

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 951  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2010, Congress passed the Dodd-Frank Act. The Dodd-Frank Act included a section called the Non-admitted and Reinsurance Reform Act (NRRA), which governs surplus lines and reinsurance. Surplus lines insurance is a type of insurance available for a unique or complex risk that an admitted carrier will not insure. In Texas, surplus lines insurance is governed under Chapter 981 (Surplus Lines Insurance) of the Texas Insurance Code. The NRRA preempts and conflicts with numerous sections in Chapter 981, creating confusion for surplus lines agents and insurers looking to Texas law for guidance.

S.B. 951 conforms Chapter 981 of the Texas Insurance Code to NRRA. Specifically, S.B. 951 clarifies that Chapter 981 applies to surplus lines insurance if the insured's home state is Texas, provides applicable definitions, exempts commercial purchasers, and states that agreements regarding uniform surplus lines insurance standards made between Texas and other states are binding.

As proposed, S.B. 951 amends current law relating to surplus lines insurance.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 10 (Section 981.105, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 11 (Section 981.060, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 981.001(c), Insurance Code, to provide that this chapter, 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, provides an orderly method for the residents of this state and nonresidents whose home state is this state for a particular transaction 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. Amends Section 981.002, Insurance Code, as follows:

Sec. 981.002. DEFINITIONS. Defines, in this chapter, "affiliate," "affiliated group," "control," "home state," and "nonadmitted insurer." Makes nonsubstantive changes.

SECTION 3. Amends Section 981.003, Insurance Code, as follows:

Sec. 981.003. APPLICABILITY OF CHAPTER. Provides that this chapter applies to surplus lines insurance if the home state of the insured is this state. Deletes existing text providing that this chapter applies to insurance of a subject that is resident, located, or to be performed in this state and that is obtained, continued or renewed through negotiations

or an application wholly or partly occurring or made within or from within this state or premiums wholly or partly remitted directly or indirectly from within this state.

SECTION 4. Amends Subchapter A, Chapter 981, Insurance Code, by adding Sections 981.0031 and 981.0032, as follows:

Sec. 981.0031. EXEMPT COMMERCIAL PURCHASER DEFINED. (a) Defines, for purposes of this chapter, "exempt commercial purchaser."

(b) Prohibits the commission, beginning January 1, 2017, by order, from more than once every five years, adjusting the amounts provided by Subsections (a)(3)(A) (relating to net worth), (B) (relating to annual revenue generated), and (D) (relating to certain nonprofit organizations or public entities) to reflect the percentage change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the five-year period immediately preceding January 1 of the year of adjustment.

Sec. 981.0032. QUALIFIED RISK MANAGEMENT DEFINED. (a) Defines, for purposes of this chapter, "qualified risk manager."

(b) Requires a qualified risk manager to have:

(1) a bachelor's or higher degree from an accredited college or university in risk management, business administration, finance, economics, or another field determined by a state insurance commissioner or other state regulatory official to demonstrate competence in risk management and:

(A) at least three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis; or

(B) purchasing of commercial lines of insurance or a designation:

(i) as a Chartered Property and Casualty Underwriter (CPCU), issued by the American Institute for CPCU/Insurance Institute of America;

(ii) as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(iii) as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education and Research;

(iv) as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(v) that is determined by the commissioner of insurance (commissioner) or the state insurance regulatory official or agency of another state to demonstrate minimum competence in risk management;

(2) at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing of commercial lines of insurance and one of the designations described by Subdivision (1)(B);

(3) at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(4) a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or another field determined by the commissioner or the state insurance regulatory official or agency of another state to demonstrate competence in risk management.

SECTION 5. Amends Section 981.004, Insurance Code, by adding Subsection (c), as follows:

(c) Provides that Subsection (a)(1) does not apply to insurance for an exempt commercial purchaser if:

(1) the agent procuring or placing the insurance discloses to the exempt commercial purchaser that comparable insurance may be available from the admitted market that is subject to more regulatory oversight than the nonadmitted market and a policy purchased in the admitted market may provide greater protection than the surplus lines insurance policy; and

(2) after receiving the notice described by Subdivision (1), the exempt commercial purchaser requests in writing that the agent procure the insurance from or place the insurance with a nonadmitted insurer.

SECTION 6. Amends Subchapter A, Chapter 981, Insurance Code, by adding Sections 981.010 and 981.011, as follows:

Sec. 981.010. FAILURE TO PAY PENALTY. Provides that a person engages in the unauthorized business of insurance if the person issues a policy of surplus lines insurance and, at the time the policy is issued, the person or the person's surplus lines agent has failed to pay a statutory penalty imposed for a violation of this code on the person or the person's surplus lines agent.

Sec. 981.011. FAILURE TO PAY PREMIUM TAX. Provides that a person engages in the unauthorized business of insurance if the person issues a policy of surplus lines insurance and, at the time the policy is issued, the person has not paid premium tax the person is obligated to pay.

SECTION 7. Amends Section 981.058, Insurance Code, as follows:

Sec. 981.058. New heading: ALIEN INSURERS. Requires an alien surplus lines insurer to be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners.

Deletes existing text requiring an alien surplus lines insurer, in addition to meeting the minimum capital and surplus requirements prescribed by Section 981.057 (Minimum Capital and Surplus Requirements), to provide evidence that the insurer maintains in the United States an irrevocable trust fund in a Federal Reserve System member bank in an amount of at least \$5.4 million for the protection of all its policyholders in the United States, and the trust fund consists of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of an insurer authorized to write similar kinds and classes of insurance in this state.

SECTION 8. Amends Sections 981.058(b) and (c), Insurance Code, as follows:

(b) Authorizes an insurer group, instead of the minimum capital and surplus requirements prescribed by Section 981.057, to maintain an irrevocable trust fund in a Federal Reserve System member bank in an amount of at least \$50 million as security to the full amount of the trust fund for all policyholders and creditors in the United States of each group member.

(c) Requires that the trust fund consist of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for

the capital and statutory reserves of an insurer authorized to write similar kinds and classes of insurance in this state. Deletes existing text requiring that the trust fund, except as provided in this section, comply with the terms specified by Section 981.058 for the trust fund required by that section.

SECTION 9. Amends Subchapter B, Chapter 981, Insurance Code, by adding Section 981.066, as follows:

Sec. 981.066. UNIFORM STANDARDS. Requires an insurer, to issue surplus lines insurance in this state, to comply with all applicable uniform standards adopted under an agreement between this state and another state.

SECTION 10. Amends Section 981.105, Insurance Code, by adding Subsections (j) and (k), as follows:

(j) Requires a surplus lines agent, if a diligent effort to obtain insurance for an exempt commercial purchaser in the admitted market was not made, to file with the stamping office, together with the information filed under Subsection (a) (relating to requiring surplus lines agent to file with the stamping office certain documents), in a form prescribed by the commissioner by rule:

- (1) proof that the surplus lines agent procuring or placing the surplus lines insurance has complied with Section 981.004(c)(1);
- (2) a copy of the exempt commercial purchaser's written request, submitted in accordance with Section 981.004(c)(2);
- (3) a written disclosure of the identity of the insured's qualified risk manager; and
- (4) an attestation by the insured that the insured has paid aggregate nationwide commercial property and casualty insurance premiums of at least \$100,000 in the immediately preceding 12 months and the purchaser is an exempt commercial purchaser as defined by Section 981.0031, and that includes a description of the criteria specified by Section 981.0031(a)(3) under which the purchaser qualifies as an exempt commercial purchaser.

(k) Requires the commissioner by rule to establish procedures and promulgate a form to be used to meet the requirements of Subsection (j). Requires that the rules include provisions that address record retention, electronic filing, and audit requirements.

SECTION 11. Repealer: Section 981.052 (Good Reputation and Prompt Service Required), Insurance Code;

Repealer: Section 981.053 (Competence, Trustworthiness, and Experience Required), Insurance Code;

Repealer: Section 981.055 (Failure to Pay Penalty), Insurance Code;

Repealer: Section 981.056 (Failure to Pay Premium Taxes), Insurance Code;

Repealer: Section 981.060 (Exemption Due to Minimum Premium Level), Insurance Code;

Repealer: Section 981.061 (Exemption Due to Certain Insurer Characteristics), Insurance Code; and

Repealer: Section 981.062 (Exemption Due to Size of Insurer and Other Factors), Insurance Code.

SECTION 12. (a) Provides that, notwithstanding Section 981.058, Insurance Code, as amended by this Act, an alien surplus lines insurer that was an eligible surplus lines insurer under Section 981.058, Insurance Code, as it existed immediately before the effective date of this Act, continues to be an eligible surplus lines insurer until January 1, 2015.

(b) Authorizes an alien insurer described by Subsection (a) of this section to apply for an extension of eligibility. Authorizes the commissioner to extend eligibility under this section until January 1, 2017, if the commissioner determines that the insurer is making a good faith effort to be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners, as required by Section 981.058, Insurance Code, as amended by this Act, and that the interests of the insurer's policyholders are otherwise adequately protected.

SECTION 13. Effective date: upon passage or September 1, 2013.