

By: Eiland

H.B. No. 1909

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 15 U.S.C. Chapter 108, this chapter provides an orderly method for the residents of this state and nonresidents 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. Section 981.002, Insurance Code, is amended to read as follows:

Sec. 981.002. DEFINITIONS. In this chapter:

(1) "Affiliate" means, with respect to determining the home state of an insured, and solely for the purpose of determining whether an entity is another entity's affiliate, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose

1 members are all affiliated.

2 (3) "Control" means, with respect to determining the
3 home state of an insured, and solely for the purpose of determining
4 whether an entity is another entity's affiliate:

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

8 (B) to control in any manner the election of the
9 majority of directors or trustees of the other entity.

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

14 (5) "Home state" means, with respect to an insured:

15 (A) the state in which the insured maintains the
16 insured's principal residence, if the insured is an individual;

17 (B) the state in which the insured maintains the
18 insured's principal place of business, if the insured is not an
19 individual;

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

25 (D) for an affiliated group, the home state of
26 the member, as determined under Paragraphs (A)-(C), that has the
27 largest percentage of premium attributed to it under the insurance

1 contract.

2 (6) [~~(1-a)~~] "Managing underwriter" means a surplus
3 lines agent or agency that exercises, pursuant to a written
4 agreement with an eligible surplus lines insurer, underwriting
5 authority for the eligible surplus lines insurer and that derives
6 the agent or agency's business from a surplus lines agent.

7 (7) "Nonadmitted insurer" means an insurer not
8 licensed to engage in the business of insurance in this state. The
9 term does not include a risk retention group as that term is defined
10 by Section 2(a)(4), Liability Risk Retention Act of 1986 (15 U.S.C.
11 Section 3901(a)(4)).

12 (8) [~~(2)~~] "Stamping office" means the Surplus Lines
13 Stamping Office of Texas.

14 (9) [~~(3)~~] "Surplus lines agent" means an agent
15 licensed under Subchapter E to procure an insurance contract from a
16 surplus lines insurer.

17 (10) [~~(4)~~] "Surplus lines insurance" means insurance
18 coverage:

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

21 (B) that may be placed, in accordance with this
22 chapter, with an eligible surplus lines insurer or the insurer's
23 managing underwriter.

24 SECTION 3. Section 981.003, Insurance Code, is amended to
25 read as follows:

26 Sec. 981.003. APPLICABILITY OF CHAPTER. This chapter
27 applies to surplus lines insurance if the home state of the insured

1 is this state~~+~~

2 ~~[(1) of a subject that is resident, located, or to be~~
3 ~~performed in this state, and~~

4 ~~[(2) that is obtained, continued, or renewed through:~~

5 ~~[(A) negotiations or an application wholly or~~
6 ~~partly occurring or made within or from within this state, or~~

7 ~~[(B) premiums wholly or partly remitted directly~~
8 ~~or indirectly from within this state].~~

9 SECTION 4. Subchapter A, Chapter 981, Insurance Code, is
10 amended by adding Sections 981.0031 and 981.0032 to read as
11 follows:

12 Sec. 981.0031. EXEMPT COMMERCIAL PURCHASER DEFINED. (a)
13 For purposes of this chapter, "exempt commercial purchaser" means a
14 person who purchases commercial insurance and, at the time of
15 placement:

16 (1) employs or retains a qualified risk manager to
17 negotiate insurance coverage;

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

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

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

23 (B) generates annual revenue of more than \$50
24 million;

25 (C) employs more than 500 full-time or full-time
26 equivalent employees per individual insured, or is a member of an
27 affiliated group that employs more than 1,000 employees in

1 aggregate;

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

4 (E) is a municipality with a population of more
5 than 50,000.

6 (b) Beginning January 1, 2017, the commission may by order
7 not more than once every five years adjust the amounts provided by
8 Subsections (a)(3)(A), (B), and (D) to reflect the percentage
9 change in the Consumer Price Index for All Urban Consumers
10 published by the Bureau of Labor Statistics of the United States
11 Department of Labor for the five-year period immediately preceding
12 January 1 of the year of adjustment.

13 Sec. 981.0032. QUALIFIED RISK MANAGER DEFINED. (a) For
14 purposes of this chapter, "qualified risk manager" means, with
15 respect to a policyholder of commercial insurance, a person who:

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

18 (2) provides skilled services in loss prevention, loss
19 reduction, or risk and insurance coverage analysis and the purchase
20 of insurance; and

21 (3) satisfies the requirements of this section.

22 (b) A qualified risk manager must have:

23 (1) a bachelor's or higher degree from an accredited
24 college or university in risk management, business administration,
25 finance, economics, or another field determined by a state
26 insurance commissioner or other state regulatory official to
27 demonstrate competence in risk management and:

1 (A) at least three years of experience in risk
2 financing, claims administration, loss prevention, risk and
3 insurance analysis, or purchasing of commercial lines of insurance;
4 or

5 (B) a designation:

6 (i) as a Chartered Property and Casualty
7 Underwriter (CPCU), issued by the American Institute for
8 CPCU/Insurance Institute of America;

9 (ii) as an Associate in Risk Management
10 (ARM) issued by the American Institute for CPCU/Insurance Institute
11 of America;

12 (iii) as a Certified Risk Manager (CRM)
13 issued by the National Alliance for Insurance Education and
14 Research;

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

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

20 (2) at least seven years of experience in risk
21 financing, claims administration, loss prevention, risk and
22 insurance coverage analysis, or purchasing of commercial lines of
23 insurance and one of the designations described by Subdivision
24 (1)(B);

25 (3) at least 10 years of experience in risk financing,
26 claims administration, loss prevention, risk and insurance
27 coverage analysis, or purchasing commercial lines of insurance; or

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

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

8 (c) Subsection (a)(1) does not apply to insurance for an
9 exempt commercial purchaser if:

10 (1) the agent procuring or placing the insurance
11 discloses to the exempt commercial purchaser that:

12 (A) comparable insurance may be available from
13 the admitted market that is subject to more regulatory oversight
14 than the nonadmitted market; and

15 (B) a policy purchased in the admitted market may
16 provide greater protection than the surplus lines insurance policy;
17 and

18 (2) after receiving the notice described by
19 Subdivision (1), the exempt commercial purchaser requests in
20 writing that the agent procure the insurance from or place the
21 insurance with a nonadmitted insurer.

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

24 Sec. 981.010. FAILURE TO PAY PENALTY. A person engages in
25 the unauthorized business of insurance if the person issues a
26 policy of surplus lines insurance and, at the time the policy is
27 issued, the person or the person's surplus lines agent has failed to

1 pay a statutory penalty imposed for a violation of this code on the
2 person or the person's surplus lines agent.

3 Sec. 981.011. FAILURE TO PAY PREMIUM TAX. A person engages
4 in the unauthorized business of insurance if the person issues a
5 policy of surplus lines insurance and, at the time the policy is
6 issued, the person has not paid premium tax the person is obligated
7 to pay.

8 SECTION 7. Section 981.058, Insurance Code, is amended to
9 read as follows:

10 Sec. 981.058. ALIEN INSURERS [~~: TRUST FUND REQUIREMENT~~]. An
11 [In addition to meeting the minimum capital and surplus
12 requirements prescribed by Section 981.057, an] alien surplus lines
13 insurer must be listed on the Quarterly Listing of Alien Insurers
14 maintained by the International Insurers Department, National
15 Association of Insurance Commissioners [~~provide evidence that:~~

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

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

21 [~~(A) cash;~~

22 [~~(B) securities;~~

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

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

1 SECTION 8. Sections 981.059(b) and (c), Insurance Code, are
2 amended to read as follows:

3 (b) Instead of the minimum capital and surplus requirements
4 prescribed by Section 981.057, an insurer group may maintain an
5 irrevocable [a] trust fund in a Federal Reserve System member bank
6 in an amount of at least \$50 million as security to the full amount
7 of the trust fund for all policyholders and creditors in the United
8 States of each group member.

9 (c) The [~~Except as provided by this section, the~~] trust fund
10 must consist of:

- 11 (1) cash;
12 (2) securities;
13 (3) letters of credit; or
14 (4) investments of substantially the same character
15 and quality as those that are eligible investments for the capital
16 and statutory reserves of an insurer authorized to write similar
17 kinds and classes of insurance in this state [~~comply with the terms~~
18 ~~specified by Section 981.058 for the trust fund required by that~~
19 ~~section~~].

20 SECTION 9. Subchapter B, Chapter 981, Insurance Code, is
21 amended by adding Section 981.066 to read as follows:

22 Sec. 981.066. UNIFORM STANDARDS. To issue surplus lines
23 insurance in this state, an insurer must comply with all applicable
24 uniform standards adopted under an agreement between this state and
25 another state.

26 SECTION 10. Section 981.105, Insurance Code, is amended by
27 adding Subsections (j) and (k) to read as follows:

1 (j) If a diligent effort to obtain insurance for an exempt
2 commercial purchaser in the admitted market was not made, a surplus
3 lines agent shall file with the stamping office, together with the
4 information filed under Subsection (a), in a form prescribed by the
5 commissioner by rule:

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

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

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

14 (4) an attestation by the insured that:

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

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

23 (k) The commissioner by rule shall establish procedures and
24 promulgate a form to be used to meet the requirements of Subsection
25 (j). The rules must include provisions that address record
26 retention, electronic filing, and audit requirements.

27 SECTION 11. The following sections of the Insurance Code

1 are repealed:

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

9 SECTION 12. (a) Notwithstanding Section 981.058, Insurance
10 Code, as amended by this Act, an alien surplus lines insurer that
11 was an eligible surplus lines insurer under Section 981.058,
12 Insurance Code, as it existed immediately before the effective date
13 of this Act, continues to be an eligible surplus lines insurer until
14 January 1, 2015.

15 (b) An alien insurer described by Subsection (a) of this
16 section may apply for an extension of eligibility. The
17 commissioner may extend eligibility under this section until
18 January 1, 2017, if the commissioner determines that the insurer is
19 making a good faith effort to be listed on the Quarterly Listing of
20 Alien Insurers maintained by the International Insurers
21 Department, National Association of Insurance Commissioners, as
22 required by Section 981.058, Insurance Code, as amended by this
23 Act, and that the interests of the insurer's policyholders are
24 otherwise adequately protected.

25 SECTION 13. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

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1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2013.