurer is:

24 (1) valid and enforceable as to all parties; and  
25 (2) recognized in the same manner as a comparable  
26 contract issued by an authorized insurer.

27 (b) A material and intentional violation of this chapter ~~[or~~

1 ~~Section 12, Article 1.14-2,~~] does not preclude the insured from  
2 enforcing the insured's rights under the contract.

3 SECTION 14. Section 981.006, Insurance Code, is amended to  
4 read as follows:

5 Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus  
6 lines agent or an eligible surplus lines insurer that violates:

7 (1) this chapter;

8 (2) Chapter 225 [~~Section 12, Article 1.14-2~~]; or

9 (3) a rule or order adopted under Subchapter B or  
10 Section 981.005.

11 SECTION 15. Section 981.008, Insurance Code, is amended to  
12 read as follows:

13 Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The  
14 premiums charged for surplus lines insurance are subject to the  
15 premium tax imposed under Chapter 225 [~~Section 12, Article 1.14-2~~].

16 SECTION 16. Section 981.101, Insurance Code, is amended by  
17 amending Subsection (b) and adding Subsection (d) to read as  
18 follows:

19 (b) A surplus lines document must state, in 11-point type,  
20 the following:

21 This insurance contract is with an insurer not licensed to  
22 transact insurance in this state and is issued and delivered  
23 as surplus line coverage under the Texas insurance statutes.  
24 The Texas Department of Insurance does not audit the finances  
25 or review the solvency of the surplus lines insurer providing  
26 this coverage, and the insurer is not a member of the property  
27 and casualty insurance guaranty association created under

1 Article 21.28-C, Insurance Code. Chapter 225 [~~Section 12,~~  
2 ~~Article 1.14-2~~], Insurance Code, requires payment of a  
3 \_\_\_\_\_ (insert appropriate tax rate) percent tax on gross  
4 premium.

5 (d)(1) Every eligible surplus lines insurer shall annually  
6 file with the stamping office a report, in a format prescribed by  
7 the stamping office, containing the following information  
8 regarding each surplus lines policy:

- 9 (A) policy number;  
10 (B) insured's name and address;  
11 (C) policy effective and expiration dates;  
12 (D) written premium allocated to Texas; and  
13 (E) name, address, and agent license number of  
14 the surplus lines agent who placed the policy, or, in the case of a  
15 group of insurers that includes individual unincorporated  
16 insurers, the group or its eligible members shall provide  
17 (i) policy information which may be aggregated or summarized as  
18 approved by the commissioner; and (ii) such other information as  
19 the commissioner may direct.

20 (2) Such information is considered confidential and  
21 shall not be made available to the public.

22 SECTION 17. Subsection (b), Section 981.104, Insurance  
23 Code, is amended to read as follows:

24 (b) A change made under Subsection (a) may not result in  
25 coverage or an insurance contract that would violate this chapter  
26 or Chapter 225 [~~Section 12, Article 1.14-2,~~] if originally issued  
27 on that basis.



1           SECTION 18. Section 981.160, Insurance Code, is amended to  
2 read as follows:

3           Sec. 981.160. NO ENFORCEMENT AUTHORITY. This subchapter  
4 does not give the stamping office authority to enforce this chapter  
5 or Chapter 225 [~~Section 12, Article 1.14-2~~].

6           SECTION 19. Section 981.056, Insurance Code, is repealed.

7           SECTION 20. This Act takes effect September 1, 2005.