

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 28, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: SB1806 by Lucio (Relating to timely filing of a surplus lines policy; providing penalties.),
Committee Report 1st House, Substituted

There is an indeterminate fiscal impact to the state from the provisions of the bill because the changes in fee and penalty revenue cannot be determined.

The bill would amend the Insurance Code relating to timely filing of surplus lines policy; providing penalties. The bill would allow the Commissioner of Insurance to assess fees for the late filing of surplus lines policies. The bill would allow the Texas Department of Insurance (TDI) to assess penalties of \$50, \$100, or \$200 per policy based on when the policy is late filed and if the agent late-filed more than 5 percent of their policies in the calendar year preceding the year in which the policy is filed.

Additionally, the bill would amend statute to state that the assessment of the late filing fee would not establish a violation for purposes of certain penalties and sanctions. An agent who fails to timely pay a late filing fee; files a surplus lines policy on or after 365 days after the later of the effective date or the issue date; or files a surplus lines policy after 180 but before 365 days after the later of the effective date or the issue date, and who, in the calendar year immediately preceding the year in which the policy is filed, late-filed more than 2 percent of their policies would be subject to penalties and sanctions under Chapters 81, 82 and 84 of the Insurance Code.

TDI would be required to provide notice to each agent of the amount of fees assessed not later than June 15th of each year; agents would be required to pay the assessed fees not later than 30 days after the date of the notice. The bill would take effect immediately upon receiving a two-thirds majority vote in each house. If the bill does not receive a two-thirds vote in each house, the bill would take effect September 1, 2011.

Based on the analysis provided by TDI, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing agency resources.

Based on the analysis provided by the Comptroller, the bill's fiscal impact cannot be determined due to the change in fines and penalties. Under current law, surplus lines agents who fail to timely file are subject to administrative penalties not to exceed \$25,000 per incident. In calendar year 2010, TDI imposed penalties of \$68,000 for failure to timely file surplus lines policies. The fiscal implications of this bill would depend on the proportion of late filers who would be assessed the \$50, \$100, or \$200 per policy fee; the number of late filers who would be subject to administrative penalties under Chapter 84 of the Insurance Code; and the penalties that would be assessed those filers.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 454 Department of Insurance

LBB Staff: JOB, AG, MW, CH