

BILL ANALYSIS

Senate Research Center

S.B. 951
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2010, Congress passed the Dodd-Frank Act. The Dodd-Frank Act included a section called the Non-admitted and Reinsurance Reform Act (NRRA), which governs surplus lines and reinsurance. Surplus lines insurance is a type of insurance available for a unique or complex risk that an admitted carrier will not insure. In Texas, surplus lines insurance is governed under Chapter 981 (Surplus Lines Insurance) of the Texas Insurance Code. The NRRA preempts and conflicts with numerous sections in Chapter 981, creating confusion for surplus lines agents and insurers looking to Texas law for guidance.

S.B. 951 conforms Chapter 981 of the Texas Insurance Code to NRRA. Specifically, S.B. 951 clarifies that Chapter 981 applies to surplus lines insurance if the insured's home state is Texas, provides applicable definitions, exempts commercial purchasers, and states that agreements regarding uniform surplus lines insurance standards made between Texas and other states are binding.

S.B. 951 amends current law relating to surplus lines insurance.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 10 (Section 981.060, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 981.001(c), Insurance Code, to provide that this chapter, 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 15 U.S.C. Chapter 108, provides an orderly method for each person whose home state is this state for a particular transaction 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. Amends Section 981.002, Insurance Code, to define "affiliate," "affiliated group," "control," and "home state," to redefine "surplus lines insurance," and to make nonsubstantive changes.

SECTION 3. Amends Section 981.003, Insurance Code, as follows:

Sec. 981.003. APPLICABILITY OF CHAPTER. Provides that this chapter applies to surplus lines insurance if the home state of the insured is this state. Deletes existing text providing that this chapter applies to insurance of a subject that is resident, located, or to be performed in this state and that is obtained, continued or renewed through negotiations or an application wholly or partly occurring or made within or from within this state or premiums wholly or partly remitted directly or indirectly from within this state.

SECTION 4. Amends Subchapter A, Chapter 981, Insurance Code, by adding Sections 981.0031 and 981.0032, as follows:

Sec. 981.0031. EXEMPT COMMERCIAL PURCHASER DEFINED. (a) Defines "exempt commercial purchaser" for purposes of this chapter.

(b) Requires the commissioner of insurance (commissioner), effective on January 1, 2015, and on every fifth January 1 thereafter, by order to adjust the amounts provided by Subsections (a)(3)(A) (defining "exempt commercial purchaser" as a person who purchases commercial insurance and, at the time of placement, has a net worth of more than \$20 million), (B) (defining "exempt commercial purchaser" as a person who purchases commercial insurance and, at the time of placement, generates annual revenue of more than \$50 million), and (D) (defining "exempt commercial purchaser" as a person who purchases commercial insurance and, at the time of placement, is a nonprofit organization or public entity generating annual expenditures of at least \$30 million) to reflect the percentage change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the five-year period immediately preceding January 1 of the year of the adjustment.

Sec. 981.0032. QUALIFIED RISK MANAGER DEFINED. Defines "qualified risk manager" for purposes of this chapter.

SECTION 5. Amends Section 981.004, Insurance Code, by adding Subsection (c), as follows:

(c) Provides that Subsection (a)(1) (relating to authorizing an eligible surplus lines insurer to provide surplus lines insurance only if the full amount of required insurance cannot be obtained from an authorized insurer) does not apply to insurance procured for an exempt commercial purchaser if:

(1) the agent procuring or placing the insurance discloses to the exempt commercial purchaser that comparable insurance may be available from the admitted market that is subject to more regulatory oversight than the surplus lines market, and a policy purchased in the admitted market may provide greater protection than the surplus lines insurance policy; and

(2) after receiving the notice described by Subdivision (1), the exempt commercial purchaser requests in writing that the agent procure the insurance from or place the insurance with an eligible surplus lines insurer.

SECTION 6. Amends Sections 981.057(b), Insurance Code, as follows:

(b) Provides that Subsection (a) (relating to requiring an eligible surplus lines insurer to maintain capital and surplus in an amount of at least \$15 million) does not apply to alien surplus lines insurers listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners.

Deletes existing text of Subsection (b) providing that if an eligible surplus lines insurer is an insurance exchange created by the laws of another state, the syndicates of the exchange are required to maintain under terms acceptable to the commissioner capital and surplus, or the equivalent under the laws of the exchange's domiciliary jurisdiction, in an amount of at least \$75 million in the aggregate; the exchange is required to maintain under terms acceptable to the commissioner at least 50 percent of the policyholder surplus of each individual syndicate in a custodial account accessible to the exchange or the exchange's domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and an individual syndicate, to be eligible to accept surplus lines insurance placements from this state as an exchange member, is required to maintain under terms acceptable to the commissioner capital and surplus, or the equivalent under the laws of the exchange's domiciliary jurisdiction, in the amount of at least \$5 million, if the syndicate is a member of an insurance exchange that maintains at least \$15 million for the protection of all exchange policyholders, or the greater of the minimum capital and surplus of the exchange's domiciliary jurisdiction or \$15 million.

SECTION 7. Amends Section 981.058, Insurance Code, as follows:

Sec. 981.058. New heading: ALIEN INSURERS. Requires an alien surplus lines insurer to be listed on the on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners.

Deletes existing text requiring an alien surplus lines insurer, in addition to meeting the minimum capital and surplus requirements prescribed by Section 981.057 (Minimum Capital and Surplus Requirements), to provide evidence that the insurer maintains in the United States an irrevocable trust fund in a Federal Reserve System member bank in an amount of at least \$5.4 million for the protection of all its policyholders in the United States, and the trust fund consists of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of an insurer authorized to write similar kinds and classes of insurance in this state.

SECTION 8. Amends Subchapter B, Chapter 981, Insurance Code, by adding Section 981.066, as follows:

Sec. 981.066. UNIFORM STANDARDS. Requires an insurer, to issue surplus lines insurance in this state, to comply with all applicable nationwide uniform standards adopted by this state in accordance with 15 U.S.C. Section 8204.

SECTION 9. Amends Section 981.215(a), Insurance Code, as follows:

(a) Requires a surplus lines agent to maintain a complete record of each surplus lines contract obtained by the agent, including any of the following, if applicable:

- (1) a copy of the daily report;
- (2) the amount of the insurance and risks insured against;
- (3) a brief general description of the property insured and the location of that property;
- (4) the gross premium charged;
- (5) the return premium paid;
- (6) the rate of premium charged on the different items of property;
- (7) the contract terms, including the effective date;
- (8) the insured's name and post office address;
- (9) the insurer's name and home office address;
- (10) the amount collected from the insured;
- (11) evidence establishing that the insured qualified as an exempt commercial purchaser and that the surplus lines agent complied with the requirements of Section 981.004(c) (relating to providing that Subsection (a)(1) does not apply to insurance procured for an exempt commercial purchaser) if a diligent effort to obtain insurance in the admitted market was not made pursuant to Section 981.004(a)(1) (relating to authorizing an eligible surplus lines insurer to provide surplus lines insurance only if the full amount of required insurance cannot be obtained from an insurer); and
- (12) any other information required by the Texas Department of Insurance.

SECTION 10. Repealers: Sections 981.052 (Good Reputation and Prompt Service Required), 981.053 (Competence, Trustworthiness, and Experience Required), 981.055 (Failure to Pay Penalty), 981.056 (Failure to Pay Premium Taxes), 981.059 (Alternative for Certain Insurer Groups), 981.060 (Exemption Due to Minimum Premium Level), 981.061 (Exemption Due to Certain Insurer Characteristics), and 981.062 (Exemption Due to Size of Insurer and Other Factors), Insurance Code.

SECTION 11. (a) Provides that notwithstanding Section 981.058, Insurance Code, as amended by this Act, an alien surplus lines insurer that was an eligible surplus lines insurer under Section 981.058, Insurance Code, as it existed immediately before the effective date of this Act, continues to be an eligible surplus lines insurer.

(b) Requires an alien insurer described by Subsection (a) of this section to comply with the trust fund requirements of Section 981.058, Insurance Code, as that section existed immediately before the effective date of this Act, in addition to the minimum capital and surplus requirements prescribed by Section 981.057, Insurance Code.

SECTION 12. Effective date: upon passage or September 1, 2013.