

## **BILL ANALYSIS**

C.S.H.B. 2492  
By: Frullo  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that the Texas surplus lines insurance market represents a significant portion of the property and casualty insurance market in Texas, but assert that all premium surplus lines payments are paid to non-Texas based insurers. The parties have expressed a need to allow surplus lines insurers domiciled in Texas to insure risks in Texas as certain other states have done. C.S.H.B. 2492 seeks to authorize certain insurance companies in Texas to sell surplus lines insurance in Texas and to provide for the regulation of domestic surplus lines insurers.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2492 amends the Insurance Code to authorize a property and casualty insurance company organized under statutory provisions providing general incorporation and regulatory requirements for insurance companies other than life, health, or accident insurance companies that has capital and surplus in an amount of at least \$15 million to apply to the Texas Department of Insurance in a form and manner prescribed by the commissioner of insurance for designation as a domestic surplus lines insurer. The bill requires the commissioner on approval of such an application to designate an applicant as a domestic surplus lines insurer and issue to the applicant a domestic surplus lines insurer certificate. The bill expressly does not entitle a domestic surplus lines insurer to a certificate of authority to engage in the business of insurance in Texas in the admitted market. The bill subjects a domestic surplus lines insurer to its provisions and all other insurance laws applicable to a property and casualty insurance company and, for purposes of statutory provisions relating to surplus lines insurance, classifies a domestic surplus lines insurer as an eligible surplus lines insurer. The bill sets out the statutory provisions to which a domestic surplus lines insurer is not subjected and establishes that, to the extent that the bill's provisions conflict with any other insurance law, the bill's provisions control.

C.S.H.B. 2492 limits the authority of a domestic surplus lines insurer to insure a risk in Texas to the insurance being procured as eligible surplus lines insurance and being a kind of insurance the insurer is authorized to write under the insurer's articles of incorporation. The bill prohibits a domestic surplus lines insurer from issuing a policy in the admitted market or a policy to satisfy the financial responsibility requirements of the Texas Motor Vehicle Safety Responsibility Act, insurance requirements of the Texas Workers' Compensation Act, or requirements of any other state law mandating insurance coverage by an insurance company authorized to engage in the

business of insurance in Texas. The bill makes the premium for a surplus lines policy written under the bill's provisions subject to the surplus lines insurance premium tax, if applicable, and makes a domestic surplus lines insurer subject to an applicable maintenance tax as if the insurer were an authorized insurer. The bill requires a surplus lines document issued by a domestic surplus lines insurer to include a statement in the form and manner provided by commissioner rule. The bill authorizes a foreign insurer to redomesticate to Texas as a domestic surplus lines insurer as provided by statutory provisions relating to redomestication of insurers and health maintenance organizations if the foreign insurer qualifies under the bill's provisions.

#### **EFFECTIVE DATE**

January 1, 2018.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2492 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. The heading to Subtitle I, Title 6, Insurance Code, is amended.

SECTION 2. Section 981.002(4), Insurance Code, is amended.

No equivalent provision.

No equivalent provision.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Section 981.004(a), Insurance Code, is amended to read as follows:

(a) An eligible surplus lines insurer may provide surplus lines insurance only if:

(1) the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in this state;

(2) the insurance is placed through a surplus lines agent; and

(3) the insurer meets the eligibility requirements of Subchapter B or B-1 as of the inception date and annual anniversary date of each insurance contract, cover note, or other confirmation of insurance.

SECTION 4. Section 981.006, Insurance Code, is amended to read as follows:

Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus lines agent or an eligible surplus lines insurer that violates:

(1) this chapter;

(2) Chapter 225; or

(3) a rule or order adopted under

Subchapter B or B-1 or Section 981.005.

SECTION 3. Chapter 981, Insurance Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. DOMESTIC SURPLUS LINES INSURER

Sec. 981.071. DEFINITION.

Sec. 981.072. DESIGNATION AS DOMESTIC SURPLUS LINES INSURER.

Sec. 981.073. APPLICABILITY OF OTHER LAW; CONFLICTS. (a) Except as provided by Subsection (b), a domestic surplus lines insurer is subject to:

- (1) this chapter; and
- (2) all other insurance laws, including Title 4, applicable to a property and casualty insurance company organized under Chapter 822.
- (b) A domestic surplus lines insurer is not subject to:
  - (1) Section 38.003;
  - (2) Chapter 462;
  - (3) Chapter 463;
  - (4) Section 981.051;
  - (5) Section 981.101(b);
  - (6) Chapter 2301; and
  - (7) Chapter 2251.

(c) To the extent that this subchapter conflicts with any other insurance law, this subchapter controls.

Sec. 981.074. AUTHORIZED BUSINESS.

Sec. 981.075. TAXES IMPOSED.

Sec. 981.076. REQUIREMENTS FOR DOMESTIC SURPLUS LINES DOCUMENTS.

Sec. 981.077. REDOMESTICATION.

No equivalent provision.

SECTION 5. Chapter 981, Insurance Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. DOMESTIC SURPLUS LINES INSURER

Sec. 981.071. DEFINITION.

Sec. 981.072. DESIGNATION AS DOMESTIC SURPLUS LINES INSURER.

Sec. 981.073. APPLICABILITY OF OTHER LAW; CONFLICTS. (a) Except as provided by Subsection (b), a domestic surplus lines insurer is subject to:

- (1) this chapter; and
- (2) all other insurance laws, including Title 4, applicable to a property and casualty insurance company organized under Chapter 822.
- (b) A domestic surplus lines insurer is not subject to:
  - (1) Section 38.003;
  - (2) Chapter 462;
  - (3) Chapter 463;
  - (4) Chapter 501;
  - (5) Section 981.051;
  - (6) Section 981.101(b);
  - (7) Chapter 2007;
  - (8) Chapter 2301;
  - (9) Chapter 2251; and
  - (10) Article 4413(37), Revised Statutes.

(c) To the extent that this subchapter conflicts with any other insurance law, this subchapter controls.

Sec. 981.074. AUTHORIZED BUSINESS.

Sec. 981.075. TAXES IMPOSED.

Sec. 981.076. REQUIREMENTS FOR DOMESTIC SURPLUS LINES DOCUMENTS.

Sec. 981.077. REDOMESTICATION.

SECTION 6. Section 981.210, Insurance Code, is amended to read as follows:

Sec. 981.210. PLACEMENT OF COVERAGE. A surplus lines agent may not place surplus lines coverage with an insurer unless:

- (1) the insurer meets the eligibility requirements of Subchapter B or B-1; and
- (2) the stamping office provides evidence to the department that the insurer meets those requirements.

SECTION 4. This Act takes effect January 1, 2018.

SECTION 7. Same as introduced version.