

By: Eltife

S.B. No. 2136

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 by
5 amending Subsection (a) and adding Subsections (c), (d), (e), (f),
6 (g), and (h) to read as follows:

7 (a) An eligible surplus lines insurer may provide surplus
8 lines insurance 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 in accordance with this chapter; 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 (c) The commissioner may by order declare eligible for
20 placement with a surplus lines insurer and exempt from the
21 requirements of Subsections (a)(1) and (b) any kind of commercial
22 insurance coverage or any commercial insurance risk for which the
23 commissioner finds, after a public hearing, that there is an
24 inadequate market among authorized insurers. In making a finding

1 under this subsection, the commissioner has the discretion to
2 determine what constitutes a "kind of commercial insurance
3 coverage," a "commercial insurance risk," or an "inadequate market
4 among authorized insurers" for the purposes of this subsection.

5 (d) The commissioner or the commissioner's designee shall
6 maintain an export list showing the coverages and risks that are
7 subject to a declaration under Subsection (c). The commissioner's
8 determination under Subsection (c) that there is an inadequate
9 market for a kind of commercial insurance coverage or a commercial
10 insurance risk and the placement of the kind of commercial
11 insurance coverage or commercial insurance risk on the export list
12 continues in effect until the commissioner by order, after a public
13 hearing, removes the kind of commercial insurance coverage or the
14 commercial insurance risk from the list.

15 (e) A public hearing on the issuance of an order under this
16 section shall be held only at the commissioner's discretion. Any
17 interested party may petition the commissioner to consider the
18 exercise of the commissioner's discretion to hold a hearing under
19 this section. Reasonable notice of a hearing under this section
20 shall be provided to all interested parties by publication in the
21 Texas Register at least 30 days before the hearing. The notice must
22 include the kind of commercial insurance coverage or the commercial
23 insurance risk to be considered by the commissioner for inclusion
24 on or removal from the export list. No kind of commercial insurance
25 coverage or commercial insurance risk may be considered by the
26 commissioner that is not specified in the published hearing notice.
27 The notice may include a deadline by which interested parties are

1 required to submit any written comments before the hearing. If the
2 commissioner declines to hold a hearing in response to a petition
3 under this subsection, the commissioner shall publish notice in the
4 Texas Register of the commissioner's declination to hold the
5 hearing not later than the 45th day after the date the commissioner
6 receives the petition.

7 (f) As an alternative to a public hearing regarding the
8 removal of a kind of commercial insurance coverage or a commercial
9 insurance risk from the export list, the commissioner may, at the
10 commissioner's discretion, issue an order removing the kind of
11 coverage or the risk from the export list without a hearing. If the
12 commissioner issues an order under this subsection, the order may
13 not take effect before the 90th day after the date the order is
14 issued.

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

19 (h) The export list:

20 (1) is not designed to generate competition between
21 the surplus lines market and the admitted market;

22 (2) may only consist of commercial lines of insurance;

23 (3) is not intended to enable circumvention of state
24 law, including the requirement that insurance procured through a
25 surplus lines insurer may only be placed through a surplus lines
26 agent; and

27 (4) is intended to express the commissioner's

1 acknowledgment that the lines of insurance included on the export
2 list may not be readily available in the admitted market.

3 SECTION 2. Subsection (b), Section 981.101, Insurance Code,
4 is amended to read as follows:

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

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

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

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