

BILL ANALYSIS

C.S.H.B. 3799
By: Miller, Sid
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that current statute requires a surplus lines insurance agent to file a copy of an issued surplus lines policy with the stamping office not later than the 60th day after the later of the effective date or the issue date of the policy. These parties further observe that, if a surplus lines policy is not correctly and completely filed with the stamping office by that deadline as provided by statute or certain administrative provisions, it is considered a late-filed policy and a violation of the Insurance Code. There is concern that this filing requirement is unique to the surplus lines insurance market, and that sanctions for failing to comply with the filing deadline should be similarly unique. The parties also report that the enforcement division of the Texas Department of Insurance has recently begun to impose administrative penalties on late-filed policy violations that may be disproportionately harsh given the violation. In an effort to address these concerns, C.S.H.B. 3799 seeks to provide for the assessment of specified fees against agents who file a surplus insurance policy after the deadline required under law.

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. 3799 amends the Insurance Code to authorize the commissioner of insurance to assess a fee against an agent who files a surplus lines insurance policy with the stamping office after the filing deadline prescribed by law and sets the amount of the fee as follows:

- for an agent who files a policy on or before the 180th day after the policy's effective date or issue date and who, in the calendar year immediately preceding the year in which the policy is late-filed, has filed not more than five percent of the policies the agent was required to file after the prescribed filing deadline, \$50 for each late-filed policy, or, for an agent who filed more than five percent of the policies the agent was required to file after the prescribed filing deadline, \$100 for each late-filed policy;
- for an agent who files a policy after the 180th day but before the 365th day after the policy's effective date or issue date and who, during the immediately preceding calendar year, filed not more than two percent of the policies that the agent was required to file after the prescribed filing deadline, \$200 for the late-filed policy; or
- for an agent who, not later than January 1, 2012, files a late-filed policy with an effective date before January 1, 2010, that at the time the policy is filed has not been listed in a previous late-filed policy report of the stamping office, \$50 for each late-filed policy.

C.S.H.B. 3799 specifies that the assessment, imposition, or payment of such a fee for a late-filed surplus lines insurance policy does not establish a violation for purposes of certain disciplinary actions taken by the commissioner or the Texas Department of Insurance (TDI) and administrative penalties and sanctions imposed for violations of state insurance law. The bill subjects an agent who files a surplus lines policy after the prescribed filing deadline to certain

disciplinary and enforcement actions, sanctions, and administrative penalties only if the agent fails to timely pay a fee assessed for a late-filed policy, files a surplus lines policy on or after the 365th day after the effective date or issue date, or files a surplus lines policy after the 180th day but before the 365th day of the effective date or issue date and filed in the calendar year immediately preceding the year in which the policy is late-filed more than two percent of the policies the agent was required to file after the prescribed filing deadline.

C.S.H.B. 3799 requires TDI to provide notice to each agent of the amount of fees assessed for late-filed policies during each calendar year not later than June 15 of the year immediately following the year for which fees are assessed and requires each agent to pay the assessed fees not later than the 30th day after the date of the notice. The bill requires TDI to provide the initial notice not later than December 1, 2011, and requires an agent to pay the initial fee not later than the 30th day after the date of the initial notice.

C.S.H.B. 3799 makes its provisions applicable to an action to enforce filing requirements for a surplus lines insurance policy that is pending on the bill's effective date, with respect to the assessment of fees against a surplus lines agent for policies filed after the prescribed filing deadline, during the 2010 calendar year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3799 differs from the original, in provisions setting the amount of the fees assessed against an agent who files a surplus lines insurance policy with the stamping office after the prescribed filing date, by specifying that such fees apply to an agent who files a policy on or before the 180th day after the policy's effective date or issue date, whereas the original makes no such specification. The substitute differs from the original by setting the fee, for an agent who, in the calendar year immediately preceding the year in which the policy is late-filed, has filed not more than five percent of the policies the agent was required to file after the prescribed filing deadline, at \$50 for each late-filed policy, or for an agent who filed more than five percent of the policies the agent was required to file after the prescribed filing deadline, at \$100 for each late-filed policy, whereas the original sets those fees at \$25 for each late-filed policy and \$50 for each late-filed policy, respectively. The substitute omits a specification included in the original that the number of late-filed policies, for purposes of the fee assessment, is that number as determined by the stamping office.

C.S.H.B. 3799 contains a provision not included in the original setting the fee at \$200 for a late-filed policy for an agent who files the policy after the 180th day but before the 365th day after the policy's effective date or issue date and who, during the immediately preceding calendar year, filed not more than two percent of the policies the agent was required to file after the prescribed filing deadline.

C.S.H.B. 3799 differs from the original by setting the fee at \$50 for each late-filed policy for an agent who files a late-filed policy with an effective date before January 1, 2010, that, at the time the policy is filed, has not been listed in a previous late-filed policy report of the stamping office, whereas the original sets the fee for an agent under those circumstances at \$25 for each late-filed policy. The substitute contains a specification not included in the original making the fee apply to an agent who files such a late-filed policy not later than January 1, 2012.

C.S.H.B. 3799 differs from the original by specifying that the assessment, imposition, or payment of a fee for a late-filed surplus lines insurance policy does not establish a violation for purposes of certain disciplinary actions taken by the commissioner of insurance or the Texas Department of Insurance (TDI) and administrative penalties and sanctions imposed for violations

of state insurance law, whereas the original specifies only that the assessment of such a fee does not establish a violation for those purposes.

C.S.H.B. 3799 differs from the original by subjecting an agent who files a surplus lines policy after the prescribed filing deadline to disciplinary and enforcement actions, sanctions, and administrative penalties under certain conditions, whereas the original subjects an agent to administrative penalties if the agent, in each of two consecutive calendar years, files more than five percent of the total number of surplus lines insurance policies the agent files after the prescribed filing date. The substitute contains provisions not included in the original establishing as conditions qualifying an agent for disciplinary and enforcement actions, sanctions, and administrative penalties failure to timely pay a fee assessed for a late-filed policy, filing a surplus lines policy on or after the 365th day after the effective date or issue date, or filing a surplus lines policy after the 180th day but before the 365th day of the effective date or issue date if the agent filed in the calendar year immediately preceding the year in which the policy is late-filed more than two percent of the policies the agent was required to file after the prescribed filing deadline.

C.S.H.B. 3799 contains provisions not included in the original requiring TDI to provide by a specified date each year notice to each agent of the amount of fees assessed for late-filed policies during the preceding calendar year and each agent to pay the assessed fees within 30 days of the notice date and setting the dates by which TDI is required to provide the initial notice and the agent is required to pay the initial fee. The substitute contains a provision not included in the original making certain of the bill's provisions applicable to an action to enforce filing requirements that is pending on the bill's effective date, with respect to the assessment of fees against a surplus lines agent for policies filed after the prescribed filing deadline, during the 2010 calendar year.

C.S.H.B. 3799 differs from the original by making the bill effective on passage, or, if the bill does not receive the necessary vote, September 1, 2011, whereas the original makes the bill effective September 1, 2011. The substitute differs from the original in nonsubstantive ways.