

By: Carona

S.B. No. 951

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. Subsection (c), Section 981.001, 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 each person whose home state is this state for a particular transaction [~~the residents of this state~~] 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 maintains the insured's
22 principal residence or principal place of business, as applicable,
23 the state to which the greatest percentage of the insured's taxable
24 premium for the insurance contract that covers the risk is
25 allocated; or

26 (D) for an affiliated group, the home state of
27 the member, as determined under Paragraphs (A)-(C), that has the

1 largest percentage of premium attributed to it under the insurance
2 contract.

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

8 (7) [~~(2)~~] "Stamping office" means the Surplus Lines
9 Stamping Office of Texas.

10 (8) [~~(3)~~] "Surplus lines agent" means an agent
11 licensed under Subchapter E to procure an insurance contract from a
12 surplus lines insurer.

13 (9) [~~(4)~~] "Surplus lines insurance" means insurance
14 coverage[+]

15 [~~(A) for a subject that is resident, located, or~~
16 ~~to be performed in this state, and~~

17 [~~(B)~~] that may be placed, in accordance with this
18 chapter, with an eligible surplus lines insurer or the insurer's
19 managing underwriter.

20 SECTION 3. Section 981.003, Insurance Code, is amended to
21 read as follows:

22 Sec. 981.003. APPLICABILITY OF CHAPTER. This chapter
23 applies to surplus lines insurance if the home state of the insured
24 is this state[+]

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

27 [~~(2) that is obtained, continued, or renewed through.~~

1 ~~[(A) negotiations or an application wholly or~~
2 ~~partly occurring or made within or from within this state; or~~

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

5 SECTION 4. Subchapter A, Chapter 981, Insurance Code, is
6 amended by adding Sections 981.0031 and 981.0032 to read as
7 follows:

8 Sec. 981.0031. EXEMPT COMMERCIAL PURCHASER DEFINED.

9 (a) For purposes of this chapter, "exempt commercial purchaser"
10 means a person who purchases commercial insurance and, at the time
11 of placement:

12 (1) employs or retains a qualified risk manager to
13 negotiate insurance coverage;

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

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

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

19 (B) generates annual revenue of more than \$50
20 million;

21 (C) employs more than 500 full-time or full-time
22 equivalent employees per individual insured, or is a member of an
23 affiliated group that employs more than 1,000 employees in
24 aggregate;

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

27 (E) is a municipality with a population of more

1 than 50,000.

2 (b) Effective on January 1, 2015, and on every fifth January
3 1 thereafter, the commissioner shall by order adjust the amounts
4 provided by Subsections (a)(3)(A), (B), and (D) to reflect the
5 percentage change in the Consumer Price Index for All Urban
6 Consumers published by the Bureau of Labor Statistics of the United
7 States Department of Labor for the five-year period immediately
8 preceding January 1 of the year of the adjustment.

9 Sec. 981.0032. QUALIFIED RISK MANAGER DEFINED. For
10 purposes of this chapter, "qualified risk manager" means, with
11 respect to a policyholder of commercial insurance, a person who:

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

14 (2) provides skilled services in loss prevention, loss
15 reduction, or risk and insurance coverage analysis and the purchase
16 of insurance; and

17 (3) satisfies the requirements of one of the following
18 paragraphs:

19 (A) has:

20 (i) a bachelor's or higher degree from an
21 accredited college or university in risk management, business
22 administration, finance, economics, or another field determined by
23 a state insurance commissioner or other state regulatory official
24 or entity to demonstrate competence in risk management; and

25 (ii) either:

26 (a) at least three years of experience
27 in risk financing, claims administration, loss prevention, risk and

1 insurance analysis, or purchasing of commercial lines of insurance;
2 or
3 (b) a designation, certification, or
4 license:
5 (1) as a chartered property
6 casualty underwriter (CPCU), issued by the American Institute for
7 CPCU/Insurance Institute of America;
8 (2) as an associate in risk
9 management (ARM) issued by the American Institute for
10 CPCU/Insurance Institute of America;
11 (3) as a Certified Risk Manager
12 (CRM) issued by the National Alliance for Insurance Education and
13 Research;
14 (4) as a RIMS Fellow (RF) issued
15 by the Global Risk Management Institute; or
16 (5) that is determined by a state
17 insurance commissioner or other state insurance regulatory
18 official or entity to demonstrate minimum competence in risk
19 management;
20 (B) has at least seven years of experience in
21 risk financing, claims administration, loss prevention, risk and
22 insurance coverage analysis, or purchasing of commercial lines of
23 insurance and one of the designations, certifications, or licenses
24 described by Paragraph (A)(ii)(b);
25 (C) has at least 10 years of experience in risk
26 financing, claims administration, loss prevention, risk and
27 insurance coverage analysis, or purchasing commercial lines of

1 insurance; or

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

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

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

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

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

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

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

23 SECTION 6. Subsection (b), Section 981.057, Insurance Code,
24 is amended to read as follows:

25 (b) Subsection (a) does not apply to alien surplus lines
26 insurers listed on the Quarterly Listing of Alien Insurers
27 maintained by the International Insurers Department, National

1 Association of Insurance Commissioners. [~~If an eligible surplus~~
2 ~~lines insurer is an insurance exchange created by the laws of~~
3 ~~another state:~~

4 [~~(1) the syndicates of the exchange must maintain~~
5 ~~under terms acceptable to the commissioner capital and surplus, or~~
6 ~~the equivalent under the laws of the exchange's domiciliary~~
7 ~~jurisdiction, in an amount of at least \$75 million in the aggregate,~~

8 [~~(2) the exchange must maintain under terms acceptable~~
9 ~~to the commissioner at least 50 percent of the policyholder surplus~~
10 ~~of each individual syndicate in a custodial account accessible to~~
11 ~~the exchange or the exchange's domiciliary commissioner in the~~
12 ~~event of insolvency or impairment of the individual syndicate; and~~

13 [~~(3) an individual syndicate, to be eligible to accept~~
14 ~~surplus lines insurance placements from this state as an exchange~~
15 ~~member, must maintain under terms acceptable to the commissioner~~
16 ~~capital and surplus, or the equivalent under the laws of the~~
17 ~~exchange's domiciliary jurisdiction, in the amount of at least:~~

18 [~~(A) \$5 million, if the syndicate is a member of~~
19 ~~an insurance exchange that maintains at least \$15 million for the~~
20 ~~protection of all exchange policyholders; or~~

21 [~~(B) the greater of:~~

22 [~~(i) the minimum capital and surplus of the~~
23 ~~exchange's domiciliary jurisdiction; or~~

24 [~~(ii) \$15 million.]~~

25 SECTION 7. Section 981.058, Insurance Code, is amended to
26 read as follows:

27 Sec. 981.058. ALIEN INSURERS [~~: TRUST FUND REQUIREMENT~~].

1 An [~~In addition to meeting the minimum capital and surplus~~
2 ~~requirements prescribed by Section 981.057, an]~~ alien surplus lines
3 insurer must be listed on the Quarterly Listing of Alien Insurers
4 maintained by the International Insurers Department, National
5 Association of Insurance Commissioners [~~provide evidence that:~~

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

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

11 [~~(A) cash;~~

12 [~~(B) securities;~~

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

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

18 SECTION 8. Subchapter B, Chapter 981, Insurance Code, is
19 amended by adding Section 981.066 to read as follows:

20 Sec. 981.066. UNIFORM STANDARDS. To issue surplus lines
21 insurance in this state, an insurer must comply with all applicable
22 nationwide uniform standards adopted by this state in accordance
23 with 15 U.S.C. Section 8204.

24 SECTION 9. Subsection (a), Section 981.215, Insurance Code,
25 is amended to read as follows:

26 (a) A surplus lines agent shall maintain a complete record
27 of each surplus lines contract obtained by the agent, including any

1 of the following, if applicable:

2 (1) a copy of the daily report;

3 (2) the amount of the insurance and risks insured
4 against;

5 (3) a brief general description of the property
6 insured and the location of that property;

7 (4) the gross premium charged;

8 (5) the return premium paid;

9 (6) the rate of premium charged on the different items
10 of property;

11 (7) the contract terms, including the effective date;

12 (8) the insured's name and post office address;

13 (9) the insurer's name and home office address;

14 (10) the amount collected from the insured; ~~and~~

15 (11) evidence establishing that the insured qualified
16 as an exempt commercial purchaser and that the surplus lines agent
17 complied with the requirements of Section 981.004(c) if a diligent
18 effort to obtain insurance in the admitted market was not made
19 pursuant to Section 981.004(a)(1); and

20 (12) any other information required by the department.

21 SECTION 10. The following sections of the Insurance Code
22 are repealed:

23 (1) Section 981.052;

24 (2) Section 981.053;

25 (3) Section 981.055;

26 (4) Section 981.056;

27 (5) Section 981.059;

- 1 (6) Section 981.060;
- 2 (7) Section 981.061; and
- 3 (8) Section 981.062.

4 SECTION 11. (a) Notwithstanding Section 981.058,
5 Insurance Code, as amended by this Act, an alien surplus lines
6 insurer that was an eligible surplus lines insurer under Section
7 981.058, Insurance Code, as it existed immediately before the
8 effective date of this Act, continues to be an eligible surplus
9 lines insurer.

10 (b) An alien insurer described by Subsection (a) of this
11 section must comply with the trust fund requirements of Section
12 981.058, Insurance Code, as that section existed immediately before
13 the effective date of this Act, in addition to the minimum capital
14 and surplus requirements prescribed by Section 981.057, Insurance
15 Code.

16 SECTION 12. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2013.