

BILL ANALYSIS

S.B. 1806
By: Lucio
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A surplus lines insurance policy must be filed with the Surplus Lines Stamping Office of Texas (stamping office) not later than the 60th day after the effective date or the issue date of the policy. Since 2003, a policy may be filed electronically on a form approved by the Stamping Office and the Texas Department of Insurance (TDI). If a surplus lines policy is not correctly and completely filed with the stamping office by the 60-day deadline, it is a late-filed policy and a violation of the Insurance Code. This filing requirement is unique to the surplus lines insurance market, but Chapter 981 (Surplus Lines Insurance) does not provide a similarly unique sanction provision for failure to comply with the filing deadline. As a result, the general sanctions provisions applicable to all other types of violations of Chapters 82 (Sanctions) and 84 (Administrative Penalties), Insurance Code, apply to late-filings violations.

In mid-2010, the enforcement division of TDI began to impose administrative penalties for late-filed policy violations under Chapter 84 at the rate of \$1 per day for each day the policy is late, with a minimum penalty of \$1,000. TDI has the legal authority to impose administrative penalties of \$25,000 per day for each day a policy is filed late. There is no statute of limitations on the running of the length of time for which such a penalty may be imposed. There are also significant collateral consequences to such a violation, including a requirement to report the violation to the attorney general and the insurance commissioner of other states. Finally, the consent orders currently used by the enforcement division require the offending agent to agree never to file a policy late again (a promise the agent simply cannot honestly make), and that, if the agent does so, the agent's license will be revoked. Surplus lines agents generally have a high compliance rate. In 2009, 424,809 surplus lines policies were filed with the stamping office; 6,712 (1.6 percent) were filed late by 385 surplus lines agents.

S.B. 1806 amends current law relating to timely filing of a surplus lines policy, and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 981.105, Insurance Code, by adding Subsections (c) through (i), as follows:

(c) Authorizes the commissioner of insurance to assess a fee against an agent who files a surplus lines policy after the filing deadline specified by Subsection (a) (relating to filing with the stamping office not later than the 60th day after the later of the effective dates or the issue date of new or renewal surplus lines insurance).

(d) Provides that for an agent who files a surplus lines policy on or before the 180th day after the effective date or issue date described by Subsection (a), the amount of the fee is:

(1) \$50 for each late-filed policy if, in the calendar year immediately preceding the year in which the policy is late-filed, the agent has filed not more than five

percent of the policies the agent was required to file after the filing deadline specified by Subsection (a); or

(2) \$100 for each late-filed policy if, in the calendar year immediately preceding the year in which the policy is late-filed, the agent has filed more than five percent of the policies the agent was required to file after the filing deadline specified by Subsection (a).

(e) Provides that for an agent who files a surplus lines policy after the 180th day but before the 365th day after the effective date or issue date described by Subsection (a) 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 filing deadline specified by Subsection (a), the amount of the fee for the late-filed policy is \$200.

(f) Provides that notwithstanding any other provision of this section, 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, the amount of the fee is \$50 for each late-filed policy.

(g) Provides that the assessment, imposition, or payment of a fee under this section does not establish a violation for purposes of Section 81.004 (Report to Attorney General), 82.051 (Cancellation or Revocation of Authorization), 82.052 (Other Sanctions), 82.054 (Cancellation on Failure to Comply), 82.056 (Notice to Other States), or 84.022(b)(3) (relating to the history of previous violations).

(h) Provides that an agent who files a surplus lines policy after the filing deadline specified by Subsection (a) is subject to Chapters 81 (General Provisions Regarding Discipline and Enforcement), 82 (Sanctions), and 84 (Administrative Penalties) only if the agent:

(1) fails to timely pay a fee assessed under this section;

(2) files a surplus lines policy on or after the 365th day after the effective date or issue date; or

(3) files a surplus lines policy after the 180th day but before the 365th day of the effective date or issue date, and in the calendar year immediately preceding the year in which the policy is late-filed, filed more than two percent of the policies the agent was required to file after the filing deadline specified in Subsection (a).

(i) Requires the Texas Department of Insurance (TDI) to provide notice to the agent of the amount of fees assessed under this section during each calendar year not later than June 15 of the year immediately following the year for which fees are assessed, and each agent to pay the assessed fees not later than the 30th day after the date of the notice.

SECTION 2. (a) Makes application of this Act, except as provided by Subsection (b) of this section, prospective.

(b) Makes application of Section 981.105, Insurance Code, as amended by this Act, to an action to enforce Section 981.105, Insurance Code, that is brought against a surplus lines agent for a policy or policies filed after the filing deadline prescribed by Section 981.105(a), Insurance Code, that:

(1) is pending on the effective date of this Act; or

(2) was filed during the 2010 calendar year.

(c) Requires TDI, not later than December 1, 2011, to provide notice to each surplus lines agent to which Subsection (b) of this section applies of the amount of fees assessed. Requires the surplus lines agent to pay the fee not later than the 30th day after the date of the notice.

SECTION 3. Effective date: upon passage or September 1, 2011.

EFFECTIVE DATE

Effective date: upon passage or September 1, 2011.