

BILL ANALYSIS

Senate Research Center

S.B. 1697
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Eligible surplus lines insurers are companies that are not licensed to sell insurance in the state, but are allowed to sell a particular type of insurance if it cannot be obtained from a licensed insurer within the state. To become eligible, a surplus lines insurer must meet minimum capital and surplus requirements, hold a license in the state in which they are located, and be authorized to write the same coverage in the state in which they are licensed that they seek to write in Texas.

One difference between unauthorized insurers and eligible surplus lines insurers is how taxes on the premiums are imposed. A tax is imposed on unauthorized insurers, while in the case of surplus lines insurance the agent collects the tax from the insured.

The 73rd Legislature, Regular Session, 1993, passed H.B. 958 to clarify that surplus lines insurers who are eligible to sell insurance in Texas are not unauthorized insurers. H.B. 958 stated that provisions regulating unauthorized insurers would not apply to eligible surplus lines insurers.

However, since 1993 state regulators and Texas courts have blurred the lines between surplus lines insurers and unauthorized insurers.

S.B. 1697 modifies Texas insurance law to conform with the intent of H.B. 958 and to clarify that surplus lines insurers are not to be taxed as unauthorized insurers. S.B. 1697 also makes conforming changes to reflect recodification.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 101.001(a), Insurance Code, to provide that it is a state concern that many residents of this state hold insurance policies issued by persons or insurers who are not authorized to do insurance business in this state and who are not qualified as eligible surplus lines insurers under Chapter 981 (Surplus Lines Insurance), Insurance Code, rather than Article 1.14-2 (Surplus Lines Insurance Premium Tax), Insurance Code.

SECTION 2. Amends Section 101.053, Insurance Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Provides that Sections 101.051 (Conduct that Constitutes the Business of Insurance) and 101.052 (Advertising Relating to Medicare Supplement Policies), Insurance Code do not apply to the lawful transaction of surplus lines insurance, rather than the lawful transaction of surplus lines insurance under Chapter 981.

(d) Defines "lawful transaction of surplus lines insurance" for the purposes of Subsection (b)(1).

SECTION 3. Amends Section 101.201(b), Insurance Code, to delete existing text providing that this section does not apply to insurance procured by a licensed surplus lines agent from an

eligible surplus lines insurer as defined by Chapter 981. Deletes reference to premium tax paid in accordance with Chapter 225.

SECTION 4. Amends Section 101.203(c), Insurance Code, to provide that this section does not apply to surplus lines insurance procured through an eligible surplus lines insurer, rather than carrier, as defined by Section 981.002, rather than Article 1.14-2.

SECTION 5. Amends Section 101.301(b), Insurance Code, to make conforming changes.

SECTION 6. Amends Section 225.002, Insurance Code, to make a nonsubstantive change.

SECTION 7. Amends Section 226.002, Insurance Code, to make a conforming change.

SECTION 8. Amends Section 226.003(g), Insurance Code, to provide that premiums on insurance procured from an eligible surplus lines insurer as defined by Section 981.002 are not subject to the tax imposed by this subchapter, rather than that premiums on insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Chapter 981 on which premium tax is paid in accordance with Chapter 225 are not subject to the tax imposed by this subchapter.

SECTION 9. Amends Section 226.052, Insurance Code, to make a conforming change.

SECTION 10. Amends Section 981.002(l), Insurance Code, to redefine "eligible surplus lines insurer."

SECTION 11. Amends Section 981.004, Insurance Code, by adding Subsection (c), to provide that an eligible surplus lines insurer is not an unauthorized insurer and is not subject to Chapter 101.

SECTION 12. Amends Section 981.005, Insurance Code, to delete existing text providing an exception to the validity of contracts obtained for an eligible surplus lines insurer, if a material and intentional violation of Section 12, Article 1.14-2, exists, and to make a conforming change.

SECTION 13. Amends Section 981.006, Insurance Code, to provide that Chapter 82 applies to a surplus lines agent or an eligible surplus lines insurer that violates Chapter 225, rather than Section 12, Article 1.14-2.

SECTION 14. Amends Section 981.008, Insurance Code, to make a conforming change.

SECTION 15. Amends Section 981.101(b), Insurance Code, to make a conforming change.

SECTION 16. Amends Section 981.104(b), Insurance Code, to make a conforming change.

SECTION 17. Amends Section 981.160, Insurance Code, to make a conforming change.

SECTION 18. Repealer: Section 981.056 (Failure to Pay Premium Taxes), Insurance Code.

SECTION 19. Effective date: September 1, 2005.