

BILL ANALYSIS

Senate Research Center
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S.B. 2136
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires an agent to make a diligent effort to obtain insurance from an authorized insurer. If, after a diligent effort, the agent is not able to find an authorized insurer to write the coverage, the agent is authorized to place the coverage with a surplus lines insurer.

This bill would authorize the commissioner of insurance to place certain types and lines of coverage on what is referred to as an "export list" and these limited types of coverage would not be subject to the prohibition of being offered as an option for coverage. The agent would be authorized to offer either or both admitted or non-admitted coverage options to his or her client.

As proposed, S.B. 2136 amends current law relating to provision of surplus lines insurance.

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 981.004, Insurance Code, as follows:

Sec. 981.004. SURPLUS LINES INSURANCE AUTHORIZED. (a) Authorizes an eligible surplus lines insurer to provide surplus lines insurance only if certain conditions are met, including that the insurance is placed through a surplus lines agent licensed in accordance with Section 981.203 (Qualifications for Surplus Lines License).

(b) Requires the commissioner of insurance (commissioner) by order to declare eligible for placement with a surplus lines insurer and exempt from all requirements any kind of insurance coverage or risk for which the commissioner finds, after a public hearing, that there is not a reasonable or adequate market among authorized insurers. Requires the commissioner or the commissioner's designee to maintain an export list showing the exempt coverages and risks.

(c) Provides that a public hearing under Subsection (b) must be held at least annually, and may be held more frequently at the commissioner's discretion. Requires that reasonable notice of each hearing be given to all interested parties, including agents, authorized insurers, trade associations representing authorized and unauthorized insurers, and consumer groups.

(d) Requires that an order by the commissioner under this section continue in effect until terminated by the commissioner.

(e) Authorizes the commissioner, if, before a hearing under Subsection (b), the commissioner receives written comments or testimony or otherwise determines that a kind of insurance on the export list is more available in the admitted market, to remove that kind of insurance from the list. Provides that the eligibility of any kind of insurance to remain on the list is subject to an annual affirmative finding by the commissioner, except that if written comments or testimony regarding the eligibility of a kind of insurance to be on the list are received before a hearing, the eligibility of that kind of insurance to remain on the export list is required to be

reviewed at the next hearing and that kind of insurance may not remain on the export list unless the commissioner or the commissioner's designee makes an affirmative determination that there is not a reasonable or adequate market among authorized insurers.

(f) Requires the commissioner or the commissioner's designee to notify all surplus lines agents of any removal of a kind of insurance from the list. Deletes existing text that authorizes an eligible surplus lines insurer to provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers.

SECTION 2. Amends Section 981.101(b), Insurance Code, as effective April 1, 2009, to require that a surplus lines document state, in 11-point type, a certain statement, including that the Texas Department of Insurance does not review or approve policy forms used by the insurer providing this coverage, nor does it audit the finances or review the solvency of the insurer, rather than the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462 (Texas Property and Casualty Insurance Guaranty Association), Insurance Code.

SECTION 3. Makes application of this Act prospective to January 1, 2010.

SECTION 4. Effective date: September 1, 2009.