

By: Eiland

H.B. No. 2698

A BILL TO BE ENTITLED

AN ACT

relating to surplus lines insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 981.001(c), Insurance Code, is amended to read as follows:

(c) To regulate and tax surplus lines insurance placed in accordance with this chapter within the meaning and intent of 15 U.S.C. Section 1011 and the Nonadmitted and Reinsurance Reform Act of 2010, contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), this chapter provides an orderly method for the residents of this state and nonresidents whose insured is domiciled in this state to effect insurance with eligible surplus lines insurers through qualified, licensed, and supervised surplus lines agents in this state, if coverage is not available from authorized and regulated insurers engaged in business in this state, under reasonable and practical safeguards.

SECTION 2. Section 981.002, Insurance Code, is amended to read as follows:

Sec. 981.002. DEFINITIONS. In this chapter:

(1) "Admitted insurer" means an insurer that holds a certificate of authority in this state and that is authorized to engage in the business of insurance.

(2) "Affiliate" means, with respect to an insured, a

1 person that controls, is controlled by, or is under common control
2 with the insured.

3 (3) "Affiliated group" means a group of entities whose
4 members are affiliated.

5 (4) "Control" means, with respect to determining the
6 home state of an affiliated entity:

7 (A) to directly or indirectly, acting through one
8 or more persons, own, control, or hold the power to vote at least 25
9 percent of any class of voting security of the affiliated entity; or

10 (B) to control in any manner the election of the
11 majority of directors or trustees of the affiliated entity.

12 (5) "Eligible surplus lines insurer" means an insurer
13 that is not an authorized insurer, but that is eligible under
14 Subchapter B, in which surplus lines insurance is placed or may be
15 placed under this chapter.

16 (6) "Home state" means:

17 (A) for an insured:

18 (i) the state in which the insured resides,
19 if the insured is an individual;

20 (ii) the state in which an insured that is
21 not an individual maintains its principal place of business; or

22 (iii) if 100 percent of the insured risk is
23 located outside of the state in which the insured resides or
24 maintains its principal place of business, as applicable, the state
25 to which the greatest percentage of the insured's taxable premium
26 for the insurance contract that covers the risk is allocated; or

27 (B) for an affiliated group, the home state of

1 the member, as determined under Paragraph (A), that has the largest
2 percentage of premium attributed to it under the insurance
3 contract.

4 (7) [~~(2)~~] "Stamping office" means the Surplus Lines
5 Stamping Office of Texas.

6 (8) [~~(3)~~] "Surplus lines agent" means an agent
7 licensed under Subchapter E to procure an insurance contract from a
8 surplus lines insurer.

9 (9) [~~(4)~~] "Surplus lines insurance" means insurance
10 coverage:

11 (A) for a subject that is resident, located, or
12 to be performed in this state; and

13 (B) that may be placed, in accordance with this
14 chapter, with an eligible surplus lines insurer.

15 SECTION 3. Section 981.003, Insurance Code, is amended to
16 read as follows:

17 Sec. 981.003. APPLICABILITY OF CHAPTER. This chapter
18 applies to insurance:

19 (1) of a subject that is resident, located, or to be
20 performed in this state; [~~and~~]

21 (2) that is obtained, continued, or renewed through:

22 (A) negotiations or an application wholly or
23 partly occurring or made within or from within this state; or

24 (B) premiums wholly or partly remitted directly
25 or indirectly from within this state; and

26 (3) that is issued to an insured whose home state is
27 this state.

1 SECTION 4. Subchapter A, Chapter 981, Insurance Code, is
2 amended by adding Sections 981.0031 and 981.0032 to read as
3 follows:

4 Sec. 981.0031. EXEMPT COMMERCIAL PURCHASER DEFINED. (a)

5 For purposes of this chapter, "exempt commercial purchaser" means a
6 person who purchases commercial insurance and, at the time of
7 placement:

8 (1) employs or retains a qualified risk manager to
9 negotiate insurance coverage;

10 (2) has paid aggregate nationwide commercial property
11 and casualty insurance premiums of more than \$100,000 in the
12 immediately preceding 12 months; and

13 (3) meets at least one of the following criteria:

14 (A) has a net worth of more than \$20 million;

15 (B) generates annual revenue of more than \$50
16 million;

17 (C) employs more than 500 full-time or full-time
18 equivalent employees per individual insured, or is a member of an
19 affiliated group that employs more than 1,000 employees in
20 aggregate;

21 (D) is a nonprofit organization or public entity
22 generating annual budgeted expenditures of at least \$30 million; or

23 (E) is a municipality with a population of more
24 than 50,000.

25 (b) Not later than January 1, 2015, and once every five
26 years thereafter, the commission shall by rule adjust the amounts
27 provided by Subsection (a) to reflect the percent change in the

1 Consumer Price Index for All Urban Consumers published by the
2 Bureau of Labor Statistics of the United States Department of Labor
3 for the five-year period immediately preceding January 1 of the
4 year of adjustment.

5 Sec. 981.0032. QUALIFIED RISK MANAGER DEFINED. (a) For
6 purposes of this chapter, "qualified risk manager" means a person
7 who:

8 (1) is an employee of, or third-party consultant
9 retained by, a commercial policyholder;

10 (2) provides skilled services in loss prevention, loss
11 reduction, or risk and insurance coverage analysis and the purchase
12 of insurance; and

13 (3) satisfies the requirements of this section.

14 (b) A qualified risk manager must have:

15 (1) a bachelor's or advanced degree from an accredited
16 college or university in risk management, business administration,
17 finance, economics, or another field determined by the commissioner
18 to demonstrate competence in risk management and:

19 (A) at least three years of experience in risk
20 financing, claims administration, loss prevention, risk and
21 insurance analysis, or purchasing of commercial lines of insurance;
22 or

23 (B) a designation:

24 (i) as a Chartered Property and Casualty
25 Underwriter (CPCU), issued by the American Institute for
26 CPCU/Insurance Institute of America;

27 (ii) as an Associate in Risk Management

1 (ARM) issued by the American Institute for CPCU/Insurance Institute
2 of America;

3 (iii) as a Certified Risk Manager (CRM)
4 issued by the National Alliance for Insurance Education and
5 Research;

6 (iv) as a RIMS Fellow (RF) issued by the
7 Global Risk Management Institute; or

8 (v) that is determined by the commissioner
9 or the state insurance regulatory official or agency of another
10 state to demonstrate minimum competence in risk management;

11 (2) at least seven years of experience in risk
12 financing, claims administration, loss prevention, risk and
13 insurance analysis, or purchasing of commercial lines of insurance
14 and one of the designations described by Subdivision (1)(B);

15 (3) at least 10 years of experience in risk financing,
16 claims administration, loss prevention, risk and insurance
17 analysis, or purchasing commercial lines of insurance; or

18 (4) a graduate degree from an accredited college or
19 university in risk management, business administration, finance,
20 economics, or another field determined by the commissioner or the
21 state insurance regulatory official or agency of another state to
22 demonstrate competence in risk management.

23 SECTION 5. Section 981.004, Insurance Code, is amended by
24 adding Subsection (c) to read as follows:

25 (c) Subsection (a) does not apply to insurance for an exempt
26 commercial purchaser if:

27 (1) the agent placing the insurance discloses to the

1 exempt commercial purchaser that:

2 (A) comparable insurance may be available from
3 the admitted market that is subject to more regulatory oversight
4 than the nonadmitted market; and

5 (B) a policy purchased in the admitted market may
6 provide greater protection than the surplus lines insurance policy;
7 and

8 (2) after receiving the notice described by
9 Subdivision (1), the exempt commercial purchaser requests in
10 writing that the agent procure or place the insurance from a
11 nonadmitted insurer.

12 SECTION 6. Subchapter A, Chapter 981, Insurance Code, is
13 amended by adding Sections 981.010 and 981.011 to read as follows:

14 Sec. 981.010. FAILURE TO PAY PENALTY. A person engages in
15 the unauthorized business of insurance if the person issues a
16 policy of surplus lines insurance and, at the time the policy is
17 issued, the person or the person's agent has failed to pay a
18 statutory penalty imposed on the person or the person's agent.

19 Sec. 981.011. FAILURE TO PAY PREMIUM TAX. A person engages
20 in the unauthorized business of insurance if the person issues a
21 policy of surplus lines insurance and, at the time the policy is
22 issued, the person has not paid premium tax the person is obligated
23 to pay.

24 SECTION 7. Section 981.058, Insurance Code, is amended to
25 read as follows:

26 Sec. 981.058. ALIEN INSURERS: TRUST FUND REQUIREMENT. An
27 [In addition to meeting the minimum capital and surplus

1 ~~requirements prescribed by Section 981.057, an~~ alien surplus lines
2 insurer must be listed on the Quarterly Listing of Alien Insurers
3 maintained by the International Insurers Department, National
4 Association of Insurance Commissioners ~~[provide evidence that:~~

5 ~~[(1) the insurer maintains in the United States an~~
6 ~~irrevocable trust fund in a Federal Reserve System member bank in an~~
7 ~~amount of at least \$5.4 million for the protection of all its~~
8 ~~policyholders in the United States; and~~

9 ~~[(2) the trust fund consists of:~~

10 ~~[(A) cash;~~

11 ~~[(B) securities;~~

12 ~~[(C) letters of credit; or~~

13 ~~[(D) investments of substantially the same~~
14 ~~character and quality as those that are eligible investments for~~
15 ~~the capital and statutory reserves of an insurer authorized to~~
16 ~~write similar kinds and classes of insurance in this state].~~

17 SECTION 8. Section 981.105, Insurance Code, is amended by
18 amending Subsection (a) and adding Subsections (c) and (d) to read
19 as follows:

20 (a) Except as provided by Subsection (c), not ~~[Not]~~ later
21 than the 60th day after the later of the effective date or the issue
22 date of new or renewal surplus lines insurance, a surplus lines
23 agent shall file with the stamping office:

24 (1) a copy of the policy issued; or

25 (2) if the policy has not been issued, a copy of the
26 certificate, cover note, or other confirmation of insurance
27 delivered to the insured.

1 (c) Not later than the 60th day after the later of the
2 effective date or the issue date of new or renewal surplus lines
3 insurance involving an exempt commercial purchaser, if due
4 diligence has not been conducted, a surplus lines agent shall file
5 with the stamping office, in a form prescribed by the commissioner
6 by rule:

7 (1) proof that the surplus lines agent procuring or
8 placing the surplus lines insurance has complied with Section
9 981.004(c)(1);

10 (2) a copy of the exempt commercial purchaser's
11 written request, submitted in accordance with Section
12 981.004(c)(2);

13 (3) a written disclosure of the identity of the
14 insured's qualified risk manager; and

15 (4) an attestation by the insured that:

16 (A) the insured has paid aggregate nationwide
17 commercial property and casualty insurance premiums of at least
18 \$100,000 in the immediately preceding 12 months; and

19 (B) the purchaser is an exempt commercial
20 purchaser as defined by Section 981.0031, and that includes a
21 description of the criteria specified by Section 981.0031(a)(3)
22 under which the purchaser qualifies as an exempt commercial
23 purchaser.

24 (d) The commissioner by rule may promulgate a form to be
25 used to meet the requirements of Subsection (c).

26 SECTION 9. The following sections of the Insurance Code are
27 repealed:

- 1 (1) Section 981.052;
- 2 (2) Section 981.053;
- 3 (3) Section 981.055;
- 4 (4) Section 981.056;
- 5 (5) Section 981.060;
- 6 (6) Section 981.061; and
- 7 (7) Section 981.062.

8 SECTION 10. (a) Notwithstanding Section 981.058, Insurance
9 Code, as amended by this Act, an alien surplus lines insurer that
10 was an eligible surplus lines insurer under Section 981.058,
11 Insurance Code, as it existed immediately before the effective date
12 of this Act, continues to be an eligible surplus lines insurer until
13 January 1, 2013.

14 (b) An alien insurer described by Subsection (a) of this
15 section may apply for an extension of eligibility. The
16 commissioner may extend eligibility under this section until
17 January 1, 2015, if the commissioner determines that the insurer is
18 making a good faith effort to be listed on the Quarterly Listing of
19 Alien Insurers maintained by the International Insurers
20 Department, National Association of Insurance Commissioners, as
21 required by Section 981.058, Insurance Code, as amended by this
22 Act, and that the interests of the insurer's policyholders are
23 otherwise adequately protected.

24 SECTION 11. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

H.B. No. 2698

1 effect, this Act takes effect September 1, 2011.