

BILL ANALYSIS

Senate Research Center
83R18757 TJS-F

H.B. 1405
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law designates the surplus lines agent of record as the party responsible for paying the surplus lines insurance premium tax. The designation of the responsible party is clear when the transaction only involves one party. However, there are instances where transactions involve more than one licensed surplus lines agent. Typically one agent exercises underwriting authority for the insurance carrier, and another agent or broker will be responsible for interacting with the insured. Involving two agents creates uncertainty as to which agent is responsible for filing taxes, retaining information, or performing other agent duties.

H.B. 1405 clarifies that in instances where more than one individual with a surplus lines license is involved in the transaction, the parties may enter into a written agreement at or before the time coverage is bound under the policy stipulating which party is responsible for the typical agent's duties.

H.B. 1405 amends current law relating to the collection of surplus lines insurance premium taxes for insurance placed with a managing underwriter.

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 225.006, Insurance Code, as follows:

Sec. 225.006. COLLECTION OF TAX BY AGENT. (a) Requires the surplus lines agent, except as otherwise provided by this section, to collect from the insured the tax imposed by this chapter at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance and the full amount of the gross premium charged by the eligible surplus lines insurer for the insurance. Makes a nonsubstantive change.

(b) Requires the managing underwriter, subject to Subsection (c) and notwithstanding any other law, to collect, report, and pay the tax imposed by this chapter if a surplus lines agent places an insurance policy with a managing underwriter as defined by Section 981.002 (Definitions). Makes nonsubstantive changes.

(c) Authorizes a surplus lines agent and a managing underwriter to enter into an agreement to provide that the surplus lines agent is responsible for filing, reporting, collection, payment, and all other requirements imposed by this chapter and Chapter 981 (Surplus Lines Insurance), including the requirement to pay the tax and file the tax report imposed by this chapter. Requires that an agreement under this subsection be in writing and be entered into at or before the time coverage is bound under the policy. Authorizes the agreement to apply to multiple policies or all policies between a surplus lines agent and a managing underwriter.

SECTION 2. Amends Sections 981.105(a) and (b), Insurance Code, as follows:

(a) Requires a surplus lines agent responsible under Section 225.006 (Collection of Tax by Agent) for the filing, reporting, collection, payment, and other requirements imposed by Chapter 225 (Surplus Lines Insurance Premium Tax), not later than the 60th day after the later of the effective date or the issue date of new or renewal surplus lines insurance, to file with the Surplus Lines Stamping Office of Texas (stamping office) a copy of the policy issued, or if the policy has not been issued, a copy of the certificate, cover note, or other confirmation of insurance delivered to the insured.

(b) Requires the surplus lines agent described in Subsection (a), rather than a surplus lines agent, to also promptly file certain other documents with the stamping office. Makes a nonsubstantive changes.

SECTION 3. Amends Section 981.213, Insurance Code, as follows:

Sec. 981.213. FILING CONTRACT WITH STAMPING OFFICE. Requires a surplus lines agent responsible under Section 225.006 for the filing, reporting, collection, payment, and other requirements imposed by Chapter 225 to report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the stamping office's plan of operation. Authorizes the Texas Department of Insurance (TDI) to accept that filing instead of the filings required under Section 981.105 (Filing With Stamping Office).

SECTION 4. Amends Section 981.215(a), Insurance Code, as follows:

(a) Requires a surplus lines agent to maintain a complete record of each surplus lines contract obtained by the agent, including any of the following, if applicable:

(1)-(9) Makes no change to these subsections;

(10) Makes a nonsubstantive change;

(11) an agreement under Section 225.006(c); and

(12) Redesignates existing Subdivision (11) as Subdivision (12) and makes no further change.

SECTION 5. Amends Section 981.223(a), Insurance Code, as follows:

(a) Requires a managing underwriter with whom an insurance policy is placed in the manner described by Section 225.006(b) to maintain appropriate records and make the records available for inspection by TDI and the comptroller of public accounts of the State of Texas, including records of:

(1)-(6) Makes no change to these subdivisions; and

(7) an agreement, if any, under Section 225.006(c) that applies to the policy, rather than documentation that the managing underwriter has transmitted to the surplus lines agent written confirmation of the agent's written agreement to act as the agent for the placement of the policy and be responsible for all filing, reporting, collection, and payment requirements imposed by this chapter and by Chapter 225.

SECTION 6. Effective date: January 1, 2014.