

1-1 By: Eltife S.B. No. 2136
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 May 5, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 5, 2009, sent
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2136 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to provision of surplus lines insurance.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 981.004, Insurance Code, is amended by
1-13 amending Subsection (a) and adding Subsections (c), (d), (e), (f),
1-14 (g), and (h) to read as follows:

1-15 (a) An eligible surplus lines insurer may provide surplus
1-16 lines insurance only if:

1-17 (1) the full amount of required insurance cannot be
1-18 obtained, after a diligent effort, from an insurer authorized to
1-19 write and actually writing that kind and class of insurance in this
1-20 state;

1-21 (2) the insurance is placed through a surplus lines
1-22 agent in accordance with this chapter; and

1-23 (3) the insurer meets the eligibility requirements of
1-24 Subchapter B as of the inception date and annual anniversary date of
1-25 each insurance contract, cover note, or other confirmation of
1-26 insurance.

1-27 (c) The commissioner may by order declare eligible for
1-28 placement with a surplus lines insurer and exempt from the
1-29 requirements of Subsections (a)(1) and (b) any kind of commercial
1-30 insurance coverage or any commercial insurance risk for which the
1-31 commissioner finds, after a public hearing, that there is an
1-32 inadequate market among authorized insurers. In making a finding
1-33 under this subsection, the commissioner has the discretion to
1-34 determine what constitutes a "kind of commercial insurance
1-35 coverage," a "commercial insurance risk," or an "inadequate market
1-36 among authorized insurers" for the purposes of this subsection.

1-37 (d) The commissioner or the commissioner's designee shall
1-38 maintain an export list showing the coverages and risks that are
1-39 subject to a declaration under Subsection (c). The commissioner's
1-40 determination under Subsection (c) that there is an inadequate
1-41 market for a kind of commercial insurance coverage or a commercial
1-42 insurance risk and the placement of the kind of commercial
1-43 insurance coverage or commercial insurance risk on the export list
1-44 continues in effect until the commissioner by order, after a public
1-45 hearing, removes the kind of commercial insurance coverage or the
1-46 commercial insurance risk from the list.

1-47 (e) A public hearing on the issuance of an order under this
1-48 section shall be held only at the commissioner's discretion. Any
1-49 interested party may petition the commissioner to consider the
1-50 exercise of the commissioner's discretion to hold a hearing under
1-51 this section. Reasonable notice of a hearing under this section
1-52 shall be provided to all interested parties by publication in the
1-53 Texas Register at least 30 days before the hearing. The notice must
1-54 include the kind of commercial insurance coverage or the commercial
1-55 insurance risk to be considered by the commissioner for inclusion
1-56 on or removal from the export list. No kind of commercial insurance
1-57 coverage or commercial insurance risk may be considered by the
1-58 commissioner that is not specified in the published hearing notice.
1-59 The notice may include a deadline by which interested parties are
1-60 required to submit any written comments before the hearing. If the
1-61 commissioner declines to hold a hearing in response to a petition
1-62 under this subsection, the commissioner shall publish notice in the
1-63 Texas Register of the commissioner's declination to hold the

2-1 hearing not later than the 45th day after the date the commissioner
2-2 receives the petition.

2-3 (f) As an alternative to a public hearing regarding the
2-4 removal of a kind of commercial insurance coverage or a commercial
2-5 insurance risk from the export list, the commissioner may, at the
2-6 commissioner's discretion, issue an order removing the kind of
2-7 coverage or the risk from the export list without a hearing. If the
2-8 commissioner issues an order under this subsection, the order may
2-9 not take effect before the 90th day after the date the order is
2-10 issued.

2-11 (g) The commissioner or the commissioner's designee shall
2-12 notify all interested parties of any removal of a line of insurance
2-13 from the list by publication in the Texas Register not later than
2-14 the 30th day after the date of the entry of the order.

2-15 (h) The export list:

2-16 (1) is not designed to generate competition between
2-17 the surplus lines market and the admitted market;

2-18 (2) may only consist of commercial lines of insurance;

2-19 (3) is not intended to enable circumvention of state
2-20 law, including the requirement that insurance procured through a
2-21 surplus lines insurer may only be placed through a surplus lines
2-22 agent; and

2-23 (4) is intended to express the commissioner's
2-24 acknowledgment that the lines of insurance included on the export
2-25 list may not be readily available in the admitted market.

2-26 SECTION 2. Subsection (b), Section 981.101, Insurance Code,
2-27 is amended to read as follows:

2-28 (b) A surplus lines document must state, in 11-point type,
2-29 the following:

2-30 This insurance contract is with an insurer not licensed to transact
2-31 insurance in this state and is issued and delivered as surplus line
2-32 coverage under the Texas insurance statutes. The Texas Department
2-33 of Insurance does not review or approve policy forms or rates used
2-34 by the insurer providing this coverage, nor does it audit the
2-35 finances or review the solvency of the surplus lines insurer
2-36 providing this coverage, and the insurer is not a member of the
2-37 property and casualty insurance guaranty association created under
2-38 Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires
2-39 payment of a _____ (insert appropriate tax rate) percent tax
2-40 on gross premium.

2-41 SECTION 3. The change in law made by this Act applies only
2-42 to surplus lines insurance coverage delivered, issued for delivery,
2-43 or renewed on or after January 1, 2010. Surplus lines insurance
2-44 coverage delivered, issued for delivery, or renewed before January
2-45 1, 2010, is governed by the law in effect immediately before the
2-46 effective date of this Act, and that law is continued in effect for
2-47 that purpose.

2-48 SECTION 4. This Act takes effect September 1, 2009.

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