

BILL ANALYSIS

C.S.H.B. 3410
By: Smithee
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A Texas Administrative Code rule defines the "surplus lines agent of record" as it applies to the agent the comptroller of public accounts considers the responsible party for the payment of surplus lines taxes. Although the rule is clear in a transaction in which there is only one licensed surplus lines agent and an eligible surplus lines carrier, it does not address situations in which there are two licensed surplus lines agents, one who exercises underwriting authority for the carrier and one who is the broker who produces premium in a program and directly interacts with the insured.

In recent surplus lines tax audits where all or part of the audited entities' operations were derived from their actions as an underwriting agent, the comptroller's field auditors have applied the definition of "surplus lines agent of record" to impose liability for the entire gross written surplus lines premium on the underwriting agent. The comptroller then billed the underwriting agent for taxes, penalties, and interest regarded as unpaid, even though the taxes were paid in the normal course of business by the licensed surplus lines producing agent-broker.

C.S.H.B. 3410 seeks to address the issue by establishing recordkeeping and reporting requirements relating to the collection, payment, and reporting of the surplus lines insurance premium tax to establish an audit trail documenting each agent's liability for payment of the tax.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3410 amends the Insurance Code to require a surplus lines agent that places an insurance policy with a managing underwriter to collect, report, and pay the surplus lines insurance premium tax. The bill defines "managing underwriter" to mean a surplus lines agent or agency that exercises, under a written agreement with an eligible surplus lines insurer, underwriting authority for the eligible surplus lines insurer and that derives the agent or agency's business from a surplus lines agent. The bill defines "surplus lines insurance."

C.S.H.B. 3410 requires a managing underwriter with whom an insurance policy is placed by a surplus lines agent to maintain appropriate records and make the records available for inspection by the Texas Department of Insurance (TDI) and the comptroller of public accounts, including records of the name and address of the insured; the policy number and policy period; the name of the eligible surplus lines insurer; the gross premium charged for the insurance; the name of the surplus lines agent who placed the policy with the managing underwriter; the license number of the surplus lines agent who placed the policy with the managing underwriter; and documentation that the managing underwriter has transmitted to the surplus lines agent written confirmation of the agent's written agreement to act as the agent for the placement of the policy and be responsible for all filing, reporting, collection, and payment requirements imposed by statutory

provisions governing surplus lines insurance and the surplus lines insurance premium tax.

C.S.H.B. 3410 requires a managing underwriter who acts as a surplus lines agent for a policy issued by an eligible surplus lines insurer to maintain appropriate records and make the records available for inspection by the TDI and the comptroller, including the information required of a managing underwriter under the bill's provisions, except for information relating to documentation that the managing underwriter has transmitted confirmation of the agent's written agreement to act as agent for certain purposes. The bill requires such records to reflect the name and license number of the managing underwriter as the surplus lines agent placing the policy. The bill authorizes a managing underwriter to hold both a surplus lines agent license and a managing general agent license.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3410 differs from the original by requiring a surplus lines agent that places an insurance policy with a managing underwriter to collect, report, and pay the surplus lines insurance premium tax, whereas the original authorizes a surplus lines agent who obtains insurance from another such surplus lines agent exercising underwriting authority for an eligible surplus lines insurer to agree, by written contract, to collect, report, and pay such a tax.

C.S.H.B. 3410 omits a provision included in the original requiring a surplus lines agent who enters into such a contract to keep a copy of the contract and make the contract available for inspection by the comptroller of public accounts.

C.S.H.B. 3410 contains a provision not included in the original defining "managing underwriter" and "surplus lines insurance."

C.S.H.B. 3410 differs from the original by requiring a managing underwriter with whom an insurance policy is placed by a surplus lines agent, including a managing underwriter who acts as a surplus lines agent for a policy issued by an eligible surplus lines insurer, to maintain appropriate records and to make those records available for inspection by the Texas Department of Insurance and the comptroller of public accounts and by specifying the information included in those records, whereas the original requires a surplus lines agent who obtains insurance from another surplus lines agent exercising underwriting authority for an eligible surplus lines insurer and who contracts to collect, report, and pay the surplus lines insurance premium tax to maintain appropriate records, including a record of each surplus lines contract with respect to which duties under the contract have been performed.

C.S.H.B. 3410 omits a provision included in the original requiring a surplus lines agent who contracts to collect, report, and pay the tax to provide the surplus lines agent exercising underwriting authority certain information not later than the 30th day after the date on which the tax is paid to the comptroller.

C.S.H.B. 3410 omits a provision included in the original authorizing a surplus lines agent to exercise underwriting authority for an eligible surplus lines insurer, including exercising the authority to rate and accept risks, bind coverage, issue formal evidence of coverage, and cancel coverage, only under a current written agreement between the underwriting surplus lines agent and the eligible surplus lines insurer.

C.S.H.B. 3410 contains a provision not included in the original authorizing a managing underwriter to hold both a surplus lines agent license and a managing general agent license.