

BILL ANALYSIS

S.B. 951
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The U.S. Congress recently passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which included a section called the Nonadmitted and Reinsurance Reform Act of 2010 that 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. Interested parties assert that the Nonadmitted and Reinsurance Reform Act preempts and conflicts with numerous provisions of the Texas Insurance Code that govern surplus lines insurance, which creates confusion for surplus lines agents and insurers looking to Texas law for guidance. S.B. 951 seeks to amend state law relating to surplus lines insurance to conform to federal law.

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

S.B. 951 amends the Insurance Code to apply statutory provisions regulating surplus lines insurance to such insurance provided to an insured whose home state is Texas and removes provisions that restrict such application to the insurance of a subject that is resident, located, or to be performed in Texas and to insurance that is obtained, continued, or renewed through negotiations or an application wholly or partly occurring or made within or from within Texas or through premiums wholly or partly remitted directly or indirectly from within Texas. The bill defines "home state," with respect to an insured, as the state in which the insured maintains the insured's principal residence if the insured is an individual; the state in which the insured maintains the insured's principal place of business if the insured is not an individual; the state to which the greatest percentage of the insured's taxable premium for an insurance contract that covers risk is allocated if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or principal place of business, as applicable; or, for an affiliated group, the home state of the member that has the largest percentage of premium attributed to it under the insurance contract. The bill redefines "surplus lines insurance" to remove the condition that the insurance coverage be for a subject that is resident, located, or to be performed in Texas.

S.B. 951 defines "exempt commercial purchaser" as a person who purchases commercial insurance and, at the time of placement, who employs or retains a qualified risk manager, as defined by the bill, to negotiate insurance coverage; who has paid aggregate nationwide commercial property and casualty insurance premiums of more than \$100,000 in the immediately preceding 12 months; and who has a net worth of more than \$20 million, generates annual revenue of more than \$50 million, employs more than 500 full-time or full-time equivalent employees per individual insured, or is a member of an affiliated group that employs more than 1,000 employees in aggregate, is a nonprofit organization or public entity generating annual budgeted expenditures of at least \$30 million, or is a municipality with a population of more than 50,000. The bill requires the commissioner of insurance by order, effective on January

1, 2015, and on every fifth January 1 thereafter, to adjust the net worth, annual revenue, and annual budgeted expenditures used to define an exempt commercial purchaser to reflect the percentage change in the federal Consumer Price Index for All Urban Consumers for the five-year period immediately preceding January 1 of the year of the adjustment.

S.B. 951 specifies the criteria for exempting insurance procured for an exempt commercial purchaser from statutory provisions that condition an eligible surplus lines insurer's authority to provide surplus lines insurance on whether the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in Texas. The bill specifies that such provisions are inapplicable to insurance procured for an exempt commercial purchaser if 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 that a policy purchased in the admitted market may provide greater protection than the surplus lines insurance policy and if, after receiving the notice, the exempt commercial purchaser requests in writing that the agent procure the insurance from or place the insurance with an eligible surplus lines insurer. The bill requires a surplus lines agent, if a diligent effort to obtain insurance in the admitted market was not made with respect to a surplus lines contract obtained by the agent, to include evidence establishing that the insured qualified as an exempt commercial purchaser and that the agent complied with the exemption criteria in the record maintained by the agent for the contract.

S.B. 951 requires an alien surplus lines insurer to be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners. The bill exempts a listed alien surplus lines insurer from a requirement for an eligible surplus lines insurer to maintain capital and surplus in an amount of at least \$15 million and removes provisions relating to minimum capital and surplus requirements for an eligible surplus lines insurer that is an insurance exchange created by the laws of another state. The bill removes provisions requiring an alien surplus lines insurer to provide evidence that the insurer maintains in the United States an irrevocable trust fund that meets specified criteria with respect to the amount and composition of the trust fund. The bill repeals certain statutory provisions regarding eligibility requirements for surplus lines insurers, including provisions requiring a good reputation and prompt service and competence, trustworthiness, and experience. The bill repeals provisions prohibiting an insurer from issuing surplus lines insurance if the insurer or its agents have failed to pay a statutory penalty imposed on the insurer or its agents or if the insurer is obligated to pay a premium tax and has not paid the tax. The bill repeals provisions authorizing an insurer group that includes unincorporated individual insurers to maintain a trust fund that meets certain criteria as an alternative to complying with the prescribed minimum capital and surplus requirements. The bill repeals provisions that require the commissioner by rule to exempt an eligible surplus lines insurer from prescribed minimum capital and surplus requirements if the insurer writes less than a specified minimum level of insurance premium and that authorize the commissioner to make such an exemption due to certain specified insurer characteristics or due to the size of the insurer and other specified factors.

S.B. 951 requires an insurer to comply with all applicable nationwide uniform standards for surplus lines eligibility adopted by Texas in accordance with federal law in order to issue surplus lines insurance in Texas.

S.B. 951 clarifies that an alien surplus lines insurer that was an eligible surplus lines insurer under statutory provisions as they existed immediately before the bill's effective date continues to be an eligible surplus lines insurer. The bill requires such an alien insurer to comply with the trust fund requirements prescribed for alien surplus lines insurers as those requirements existed immediately before the bill's effective date, in addition to the prescribed minimum capital and surplus requirements.

S.B. 951 repeals the following provisions of the Insurance Code:

- Section 981.052
- Section 981.053
- Section 981.055
- Section 981.056
- Section 981.059
- Section 981.060
- Section 981.061
- Section 981.062

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.