

1-1 By: Duncan S.B. No. 1697
1-2 (In the Senate - Filed March 11, 2005; March 30, 2005, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 25, 2005, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 25, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the distinction between surplus lines insurance and
1-9 unauthorized insurance.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (a), Section 101.001, Insurance Code,
1-12 is amended to read as follows:

1-13 (a) It is a state concern that many residents of this state
1-14 hold insurance policies issued by persons or insurers who are not
1-15 authorized to do insurance business in this state and who are not
1-16 qualified as eligible surplus lines insurers under Chapter 981
1-17 [~~Article 1.14-2~~]. These residents face often insurmountable
1-18 obstacles in asserting legal rights under the policies in foreign
1-19 forums under unfamiliar laws and rules of practice.

1-20 SECTION 2. Section 101.053, Insurance Code, is amended by
1-21 amending Subsection (b) and adding Subsection (d) to read as
1-22 follows:

1-23 (b) Sections 101.051 and 101.052 do not apply to:

1-24 (1) the lawful transaction of surplus lines insurance
1-25 [~~under Chapter 981~~];

1-26 (2) the lawful transaction of reinsurance by insurers;

1-27 (3) a transaction in this state that:

1-28 (A) involves a policy that:

1-29 (i) is lawfully solicited, written, and
1-30 delivered outside this state; and

1-31 (ii) covers, at the time the policy is
1-32 issued, only subjects of insurance that are not resident, located,
1-33 or expressly to be performed in this state; and

1-34 (B) takes place after the policy is issued;

1-35 (4) a transaction:

1-36 (A) that involves an insurance contract
1-37 independently procured by the insured from an insurance company not
1-38 authorized to do insurance business in this state through
1-39 negotiations occurring entirely outside this state;

1-40 (B) that is reported; and

1-41 (C) on which premium tax is paid in accordance
1-42 with Chapter 226;

1-43 (5) a transaction in this state that:

1-44 (A) involves group life, health, or accident
1-45 insurance, other than credit insurance, and group annuities in
1-46 which the master policy for the group was lawfully issued and
1-47 delivered in a state in which the insurer or person was authorized
1-48 to do insurance business; and

1-49 (B) is authorized by a statute of this state;

1-50 (6) an activity in this state by or on the sole behalf
1-51 of a nonadmitted captive insurance company that insures solely:

1-52 (A) directors' and officers' liability insurance
1-53 for the directors and officers of the company's parent and
1-54 affiliated companies;

1-55 (B) the risks of the company's parent and
1-56 affiliated companies; or

1-57 (C) both the individuals and entities described
1-58 by Paragraphs (A) and (B);

1-59 (7) the issuance of a qualified charitable gift
1-60 annuity under Chapter 102; or

1-61 (8) a lawful transaction by a servicing company of the
1-62 Texas workers' compensation employers' rejected risk fund under
1-63 Section 4.08, Article 5.76-2, as that article existed before its
1-64 repeal.

2-1 (d) For the purposes of Subsection (b)(1), "lawful
2-2 transaction of surplus lines insurance" means an insurance
2-3 transaction where the insurance is procured from an eligible
2-4 surplus lines insurer as defined by Section 981.002.

2-5 SECTION 3. Subsection (b), Section 101.201, Insurance Code,
2-6 is amended to read as follows:

2-7 (b) This section does not apply to [~~insurance procured by a~~
2-8 ~~licensed surplus lines agent from an eligible surplus lines insurer~~
2-9 ~~as defined by Chapter 981 and~~] independently procured contracts of
2-10 insurance, as described in Section 101.053(b)(4), that are reported
2-11 and on which premium tax is paid in accordance with Chapter [~~225 or~~]
2-12 226.

2-13 SECTION 4. Subsection (c), Section 101.203, Insurance Code,
2-14 is amended to read as follows:

2-15 (c) This section does not apply to:

2-16 (1) a transaction in this state that:

2-17 (A) involves a policy that:

2-18 (i) is lawfully solicited, negotiated,
2-19 written, and delivered outside this state; and

2-20 (ii) covers, at the time the policy is
2-21 issued, only subjects of insurance that are not resident, located,
2-22 or expressly to be performed in this state; and

2-23 (B) takes place after the policy is issued; or

2-24 (2) surplus lines insurance procured through an
2-25 eligible surplus lines insurer [~~carriers~~] as defined by Section
2-26 981.002 [~~Article 1.14-2~~].

2-27 SECTION 5. Subsection (b), Section 101.301, Insurance Code,
2-28 is amended to read as follows:

2-29 (b) This section does not apply to:

2-30 (1) a transaction described by Section 101.053(b)(4);
2-31 or

2-32 (2) surplus lines insurance procured through an
2-33 eligible surplus lines insurer [~~carriers~~] as defined by Section
2-34 981.002 [~~Article 1.14-2~~].

2-35 SECTION 6. Section 225.002, Insurance Code, is amended to
2-36 read as follows:

2-37 Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter
2-38 applies only to a surplus lines agent who collects gross premiums
2-39 for surplus lines insurance.

2-40 SECTION 7. Section 226.002, Insurance Code, is amended to
2-41 read as follows:

2-42 Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This subchapter
2-43 applies only to an unauthorized insurer who charges gross premiums
2-44 for insurance on a subject resident, located, or to be performed in
2-45 this state.

2-46 SECTION 8. Subsection (g), Section 226.003, Insurance Code,
2-47 is amended to read as follows:

2-48 (g) The following premiums are not subject to the tax
2-49 imposed by this subchapter:

2-50 (1) premiums on insurance procured [~~by a licensed~~
2-51 ~~surplus lines agent~~] from an eligible surplus lines insurer as
2-52 defined by Section 981.002 [~~Chapter 981 on which premium tax is paid~~
2-53 ~~in accordance with Chapter 225~~]; and

2-54 (2) premiums on an independently procured contract of
2-55 insurance on which premium tax is paid in accordance with
2-56 Subchapter B.

2-57 SECTION 9. Section 226.052, Insurance Code, is amended to
2-58 read as follows:

2-59 Sec. 226.052. APPLICABILITY OF SUBCHAPTER. This subchapter
2-60 applies only to an insured who procures an insurance contract in
2-61 accordance with Section 101.053(b)(4).

2-62 SECTION 10. Subdivision (1), Section 981.002, Insurance
2-63 Code, is amended to read as follows:

2-64 (1) "Eligible surplus lines insurer" means an insurer
2-65 that is not an unauthorized [~~authorized~~] insurer, but that is
2-66 eligible under Subchapter B, in which surplus lines insurance is
2-67 placed or may be placed under this chapter.

2-68 SECTION 11. Section 981.004, Insurance Code, is amended by
2-69 adding Subsection (c) to read as follows:

3-1 (c) An eligible surplus lines insurer is not an unauthorized
3-2 insurer and is not subject to Chapter 101.

3-3 SECTION 12. Section 981.005, Insurance Code, is amended to
3-4 read as follows:

3-5 Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a
3-6 material and intentional violation of this chapter [~~or Section 12,~~
3-7 ~~Article 1.14-2,~~] exists, an insurance contract obtained from an
3-8 eligible surplus lines insurer is:

3-9 (1) valid and enforceable as to all parties; and

3-10 (2) recognized in the same manner as a comparable
3-11 contract issued by an authorized insurer.

3-12 (b) A material and intentional violation of this chapter [~~or~~
3-13 ~~Section 12, Article 1.14-2,~~] does not preclude the insured from
3-14 enforcing the insured's rights under the contract.

3-15 SECTION 13. Section 981.006, Insurance Code, is amended to
3-16 read as follows:

3-17 Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus
3-18 lines agent or an eligible surplus lines insurer that violates:

3-19 (1) this chapter;

3-20 (2) Chapter 225 [~~Section 12, Article 1.14-2~~]; or

3-21 (3) a rule or order adopted under Subchapter B or
3-22 Section 981.005.

3-23 SECTION 14. Section 981.008, Insurance Code, is amended to
3-24 read as follows:

3-25 Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The
3-26 premiums charged for surplus lines insurance are subject to the
3-27 premium tax imposed under Chapter 225 [~~Section 12, Article 1.14-2~~].

3-28 SECTION 15. Subsection (b), Section 981.101, Insurance
3-29 Code, is amended to read as follows:

3-30 (b) A surplus lines document must state, in 11-point type,
3-31 the following:

3-32 This insurance contract is with an insurer not licensed to
3-33 transact insurance in this state and is issued and delivered
3-34 as surplus line coverage under the Texas insurance statutes.
3-35 The Texas Department of Insurance does not audit the finances
3-36 or review the solvency of the surplus lines insurer providing
3-37 this coverage, and the insurer is not a member of the property
3-38 and casualty insurance guaranty association created under
3-39 Article 21.28-C, Insurance Code. Chapter 225 [~~Section 12,~~
3-40 ~~Article 1.14-2~~], Insurance Code, requires payment of a
3-41 _____ (insert appropriate tax rate) percent tax on gross
3-42 premium.

3-43 SECTION 16. Subsection (b), Section 981.104, Insurance
3-44 Code, is amended to read as follows:

3-45 (b) A change made under Subsection (a) may not result in
3-46 coverage or an insurance contract that would violate this chapter
3-47 or Chapter 225 [~~Section 12, Article 1.14-2,~~] if originally issued
3-48 on that basis.

3-49 SECTION 17. Section 981.160, Insurance Code, is amended to
3-50 read as follows:

3-51 Sec. 981.160. NO ENFORCEMENT AUTHORITY. This subchapter
3-52 does not give the stamping office authority to enforce this chapter
3-53 or Chapter 225 [~~Section 12, Article 1.14-2~~].

3-54 SECTION 18. Section 981.056, Insurance Code, is repealed.

3-55 SECTION 19. This Act takes effect September 1, 2005.

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