

**CHAPTER 999**

H.B. No. 958

AN ACT

relating to the issuance of insurance through eligible surplus lines insurers.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 1, Article 1.14–1, Insurance Code, is amended to read as follows:

Sec. 1. PURPOSE. The purpose of this Article is to subject certain persons and insurers to the jurisdiction of the State Board of Insurance, of proceedings before the Board, and of the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The Legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers *neither* [not] authorized to do insurance business in this state *nor qualified as eligible surplus lines insurers as defined in Article 1.14-2*, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The Legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the Legislature herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading or process upon such persons or insurers in any proceeding before the State Board of Insurance to enforce or effect full compliance with the insurance and tax statutes of this state, and declares in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of P.L. 79-15 (1945), (Chapter 20, 1st Sess., S. 340), 59 Stats. 33, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

SECTION 2. Section 2(b), Article 1.14-1, Insurance Code, is amended to read as follows:

(b) The provisions of this section do not apply to:

1. The lawful transaction of surplus lines insurance *pursuant to Article 1.14-2*.
2. The lawful transaction of reinsurance by insurers.
3. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article.
5. Transactions in this state involving group life, health or accident insurance (other than credit insurance) and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business and such transactions are authorized by other statutes of this state.
6. Lawful transactions by servicing companies of the Texas workers' compensation employers' rejected risk fund pursuant to Section 4.08, Article 5.76-2.

SECTION 3. Section 8, Article 1.14-1, Insurance Code, is amended to read as follows:

Sec. 8. VALIDITY OF INSURANCE CONTRACTS. Except for [~~lawfully procured surplus lines~~] insurance *procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined in Article 1.14-2* and contracts of insurance independently procured, *as defined in Section 2(b)4 of this Article*, [~~through negotiations occurring entirely outside of this state~~] which are reported and on which premium tax is paid in accordance with this Article or Article 1.14-2, any contract of insurance effective in this state and entered into by an unauthorized insurer is unenforceable by such insurer. In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount thereof pursuant to the provisions of such insurance contract.

SECTION 4. Section 9, Article 1.14-1, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) *This section does not apply to transactions in this state involving a policy lawfully solicited, negotiated, written, and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy or surplus lines insurance procured through eligible surplus lines carriers as defined in Article 1.14-2.*

SECTION 5. Section 10, Article 1.14-1, Insurance Code, is amended to read as follows:

Sec. 10. REPORTING OF UNAUTHORIZED INSURANCE. (a) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the State Board of Insurance every insurance policy or contract which has been entered into by any insurer *unauthorized* [~~not authorized~~] to transact such insurance in this state.

(b) *This section does not apply to transactions in this state involving contracts of insurance independently procured, as defined in Section 2(b)4 of this Article or surplus lines insurance procured by a licensed surplus lines agent from an eligible surplus lines carrier as defined in Article 1.14-2 [a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy].*

SECTION 6. Section 11, Article 1.14-1, Insurance Code, is amended to read as follows:

Sec. 11. UNAUTHORIZED INSURANCE PREMIUM TAX. (a) Except as to premiums on [~~lawfully procured surplus lines~~] insurance *procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined in Article 1.14-2* and premiums on independently procured insurance on which a tax has been paid pursuant to this Article or Article 1.14-2, every unauthorized insurer shall pay to the State Board of Insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed a premium receipts tax of 4.85 percent of gross premiums charged for such insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed by this subsection is not paid within the time stated, the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premiums which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. *Premiums on risks or exposures which are properly allocated to federal waters, international waters or under the jurisdiction of a foreign government shall not be considered taxable by this state.*

SECTION 7. Section 12, Article 1.14-1, Insurance Code, is amended to read as follows:

Sec. 12. INDEPENDENTLY PROCURED INSURANCE TAX. (a) *Every insured who procures insurance in accordance with Section 2(b)4 of this Article must file a report with the State Board of Insurance and pay an independently procured insurance tax of 4.85 percent.*

(b) *A report must be filed with the State Board of Insurance within 60 days after the date the insurance was independently procured. The report must be made in writing on forms provided by the State Board of Insurance. The report must contain the name and address of the insured or insureds, the name and address of the insurer, the subject of the insurance, a*

general description of the coverage, the amount of premium charged, and any additional information which the State Board of Insurance requests.

(c) ~~The report shall be filed and any tax due shall be paid by the insured or by any other person designated by the insured. [Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state shall within 60 days after the date such insurance was so procured, continued or renewed, file a report of the same with the State Board of Insurance in writing and upon forms designated by the State Board of Insurance and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the State Board of Insurance.~~

~~(b) Any insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed within this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of Paragraph (a).~~

~~(e) There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a premium receipts tax of 3.85 percent of gross premiums charged for such insurance. The term "premium" shall include all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The insured shall, before March 1 next succeeding the calendar year in which the insurance was so procured, continued or renewed, pay the amount of the tax to the State Board of Insurance. In event of cancellation and rewriting of any such insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.]~~

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. *Premiums on risks or exposures which are properly allocated to federal waters, international waters or under the jurisdiction of a foreign government shall not be taxable.*

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the State Board of Insurance within the time stated in Paragraph (c). If the tax prescribed by this subsection is not paid within the time stated in Paragraph (c), the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(f) The Attorney General, upon request of the State Board of Insurance, shall proceed in the courts of this or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

(g) This section shall not be construed or deemed to abrogate or modify any provision of this Article. This section does not apply as to individual life or individual disability insurance.

SECTION 8. Section 1, Article 1.14-2, Insurance Code, is amended to read as follows:

Sec. 1. PURPOSE. Insurance transactions which are entered into by citizens of this state with *eligible surplus lines* [~~unauthorized~~] insurers through a surplus lines agent as a result of difficulty in obtaining coverage from licensed insurers are a matter of public interest. The Legislature declares that such transaction of surplus lines insurance is a subject of concern

and that it is necessary to provide for the regulation, taxation, supervision and control of such transactions and the practices and matters related thereto by requiring appropriate standards and reports concerning the placement of such insurance; by imposing requirements necessary to make such regulation and control reasonably complete and effective; by providing orderly access to *eligible surplus lines* insurers [~~that are not authorized to transact the business of insurance in this state~~]; by insuring the maintenance of fair and honest markets; by protecting the revenues of this state; and by protecting *licensed* [~~authorized~~] insurers, which under the laws of this state must meet strict standards as to the regulation of the business of insurance and the taxation thereof, from unfair competition by unauthorized insurers. In order to properly regulate and tax such [~~unauthorized~~] insurance *placed in accordance with this Article* within the meaning and intent of P.L. 79-15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33, the Legislature herein provides an orderly method for the [~~insuring~~] public of this state to effect insurance with *eligible surplus lines* [~~unauthorized~~] insurers through qualified, licensed and supervised surplus line agents in this state *if coverage is not available from duly licensed, regulated insurers conducting business in this state* and under reasonable and practical safeguards so that such insurance coverage may be obtained by residents of this state [~~to the extent that the coverage is not procurable from duly licensed, regulated insurers conducting business in this state~~].

SECTION 9. Section 2(b), Article 1.14-2, Insurance Code, is amended to read as follows:

(b) "Surplus lines insurer" means an *unlicensed* [~~unauthorized~~] insurer *deemed eligible pursuant to Section 8 of this Article* in which an insurance coverage is placed or may be placed under this Article.

SECTION 10. Section 3(a), Article 1.14-2, Insurance Code, is amended to read as follows:

(a) If insurance coverages of subjects resident, located or to be performed in this state cannot be procured from licensed insurers after diligent effort, such coverages, hereinafter designated as surplus line insurance, may be procured from *eligible surplus lines* [~~unauthorized~~] insurers subject to the following conditions:

1. The insurance must be eligible for surplus lines under Section 5.
2. The insurer must be an eligible surplus lines insurer under Section 8.
3. The insurance must be placed through a licensed Texas surplus lines agent resident in this state.
4. The other applicable provisions of this section must be complied with.

SECTION 11. Section 4(a), Article 1.14-2, Insurance Code, is amended to read as follows:

(a) An agent licensed by the state may not issue or cause to be issued an insurance contract with an *eligible surplus lines* [~~unauthorized~~] insurer, unless the agent possesses a current surplus lines license issued by the State Board of Insurance.

SECTION 12. Sections 6(c) and (d), Article 1.14-2, Insurance Code, are amended to read as follows:

(c) Within 60 days after the *effective date or issue date, whichever is later*, [~~effectuation~~] of any new or renewal surplus lines insurance contract, the surplus lines agent shall file with the *Surplus Lines Stamping Office of Texas* evidence that a diligent effort as defined in Section 5 of this Article has been performed and a true and correct [~~State Board of Insurance an exact~~] copy of the contract [~~policy~~] issued. If a contract [~~policy~~] has not been issued, the surplus lines agent shall so file a true and correct [~~an exact~~] copy of his certificate, cover note or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the *Surplus Lines Stamping Office of Texas* a true and correct [~~State Board of Insurance an exact~~] copy of any substitute certificate, cover note or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the *Surplus Lines Stamping Office of Texas* [~~State Board of Insurance~~] as to the substance of any change represented by such substitute certificate, cover note or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued. Except, however, as respects this Subsection (c), equivalent information may be filed as required by the Board.

(d) No surplus lines agent shall deliver any such document, or purport to insure or represent that insurance will be or has been granted by any *eligible surplus lines* [unauthorized] insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

SECTION 13. Sections 6A(a) and (c), Article 1.14-2, Insurance Code, are amended to read as follows:

(a) There is hereby created a nonprofit association to be known as the Surplus Lines Stamping Office of Texas. All surplus lines agents shall as a condition of their holding a license as a surplus lines agent in this state report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the plan of operation adopted under Subsection (d) of this section. The board may accept such filing in lieu of the filings required under *Subsection (b)* [Subsections (a) and (c)] of Section 6 of this article.

(c) The stamping office shall function through a board of directors appointed by the State Board of Insurance. The board of directors of the stamping office shall consist of 9 members, who serve terms as established in the plan of operation. Four of the members of the board of directors must represent the general public *and shall have a minimum of three years of experience in the purchase of commercial insurance*. A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;

(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.

SECTION 14. Section 7, Article 1.14-2, Insurance Code, is amended to read as follows:

Sec. 7. REQUIREMENTS FOR SURPLUS LINES CONTRACTS. (a) Every new or renewal insurance contract, certificate, cover note or other confirmation of insurance procured and delivered as a surplus line coverage pursuant to this Article shall bear the name and address of the insurance agent who procured it and shall have stamped or affixed upon it in 11-point type the following: "This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Texas insurance statutes. The State Board of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Article 21.28-C, Insurance Code. Article 1.14-2, Insurance Code, requires payment of \_\_\_\_\_ (insert appropriate tax rate) percent tax on gross premium."

(b) Such document shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

(c) *The insurer must be an eligible surplus lines insurer as of the inception date and annual anniversary date of every insurance contract, cover note, or other confirmation of insurance.*

(d) *An extension of a contract beyond its original expiration date shall be subject to Section 7(a) and Section 8 of this Article.*

SECTION 15. Section 8, Article 1.14-2, Insurance Code, is amended to read as follows:

Sec. 8. ELIGIBILITY OF SURPLUS LINES INSURERS. (a) A surplus lines agent shall not knowingly place surplus lines insurance with financially unsound insurers. The surplus lines agent shall make a reasonable effort to ascertain the financial condition of the *eligible surplus lines* [unauthorized] insurer before placing insurance therewith.

(b) No surplus lines agent shall place any coverage with an [unauthorized] insurer unless the insurer has met the eligibility requirements of this section and the stamping office

provides evidence that the insurer has met the requirements to the State Board of Insurance. An ~~unauthorized~~ insurer shall not be an eligible *surplus lines insurer* unless the insurer has a minimum capital and surplus that are not less than the following amounts for the following dates:

- (1) \$4.5 million capital and surplus as of December 31, 1991; or
- (2) \$6 million capital and surplus as of December 31, 1992.

(c) An ~~unauthorized~~ insurer may be exempt from the minimum capital and surplus requirements provided by Subsection (b) of this section if the Commissioner of Insurance finds, after public hearing, that the exemption is warranted based on factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, reinsurance contracts, company record and reputation within the industry, and other information the commissioner requires to make a determination.

(d) In addition to meeting the minimum capital and surplus requirements provided by this section, an alien insurer must provide evidence that it maintains in the United States an irrevocable trust fund in a Federal Reserve System member bank in an amount not less than \$1.5 million for the protection of all its policyholders in the United States and that 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 authorized insurers licensed to write like kinds and classes of insurance in this state.

(e) Instead of the minimum capital and surplus requirements provided by this section, an unincorporated group of alien individual insurers may maintain a trust fund in an amount not less than \$50 million as security to the full amount of the trust fund for all policyholders and creditors in the United States of each member of the group. Except as specifically otherwise provided by this subsection, the trust fund must comply with the terms and conditions provided by Subsection (d) of this section for the trust fund required by that subsection.

(f) Every insurer~~, as defined by Article 1.14-1,~~ proposing to transact surplus lines insurance within this state shall hold a current license or authority from its domiciliary state or country to conduct the business of insurance. The license or authority from the domiciliary state or country must be for the kind or class of insurance to be written in this state as surplus lines insurance, and satisfactory evidence that the insurer holds the required license or authorization must be provided to the Commissioner of Insurance.

(g) The ~~unauthorized~~ insurer must be of good repute and provide reasonably prompt service to its policyholders in the payment of just losses and claims.

(h) No ~~unauthorized~~ insurer shall be eligible if the management is incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make its proposed operation hazardous to the insurance-buying public; or if the State Board of Insurance has good reason to believe that it is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(i) No ~~unauthorized~~ insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. No ~~unauthorized~~ insurer shall be eligible if the insurer is obligated to pay and has failed to pay premium taxes *in the state* ~~[required under Section 11 of Article 1.14-1]~~. The State Board of Insurance may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

(j) No new or renewal surplus lines insurance shall be placed with any *eligible* surplus lines insurer which requires as a condition precedent to writing such new or renewal insurance that the prospective insured or the insured place other insurance not *procurable* ~~[eligible]~~ as surplus lines insurance with such *eligible* surplus lines insurer.

(k) This section shall not be deemed to cast upon the State Board of Insurance any duty or responsibility to determine the actual financial condition or claims practice of any *unlicensed insurer* or any unauthorized insurer *as defined in Article 1.14-1 of this code*.

(l) An ~~unauthorized~~ insurer is not an eligible *surplus lines insurer* unless it is authorized to write the same coverage in the jurisdiction in which the ~~unauthorized~~ insurer is licensed or certificated to do business.

SECTION 16. Section 9, Article 1.14-2, Insurance Code, is amended to read as follows:

Sec. 9. VALIDITY OF CONTRACTS. (a) Insurance contracts procured from an eligible *surplus lines insurer* ~~[as surplus line coverage from unauthorized insurers in accordance with this Article]~~ shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by licensed ~~authorized~~ insurers unless there was a material and intentional violation of this Article.

(b) ~~In the event of a material and intentional violation of this Article, the [A contract of insurance placed in effect by an unauthorized insurer in violation of this Article is unenforceable by the insurer. The]~~ insured shall not be precluded from enforcing his rights in accordance with the terms and provisions of such contract.

SECTION 17. Section 12(a), Article 1.14-2, Insurance Code, is amended to read as follows:

(a) The premiums charged for surplus lines insurance are subject to a premium receipts tax of 4.85 percent of gross premiums charged for such insurance. The term premium includes all premiums, membership fees, assessments, dues or any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb such tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of such tax or his commission. The surplus lines agent shall report, under oath, to the State Board of Insurance within 30 days from the 1st day of January and July of each year the amount of gross premiums paid for such insurance placed through him in nonlicensed insurers, and shall pay to the Board the tax provided for by this Article. If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as ~~[taxable]~~ premiums which may be subject to taxation by ~~[of]~~ any other state or states or by a foreign jurisdiction. Premiums on risks or exposures which are properly allocated to federal waters, international waters or under the jurisdiction of a foreign government shall not be taxable by this state. In event of cancellation and rewriting of any surplus lines insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

SECTION 18. Section 16, Article 1.14-2, Insurance Code, is amended to read as follows:

Sec. 16. ANNUAL REPORT OF SURPLUS LINES AGENT. Each surplus lines agent shall, before March 1 in each year, make a report to the *Texas Department* ~~[State Board]~~ of Insurance for the preceding calendar year, on the form prescribed by it, of such facts as it requires and including a showing that the amount of insurance procured from such eligible *surplus lines* ~~unauthorized~~ insurer or insurers is only the amount in excess of the amount procurable from licensed insurers.

SECTION 19. Section 17, Article 1.14-2, Insurance Code, is amended to read as follows:

Sec. 17. PENALTY. Any violation of this Article shall subject the surplus lines agent or eligible *surplus lines insurer* to all of the provisions and sanctions contained in Section 7, Article 1.10, of this Code.

SECTION 20. Section 17A(a), Article 1.14-2, Insurance Code, is amended to read as follows:

(a) If a surplus lines agent or eligible *surplus lines insurer* violates Section 8 or 9 of this article or a rule, regulation, or order adopted under that provision, the State Board of



Insurance may assess a penalty against that agent or insurer as provided by Section 7, Article 1.10, of this code.

SECTION 21. Section 7(c), Article 1.36, Insurance Code, is amended to read as follows:

(c) In addition to service under Section 3 of this article and Subsection (a) of this section, service of process, notice, or demand on an unauthorized person or insurer is valid if served on any person in this state who on behalf of that unauthorized person or insurer is doing any act of an insurance business as provided by Section 2 of Article 1.14-1 of this code. *This section does not apply to surplus lines insurers which were deemed eligible surplus lines insurers pursuant to Article 1.14-2 of this code at the date the applicable coverage was issued.*

SECTION 22. Section 8(b), Article 1.36, Insurance Code, is amended to read as follows:

(b) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by any unauthorized person or insurer is equivalent to and constitutes an irrevocable appointment of the secretary of state by that person or insurer, binding on him, his executor, administrator, or personal representative or, if a corporation, successor in interest to be the lawful attorney for service of that person or insurer. The secretary of state may be served legal notice, order, pleading, or other process in any proceeding described by Subsection (a) of this section that arises out of doing an insurance business in this state by that person or insurer. *This section does not apply to surplus lines insurers which were deemed eligible surplus lines insurers pursuant to Article 1.14-2 of this code at the date applicable coverage was issued.*

SECTION 23. Section 11, Article 1.36, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) *This section does not apply to surplus lines insurers which were deemed eligible surplus lines insurers pursuant to Article 1.14-2 of this code at the date applicable coverage was issued.*

SECTION 24. Section 12, Article 1.36, Insurance Code, is amended to read as follows:

Sec. 12. SERVICE OF PROCESS ON *ELIGIBLE* SURPLUS LINES INSURERS. (a) ~~[A surplus lines insurer may be sued on any cause of action arising in this state under any surplus lines insurance contract issued by it or under any certificate, cover note, or other confirmation of that insurance issued by the surplus lines agent, under the same procedure provided for unauthorized insurers in Sections 3, 7, and 8 of this article.]~~ *Any act of doing an insurance business by an eligible surplus lines insurance company constitutes an irrevocable appointment of the Secretary of State by that insurer binding on it and its successors in interest to be the lawful attorney for service of that insurer. The Secretary of State may be served with any process, notice, or demand arising out of doing an insurance business in this state by that insurer, except in an action, suit, or proceeding by the State Board of Insurance or by the state.*

(b) *Any act of doing an insurance business by an eligible surplus lines insurance company signifies the insurer's agreement that legal process served under this section has the same legal force and validity as personal service of process in this state on that insurer or its successor in interest.*

(c) [(b)] Any policy issued by the surplus lines insurer or any certificate of insurance issued by the surplus lines agent must contain a provision stating the substance of this section and designating the Person to whom the commissioner is to mail process. This address must be supplied by the plaintiff in the citation that is served.

(d) [(e)] Each surplus lines insurer assuming a surplus lines risk under this article is considered to have made itself subject to the terms of this section.

(e) [(d)] This section is cumulative of any other methods that may be provided by law for service of process on a surplus lines insurer, including Section 3 of this article.

SECTION 25. This Act takes effect on September 1, 1993.

SECTION 26. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 14, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 958 on May 27, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.