

BILL ANALYSIS

C.S.H.B. 1405
By: Smithee
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law designates the surplus lines agent of record as the party responsible for paying the surplus lines insurance premium tax. Interested parties report that the designation of a responsible party is clear in a transaction involving only one licensed surplus lines agent; however, there often are transactions involving more than one agent holding a surplus lines insurance license. One agent may exercise underwriting authority for the carrier, and another agent or broker may be responsible for interacting with the insured. Interested parties contend that the various roles surplus lines agents can assume may create uncertainty as to who is responsible for filing taxes, retaining information, or performing other agent duties.

C.S.H.B. 1405 seeks to clarify who is responsible for filing surplus lines insurance premium taxes and who is responsible for performing other required agent duties, in instances where there is more than one surplus lines agent, by allowing the surplus lines agent and a managing underwriter to enter into a written agreement at or before the time coverage is bound under the policy.

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. 1405 amends the Insurance Code to require a managing underwriter, rather than a surplus lines agent, to collect, report, and pay the surplus lines insurance premium tax if the surplus lines agent places an insurance policy with the managing underwriter. The bill authorizes the surplus lines agent and the managing underwriter to enter into a written agreement, at or before the time coverage is bound under a policy, providing that the surplus lines agent, rather than the managing underwriter, is responsible for the filing, reporting, collection, payment, and all other requirements under statutory provisions relating to the surplus lines insurance premium tax and under statutory provisions relating to surplus lines insurance in general. The bill authorizes the agreement to apply to multiple policies or to all policies between a surplus lines agent and a managing underwriter. The bill includes such an agreement between a surplus lines agent and a managing underwriter among the records that the surplus lines agent and managing underwriter are required to maintain regarding each surplus lines contract obtained by the agent or placed with the managing underwriter, as applicable.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1405 may differ from the original in minor or nonsubstantive ways, the

following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 225.006, Insurance Code, is amended to read as follows:

Sec. 225.006. COLLECTION OF TAX BY AGENT. (a) Except as otherwise provided by this section, the ~~[The]~~ surplus lines agent shall collect from the insured the tax imposed by this chapter at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance and the full amount of the gross premium charged by the eligible surplus lines insurer for the insurance.

(b) Subject to Subsection (c) and notwithstanding ~~[Notwithstanding]~~ any other law, if a surplus lines agent ~~[that]~~ places an insurance policy with a managing underwriter, as defined by Section 981.002, the managing underwriter shall collect, report, and pay the tax imposed by this chapter.

(c) A surplus lines agent and a managing underwriter may enter into an agreement to provide that the surplus lines agent shall collect, report, and pay the tax imposed by this chapter.

An agreement under this subsection must be in writing and must be entered into at or before the time coverage is bound under the policy. The agreement may apply to multiple policies or all policies between a surplus lines agent and a managing underwriter.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 225.006, Insurance Code, is amended to read as follows:

Sec. 225.006. COLLECTION OF TAX BY AGENT. (a) Except as otherwise provided by this section, the ~~[The]~~ surplus lines agent shall collect from the insured the tax imposed by this chapter at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance and the full amount of the gross premium charged by the eligible surplus lines insurer for the insurance.

(b) Subject to Subsection (c) and notwithstanding ~~[Notwithstanding]~~ any other law, if a surplus lines agent ~~[that]~~ places an insurance policy with a managing underwriter, as defined by Section 981.002, the managing underwriter shall collect, report, and pay the tax imposed by this chapter.

(c) A surplus lines agent and a managing underwriter may enter into an agreement to provide that the surplus lines agent is responsible for filing, reporting, collection, payment, and all other requirements imposed by this chapter and Chapter 981, including the requirement to pay the tax and file the tax report imposed by this chapter.

An agreement under this subsection must be in writing and must be entered into at or before the time coverage is bound under the policy. The agreement may apply to multiple policies or all policies between a surplus lines agent and a managing underwriter.

SECTION 2. Sections 981.105(a) and (b), Insurance Code, are amended to read as follows:

(a) Not later than the 60th day after the later of the effective date or the issue date of new or renewal surplus lines insurance, a surplus lines agent responsible under Section 225.006 for the filing, reporting, collection, payment, and other requirements imposed by Chapter 225 shall file with the stamping office:

(1) a copy of the policy issued; or

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

(b) The [A] surplus lines agent described by Subsection (a) shall also promptly file with the stamping office:

(1) a copy of each substitute certificate, cover note, or other confirmation of insurance delivered to an insured;

(2) a copy of each endorsement of an original policy, certificate, cover note, or other confirmation of insurance delivered to an insured; and

(3) a memorandum from the agent informing the stamping office of the substance of any change represented by a document described by Subdivision (1) or (2), as compared with the original coverage.

No equivalent provision.

SECTION 3. Section 981.213, Insurance Code, is amended to read as follows:

Sec. 981.213. FILING CONTRACT WITH STAMPING OFFICE. A surplus lines agent responsible under Section 225.006 for the filing, reporting, collection, payment, and other requirements imposed by Chapter 225 shall report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the stamping office's plan of operation. The department may accept that filing instead of the filings required under Section 981.105.

SECTION 2. Section 981.215(a), Insurance Code, is amended.

SECTION 4. Same as introduced version.

SECTION 3. Section 981.223(a), Insurance Code, is amended.

SECTION 5. Same as introduced version.

SECTION 4. This Act takes effect September 1, 2013.

SECTION 6. This Act takes effect January 1, 2014.