

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2136  
By: Eltife  
Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law requires an agent to make a diligent effort to obtain insurance from an authorized insurer. If, after a diligent effort, the agent is not able to find an authorized insurer to write the coverage, the agent is authorized to place the coverage with a surplus lines insurer.

This bill would authorize the commissioner of insurance to place certain types and lines of coverage on what is referred to as an "export list" and these limited types of coverage would not be subject to the prohibition of being offered as an option for coverage. The agent would be authorized to offer either or both admitted or non-admitted coverage options to his or her client.

C.S.S.B. 2136 amends current law relating to provision of surplus lines insurance.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 981.004, Insurance Code, by amending Subsection (a) and adding Subsections (c)-(h), as follows:

(a) Authorizes an eligible surplus lines insurer to provide surplus lines insurance only if certain conditions are met, including that the insurance is placed through a surplus lines agent in accordance with this chapter.

(c) Authorizes the commissioner of insurance (commissioner) by order to declare eligible for placement with a surplus lines insurer and exempt from the requirements of Subsections (a)(1) (relating to the amount of required insurance that cannot be obtained from an insurer) and (b) (relating to authorizing an eligible surplus lines insurer to provide surplus lines insurance) any kind of commercial insurance coverage or any commercial insurance risk for which the commissioner finds, after a public hearing, that there is an inadequate market among authorized insurers. Provides that the commissioner, in making a finding under this subsection, has the discretion to determine what constitutes a "kind of commercial insurance coverage," a "commercial insurance risk," or an "inadequate market among authorized insurers" for the purposes of this subsection.

(d) Requires the commissioner or the commissioner's designee to maintain an export list showing the exempt coverages and risks that are subject to a declaration under Subsection (c). Provides that the commissioner's determination under Subsection (c) that there is an inadequate market for a kind of commercial insurance coverage or a commercial insurance risk and the placement of the kind of commercial insurance coverage or commercial insurance risk on the export list continues in effect until the commissioner by order, after a public hearing, removes the kind of commercial insurance coverage or the commercial insurance risk from the list.

(e) Requires that a public hearing on the issuance of an order under this section be held only at the commissioner's discretion. Authorizes any interested party to petition the commissioner to consider the exercise of the commissioner's discretion to hold a hearing

under this section. Requires that a reasonable notice of a hearing under this section be provided to all interested parties by publication in the Texas Register at least 30 days before the hearing. Requires that the notice include the kind of commercial insurance coverage or the commercial insurance risk to be considered by the commissioner for inclusion on or removal from the export list. Authorizes that no kind of commercial insurance coverage or commercial insurance risk be considered by the commissioner that is not specified in the published hearing notice. Authorizes the notice to include a deadline by which interested parties are required to submit any written comments before the hearing. Requires the commissioner, if the commissioner declines to hold a hearing in response to a petition under this subsection, to publish notice in the Texas Register of the commissioner's declination to hold the hearing not later than the 45th day after the date the commissioner receives the petition.

(f) Authorizes the commissioner, as an alternative to a public hearing regarding the removal of a kind of commercial insurance coverage or a commercial insurance risk from the export list, at the commissioner's discretion, to issue an order removing the kind of coverage or the risk from the export list without a hearing. Prohibits the order, if the commissioner issues an order under this subsection, from taking effect before the 90th day after the date the order is issued.

(g) Requires the commissioner or the commissioner's designee to notify all interested parties of any removal of a line of insurance from the list by publication in the Texas Register not later than the 30th day after the date of the entry of the order.

(h) Provides that the export list is not designed to generate competition between the surplus lines market and the admitted market; authorized to only consist of commercial lines of insurance; is not intended to enable circumvention of state law, including the requirement that insurance procured through a surplus lines insurer is authorized to only be placed through a surplus lines agent; and is intended to express the commissioner's acknowledgment that the lines of insurance included on the export list may not be readily available in the admitted market.

SECTION 2. Amends Section 981.101(b), Insurance Code, to require that a surplus lines document state, in 11-point type, a certain statement, including that the Texas Department of Insurance does not review or approve policy forms or rates used by the insurer providing this coverage, nor does it audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462 (Texas Property and Casualty Insurance Guaranty Association), Insurance Code. Chapter 225 (Surplus Lines Insurance Premium Tax), Insurance Code, requires payment of a \_\_\_\_\_ (insert appropriate tax rate) percent tax on gross premium.

SECTION 3. Makes application of this Act prospective to January 1, 2010.

SECTION 4. Effective date: September 1, 2009.