

BILL ANALYSIS

Senate Research Center
82R10591 TJS-F

S.B. 1806
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A surplus lines insurance policy must be filed with the Surplus Lines Stamping Office of Texas (stamping office) not later than the 60th day after the effective date or the issue date of the policy. If a surplus lines policy is not correctly and completely filed with the stamping office by the 60-day deadline, it is a late-filed policy and a violation of the Insurance Code. This filing requirement is unique to the surplus lines insurance market, but Chapter 981 (Surplus Lines Insurance) does not provide a similarly unique sanction provision for failure to comply with the filing deadline. As a result, the general sanctions provisions applicable to all other types of violations of Chapters 82 (Sanctions) and 84 (Administrative Penalties), Insurance Code, apply to late-filings violations.

In mid-2010, the enforcement division of the Texas Department of Insurance (TDI) began to impose administrative penalties for late-filed policy violations under Chapter 84 at the rate of \$1 per day for each day the policy is late, with a minimum penalty of \$1,000. TDI has the legal authority to impose administrative penalties of \$25,000 per day for each day a policy is filed late. There is no statute of limitations on the running of the length of time for which such a penalty may be imposed. There are also significant collateral consequences to such a violation, including a requirement to report the violation to the attorney general and the insurance commissioner of other states. Finally, the consent orders currently used by the enforcement division require the offending agent to agree never to file a policy late again (a promise the agent simply cannot honestly make), and that, if the agent does so, the agent's license will be revoked. Surplus lines agents generally have a high compliance rate. In 2009, 424,809 surplus lines policies were filed with the stamping office; 6,712 (1.6 percent) were filed late by 385 surplus lines agents.

S.B. 1806 provides a comprehensive approach to improved compliance with the unique policy filing requirements for surplus lines policies which more appropriately fit penalty to the crime. This bill recognizes good faith compliance efforts and appropriately addresses outlier chronic late-filers. This bill changes the fundamental nature of the sanction for late-filing from that of a fine to a fee, except for those filers who are chronically late. This bill requires that a late-filed who maintained a compliance rate of 95 percent for the previous calendar year pay a simple fee for filing late, and a late-filer who had not managed a 95 percent compliance rate for the previous year would pay a fee twice as large. If a late-filer has failed to maintain a 95 percent compliance rate for two straight years, the agent will then be subject to the current enforcement sanction. If an agent voluntarily late-filed a policy which had not previously been identified as late-filer, such a self-reporting late-filer would pay a smaller late-filed policy fee. Finally, failure to timely file policies is exempted from the various additional sanctions applicable to other classes of violations of the Insurance Code.

As proposed, S.B. 1806 amends current law relating to timely filing of surplus lines policy; providing penalties.

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 981.105, Insurance Code, by adding Subsections (c), (d), and (e), as follows:

(c) Authorizes the commissioner of insurance to assess a fee against an agent who files a surplus lines policy after the date specified in Subsection (a) (relating to filing with the stamping office a copy of the policy issued or a copy of the certificate, cover note, or other delivered confirmation of insurance). Provides that the amount of the fee is:

(1) for an agent who, in the calendar year immediately preceding the year in which the policy is late-filed, files as determined by the stamping office:

(A) not more than five percent of the total number of policies the agent is required to file after the date specified in Subsection (a), \$25 for each late-filed policy; or

(B) more than five percent of the total number of policies the agent is required to file after the date specified in Subsection (a), \$50 for each late-filed policy; or

(2) for an agent who files a late-filed policy with an effective date before January 1, 2010, that at the time the policy is filed has not been listed in a previous late-filed policy report of the stamping office, \$25 for each late-filed policy.

(d) Provides that the assessment of a fee under Subsection (c) does not establish a violation for purposes of Section 81.004 (Report to the Attorney General), 82.051 (Cancellation or Revocation of Authorization), 82.052 (Other Sanctions), 82.054 (Cancellation on Failure to Comply), 82.056 (Notice to Other States), or 84.022(b)(3) (relating to the history of previous violations).

(e) Provide that an agent is subject to penalties under Chapter 84 (Administrative Penalties) if, in each of two consecutive calendar years, the agent files more than five percent of the total number of policies the agent files after the date specified in Subsection (a).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.