

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 insurance is procured from an eligible
11 surplus lines insurer as defined by Section 981.002.

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

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

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

22 (c) This section does not apply to:

23 (1) a transaction in this state that:

24 (A) involves a policy that:

25 (i) is lawfully solicited, negotiated,
26 written, and delivered outside this state; and

27 (ii) covers, at the time the policy is

1 issued, only subjects of insurance that are not resident, located,
2 or expressly to be performed in this state; and

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

4 (2) surplus lines insurance procured through an
5 eligible surplus lines insurer [~~carriers~~] as defined by Section
6 981.002 [~~Article 1.14-2~~].

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

9 (b) This section does not apply to:

10 (1) a transaction described by Section 101.053(b)(4);
11 or

12 (2) surplus lines insurance procured through an
13 eligible surplus lines insurer [~~carriers~~] as defined by Section
14 981.002 [~~Article 1.14-2~~].

15 SECTION 6. Section 225.002, Insurance Code, is amended to
16 read as follows:

17 Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter
18 applies only to a surplus lines agent who collects gross premiums
19 for surplus lines insurance.

20 SECTION 7. Section 226.002, Insurance Code, is amended to
21 read as follows:

22 Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This subchapter
23 applies only to an unauthorized insurer who charges gross premiums
24 for insurance on a subject resident, located, or to be performed in
25 this state.

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

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

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

7 (2) premiums on an independently procured contract of
8 insurance on which premium tax is paid in accordance with
9 Subchapter B.

10 SECTION 9. Section 226.052, Insurance Code, is amended to
11 read as follows:

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

15 SECTION 10. Subdivision (1), Section 981.002, Insurance
16 Code, is amended to read as follows:

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

21 SECTION 11. Section 981.004, Insurance Code, is amended by
22 adding Subsection (c) to read as follows:

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

25 SECTION 12. Section 981.005, Insurance Code, is amended to
26 read as follows:

27 Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a

1 material and intentional violation of this chapter [~~or Section 12,~~
2 ~~Article 1.14-2,~~] exists, an insurance contract obtained from an
3 eligible surplus lines insurer is:

4 (1) valid and enforceable as to all parties; and

5 (2) recognized in the same manner as a comparable
6 contract issued by an authorized insurer.

7 (b) A material and intentional violation of this chapter [~~or~~
8 ~~Section 12, Article 1.14-2,~~] does not preclude the insured from
9 enforcing the insured's rights under the contract.

10 SECTION 13. Section 981.006, Insurance Code, is amended to
11 read as follows:

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

14 (1) this chapter;

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

16 (3) a rule or order adopted under Subchapter B or
17 Section 981.005.

18 SECTION 14. Section 981.008, Insurance Code, is amended to
19 read as follows:

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

23 SECTION 15. Subsection (b), Section 981.101, Insurance
24 Code, is amended to read as follows:

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

27 This insurance contract is with an insurer not

1 licensed to transact insurance in this state and is issued
2 and delivered as surplus line coverage under the Texas
3 insurance statutes. The Texas Department of Insurance does
4 not audit the finances or review the solvency of the surplus
5 lines insurer providing this coverage, and the insurer is not
6 a member of the property and casualty insurance guaranty
7 association created under Article 21.28-C, Insurance Code.
8 Chapter 225 [~~Section 12, Article 1.14-2~~], Insurance Code,
9 requires payment of a _____ (insert appropriate tax
10 rate) percent tax on gross premium.

11 SECTION 16. Subsection (b), Section 981.104, Insurance
12 Code, is amended to read as follows:

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

17 SECTION 17. Section 981.160, Insurance Code, is amended to
18 read as follows:

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

22 SECTION 18. Section 981.056, Insurance Code, is repealed.

23 SECTION 19. This Act takes effect September 1, 2005.