

CHAPTER 184

S.B. No. 526

AN ACT

relating to the regulation of surplus lines insurance.

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

SECTION 1. Section 4, Article 1.14-2, Insurance Code, as amended, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) The board shall deposit ~~all [license fees and renewal]~~ fees in the State Treasury to the credit of the State Board of Insurance operating fund. Such fees are not refundable *except as provided by Subsection (h) of this section.*

(h) *Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided by Article 21.01-1, Insurance Code, each person required to be examined shall pay a fee before being examined at the time and place for the examination. The State Board of Insurance shall determine the amount of the fee, but the fee may not be more than \$20. A new fee must be paid before each examination. A fee paid under this subsection may not be refunded unless the applicant:*

(1) gives notice to the State Board of Insurance not later than 24 hours before the time for the beginning of the examination that the applicant will not take the examination;

- (2) *does not appear to take the examination; and*
- (3) *receives the approval of the State Board of Insurance.*

SECTION 2. Section 8, Article 1.14-2, Insurance Code, as amended, 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 unauthorized insurer before placing insurance therewith.

(b) *No surplus lines agent shall place any coverage with an unauthorized insurer unless the insurer is eligible and satisfactory evidence of eligibility of the insurer is provided to the State Board of Insurance. An unauthorized insurer shall not be eligible unless the insurer has a minimum capital and surplus that are not less than the following amounts for the following dates:*

- (1) *\$2.5 million capital and surplus as of December 31, 1987;*
- (2) *\$3.5 million capital and surplus as of December 31, 1989;*
- (3) *\$4.5 million capital and surplus as of December 31, 1991; or*
- (4) *\$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 [it has capital and surplus or its equivalent that is adequate in relation to its premium writings and the exposure it assumes].*

(g) [(b)] *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) [(e)] *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) [(d)] 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 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) [(e)] No new or renewal surplus lines insurance shall be placed with any 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 eligible as surplus lines insurance with such surplus lines insurer.

(k) [(f)] 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 unauthorized insurer.

SECTION 3. Section 14, Article 1.14-2, Insurance Code, as amended, is amended to read as follows:

Sec. 14. SURPLUS LINES AGENTS' AUTHORITY; COMMISSIONS. *A surplus lines agent may originate surplus lines insurance or accept surplus lines insurance from another agent who is licensed to handle the kind of insurance being accepted. A surplus lines agent may share commissions with agents from whom he accepts surplus lines insurance* [~~Agents licensed in accordance with this Article may not pay the whole or any part of the commission on surplus lines insurance to any person, except that such commissions may be shared or divided with any other licensed agent.~~]

SECTION 4. Section 17, Article 1.14-2, Insurance Code, as amended, is amended to read as follows:

Sec. 17. PENALTY. Any violation of this *Article* [~~section~~] shall subject the *surplus lines agent to all of the provisions and sanctions contained in Section 7, Article 1.10, of this Code* [~~suspension of his agent's license for a period of not less than 90 days and a fine of not more than \$500.~~]

SECTION 5. Article 21.11, Insurance Code, as amended, is amended to read as follows:

Art. 21.11. COMMISSIONS TO NON-RESIDENTS; CANCELLATION OF NON-RESIDENT AGENT'S LICENSE; NON-RESIDENT AGENT NOT TO ACT AS SURPLUS LINES AGENT. Any person, agent, firm, or corporation licensed by the Board to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the State of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons in this State, to any person, persons, agent, firm or corporation that is a non-resident of this State, or to any person or persons, agent, firm or corporation not duly licensed by the Board as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent; excepting however, that on any policy of insurance originated by a Licensed Non-Resident Insurance Agent, as hereinafter defined, and covering property or persons in this State, a Texas local Recording Agent may divide the commission with the originating Licensed Non-Resident Insurance Agent, but in any such case the insurance company or carrier shall pay to the Texas Local Recording Agent through which such policy is issued, signed or countersigned, his minimum share, which shall be a sum not less than the amount of commission or brokerage required to be paid by the laws or regulations of the State of such originating Non-Resident Agent when a similar policy of insurance is originated by a Texas Local Recording Agent covering persons or property in such other State.

Nothing herein shall prevent a Texas Local Recording Agent from dividing with, or paying commissions to, another Texas local Recording Agent. Nothing herein shall

relieve any insurance company or carrier covered thereby from writing Texas risks through Texas agents as provided in Article 21.09, Insurance Code.

A Licensed Non-Resident Insurance Agent is any person, firm or corporation residing or domiciled in another State and having a Non-Resident Insurance Agent's license as is hereinafter authorized.

Upon application, in such form as the Board of Insurance Commissioners may require, a non-resident of this State who is duly licensed to transact insurance other than life under the laws of the State wherein such applicant resides, if such State does not prohibit residents of this State from acting as insurance agent therein, the Board of Insurance Commissioners may issue to such applicant a Non-Resident Agent's license.

The issuance of a Non-Resident Agent's license shall be for the purpose of permitting a Local Recording Agent of Texas to divide commission with an agent of another State on insurance covering property or persons in this State placed with or through a Local Recording Agent, and to permit an agent of another State, who qualifies and is licensed as a Non-Resident Agent, to inspect and service such risks in Texas, which license shall be subject to the same fees, qualifications, requirements and restrictions as apply to Local Recording Agents of this State, except that an office shall not be maintained in this State by a Non-Resident Agent and all such insurance transacted shall be through licensed Local Recording Agents as provided in Article 21.09 of the Texas Insurance Code; and provided further that a Non-Resident Agent shall transact all matters with the Board of Insurance Commissioners relating to rates and rate engineering and terminology of standard policy forms through Local Recording Agents, and nothing contained herein shall be construed as granting authority to a Non-Resident Agent to transact such matters directly with the Board of Insurance Commissioners; and, except that the Board of Insurance Commissioners, at its discretion, on payment by applicant of the examination fee, may enter into a reciprocal arrangement with the officer having jurisdiction of insurance business in any other State to accept in lieu of the written examination of such an applicant residing therein, a certificate of such officer to the effect that the applicant is licensed as an insurance agent in such State and has complied with its qualification standards in respect to the following:

- (a) Experience or training;
- (b) Reasonable familiarity with the broad principles of insurance, licensing and regulatory laws, and with provisions, terms, and conditions of the insurance which applicant proposes to transact; and
- (c) A fair and general understanding of the obligations and duties of an insurance agent.

Nothing contained herein shall be construed to permit any person or firm who is licensed solely as a broker in the State of his residence to be granted a Non-Resident license as referred to herein; provided further that nothing contained herein shall be construed to permit a holder of a Non-Resident Agent's license to act as a *Surplus Lines* [~~an Excess~~] Agent under the provisions of *Article 1.14-2* [~~present Article 21.38~~] of the Insurance Code or to perform any of the acts permitted thereunder or to permit any person or firm who holds a Non-Resident Agent's license as authorized herein to engage in any form of direct solicitation of insurance within this State. A Non-Resident Agent's license shall be cancelled and not be subject to reissuance when it is found by the Board of Insurance Commissioners that such license was obtained or is being used for the purpose of transacting insurance through a Local Recording Agent in such a manner as to permit a Non-Resident Agent, by subterfuge, to transact insurance as a Local Recording Agent, and in which event the license of the Local Recording Agent likewise shall be cancelled and not be subject to reissuance and all insurance transacted under such arrangement shall be cancelled, provided further that the provisions of Sections 16 and 17, Article 21.14 of the Insurance Code shall apply to such cancellation.

SECTION 6. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 31, 1987, by the following vote: Yeas 31, Nays 0. Passed the House on May 14, 1987, by the following votes on a division of the question: Section 1 passed by the following vote: Yeas 143, Nays 0, two present not voting; the remainder of the bill passed by the following vote: Yeas 142, Nays 0, three present not voting.

Approved May 26, 1987.

Effective May 26, 1987.