

**SUBJECT:** Changing requirements for certain purchasers of surplus lines insurance

**COMMITTEE:** Insurance — favorable, without amendment

**VOTE:** 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

**WITNESSES:** For — Lee Loftis, Independent Insurance Agents of Texas; Garrett Sprowls, Texas Surplus Lines Association; (*Registered, but did not testify*: Thomas Ratliff, American Insurance Association; Annie Spilman, National Federation of Independent Business/Texas; Sandy Hoy, Texas Apartment Association; Amanda Martin, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers; Michael White, Texas Construction Association; Kenneth Besserman, Texas Restaurant Association; Bonnie Bruce, Texas Society of Anesthesiologists; Keith Strama, Texas Surplus Lines Association; Lucas Meyers, the Travelers Companies, Inc. and Subsidiaries)

Against — None

On — (*Registered, but did not testify*: Jay Thompson, AFACT; Norma Essary, Surplus Lines Stamping Office of Texas (SLTX); Jamie Walker, Texas Department of Insurance)

**BACKGROUND:** Insurance Code, sec. 981.051 allows insurance agents unauthorized to sell insurance policies in Texas to issue surplus lines insurance if they are authorized by their home state or country to engage in the business of insurance. Under sec. 981.004, to provide surplus lines insurance, insurance agents must first perform a diligent search effort to determine that a policy in the full amount of required insurance cannot be obtained from an insurer authorized to sell policies in Texas.

Sec. 981.004(c) provides an exemption to the diligent search requirement for agents of certain large or municipal purchasers of commercial

insurance. To be exempt, commercial purchasers must meet certain requirements, which include retaining a qualified risk manager and having paid aggregate commercial property and casualty insurance of more than \$100,000 in the last year.

Exempt agents must disclose to the purchaser that comparable insurance may be available in the admitted market and that other policies may provide greater protection. Upon receipt of this notice, the purchaser must issue a written request for placement with an eligible surplus lines insurer.

**DIGEST:**

HB 1559 would exempt agents of industrial insured purchasers from the diligent search requirement needed to issue surplus lines insurance.

Purchasers of commercial insurance would qualify as industrial insureds if, at the time of policy placement, they:

- retained a qualified risk manager;
- had paid aggregate nationwide commercial property and casualty insurance of more than \$25,000 in the last year; and
- had at least 25 full-time employees.

In order to issue a policy to an industrial insured without performing a diligent search, an issuer would be required to hold at least an "A-" financial strength rating from the A.M. Best Company and meet the same disclosure requirements as exempt issuers selling to commercial insureds provided under current law.

The bill would take effect on September 1, 2017, and would apply only to a policy written or renewed on or after January 1, 2018.

**SUPPORTERS  
SAY:**

HB 1559 would allow knowledgeable purchasers to more freely access the surplus lines insurance market, increasing competition and consumer choice in selecting between commercial insurers by expanding the options immediately accessible. This would allow certain industrial purchasers to select a specialized policy to meet the needs of their commercial operation.

The bill would allow the agents of industrial insured purchasers to more efficiently do their jobs. Exempting them from the diligent search requirement frees their time and resources to better compare policies on behalf of the purchaser.

The bill also would reduce confusion about which policies industrial insureds could lawfully purchase. Currently, agents of industrial insureds must first demonstrate that the full amount of "required" insurance cannot be obtained from the state-regulated market in order to purchase insurance from the surplus lines market. The bill would exempt industrial insureds from this ambiguous requirement that unnecessarily deters competition between the state-regulated and surplus lines markets.

HB 1559 would not expose purchasers or issuers to increased risk because purchasers and agents would be required to engage in a thorough risk assessment. Several provisions of the bill ensure that placement in the surplus lines market could occur only after a sophisticated cost-benefit analysis, including the qualified risk manager requirement, disclosure and notice requirements, and financial strength rating requirement. Additionally, since guaranty fund protection covers risk only up to \$300,000 for policies in the state-regulated market, the difference in liability between policies in the two markets is limited.

**OPPONENTS  
SAY:**

HB 1559 could expose commercial insurance purchasers to undue risk by expanding access to the surplus lines market. Surplus lines insurance is not protected by guaranty funds or subject to solvency from the Texas Department of Insurance (TDI) if the insurer goes bankrupt. Surplus lines insurers are not authorized by TDI, and increasing engagement with them could damage both purchasers and the market.

**NOTES:**

A companion bill, SB 562 by Hancock, was reported favorably from the Senate Business and Commerce Committee on April 5 and recommended for the local and uncontested calendar.