

By: Hunter

H.B. No. 3978

A BILL TO BE ENTITLED

1 AN ACT
2 relating to provision of surplus lines insurance.

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

4 SECTION 1. Section 981.004, Insurance Code, is amended to
5 read as follows:

6 Sec. 981.004. SURPLUS LINES INSURANCE AUTHORIZED. (a) An
7 eligible surplus lines insurer may provide surplus lines insurance
8 only if:

9 (1) the full amount of required insurance cannot be
10 obtained, after a diligent effort, from an insurer authorized to
11 write and actually writing that kind and class of insurance in this
12 state;

13 (2) the insurance is placed through a surplus lines
14 agent licensed in accordance with Section 981.203; and

15 (3) the insurer meets the eligibility requirements of
16 Subchapter B as of the inception date and annual anniversary date of
17 each insurance contract, cover note, or other confirmation of
18 insurance.

19 (b) The commissioner shall by order declare eligible for
20 placement with a surplus lines insurer and exempt from all
21 requirements any kind of insurance coverage or risk for which the
22 commissioner finds, after a public hearing, that there is not a
23 reasonable or adequate market among authorized insurers. The
24 commissioner or the commissioner's designee shall maintain an

1 export list showing the exempt coverages and risks.

2 (c) A public hearing under Subsection (b) must be held at
3 least annually, and may be held more frequently at the
4 commissioner's discretion. Reasonable notice of each hearing shall
5 be given to all interested parties, including agents, authorized
6 insurers, trade associations representing authorized and
7 unauthorized insurers, and consumer groups.

8 (d) An order by the commissioner under this section shall
9 continue in effect until terminated by the commissioner.

10 (e) If, before a hearing under Subsection (b), the
11 commissioner receives written comments or testimony or otherwise
12 determines that a kind of insurance on the export list is more
13 available in the admitted market, the commissioner may remove that
14 kind of insurance from the list. The eligibility of any kind of
15 insurance to remain on the list is subject to an annual affirmative
16 finding by the commissioner, except that if written comments or
17 testimony regarding the eligibility of a kind of insurance to be on
18 the list are received before a hearing, the eligibility of that kind
19 of insurance to remain on the export list shall be reviewed at the
20 next hearing and that kind of insurance may not remain on the export
21 list unless the commissioner or the commissioner's designee makes
22 an affirmative determination that there is not a reasonable or
23 adequate market among authorized insurers.

24 (f) The commissioner or the commissioner's designee shall
25 notify all surplus lines agents of any removal of a kind of
26 insurance from the list ~~[An eligible surplus lines insurer may~~
27 ~~provide surplus lines insurance only in the amount that exceeds the~~

1 ~~amount of insurance obtainable from authorized insurers]~~.

2 SECTION 2. Section 981.101(b), Insurance Code, as effective
3 April 1, 2009, is amended to read as follows:

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

6 This insurance contract is with an insurer not
7 licensed to transact insurance in this state and is
8 issued and delivered as surplus line coverage under
9 the Texas insurance statutes. The Texas Department of
10 Insurance does not review or approve policy forms used
11 by the insurer providing this coverage, nor does it
12 audit the finances or review the solvency of the
13 ~~[surplus lines] insurer [providing this coverage]~~, and
14 the insurer is not a member of the property and
15 casualty insurance guaranty association created under
16 Chapter 462, Insurance Code. Chapter 225, Insurance
17 Code, requires payment of a _____ (insert
18 appropriate tax rate) percent tax on gross premium.

19 SECTION 3. The change in law made by this Act applies only
20 to surplus lines insurance coverage delivered, issued for delivery,
21 or renewed on or after January 1, 2010. Surplus lines insurance
22 coverage delivered, issued for delivery, or renewed before January
23 1, 2010, is governed by the law in effect immediately before the
24 effective date of this Act, and that law is continued in effect for
25 that purpose.

26 SECTION 4. This Act takes effect September 1, 2009.