



Lone Star Lines

The Quarterly Publication of the Surplus Lines Stamping Office of Texas

Legislation Update Related to Texas Surplus Lines or the Stamping Office

77th Texas Legislature - 2001

The following comments were written by Alex Gonzales, Winstead Sechrest & Minick, representing the Surplus Lines Stamping Office of Texas as General Counsel.

The 77th Texas Legislative Session was a relatively quiet one with regard to insurance issues. The greatest activity in insurance legislation this session related to health insurance, including several bills aimed at availability and affordability of small employer group health plans.

Other insurance related topics in which legislation was passed this session include restructuring of workers' compensation claims procedures; protection of consumer privacy; approval of insurance company acquisitions; setting of windstorm insurance pool rates; approval of benchmark rates by rule; loss control requirements; and rating criteria for personal auto insurance. Space is limited in this publication, but more detailed information is available in an expanded article available from the author of this article.

As in other sessions, a few bills that are currently viewed as having

minimal or selective impact may end up affecting many more interests in the long run. Only time will tell. Some insurance bills, including **HB 1862** (prompt pay, clean claims) and **SB 1654** (limiting the use of practice guidelines for insurance defense counsel), which could have had a major impact were among the 82 bills vetoed by the Governor.

By our count, only two bills with provisions that directly relate to surplus lines were passed.

First, **SB 414** revamps Texas' insurance agent licensing statutes to comply with the federal Gramm-Leach-Bliley Act. In general, non-residents will be permitted to secure Texas insurance agent licenses, including surplus lines licenses.

Only one officer, shareholder or director of a corporation will be required to be licensed as a Texas agent in order for the agency to be licensed in Texas.

However, all individuals performing the acts of

an agent, as defined in the Insurance Code, will be required to be individually licensed. This latter provision preempts a long standing surplus lines industry custom in which the surplus lines agent's staff or local recording agents performed certain administrative functions in placing surplus lines insurance. The new



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Change continues fast and furious in the Texas surplus lines market. Through June, SL premium reported to the Stamping Office was up 26% over the same period last year. Also, average premium per policy is up more than 19% for the year, signifying an apparent turn in market pricing.

Stamping offices across the country report similar statistics.

Last December, TDI adopted the most sweeping revisions to SL regulations in years. The Comptroller adopted a broad new SL premium tax rule in March. The Texas Legislature just passed a major agent licensing reform bill (SB 414), effective September 1. Among its numerous provisions are the removal of residency requirements for corporate agency owners (serving to eliminate the goodwill value of a grandfathered MGA license) and the licensing of nonresident surplus lines agents. Agents and insurers must comply with the privacy requirements under the federal Gramm-Leach-Bliley Act. The NAIC continues its efforts to modernize state insurance regulation of market conduct, company and agent licensing, rate and form approval, and electronic commerce. The Stamping Office continues its computer systems modernization project (see Elaine White's update on page 3), to be followed by development of an electronic policy data filing system.

To help you keep up with all this, I encourage you to attend one of our seminars in September. Speakers include Betty Patterson, Senior Associate Commissioner over TDI's Financial Program; Matt Ray, Deputy Commissioner over Agent Licensing; Kathy Wilcox, TDI authority on surplus lines; and Gary Johnson and Karen Snyder of the Comptroller's Insurance Tax Policy section. Seminars are free, approved for 3 hours of continuing education credit from TDI and the TSBPA, and oriented this year more to higher-level agency staff. Take this opportunity to ask questions of policymakers from TDI and the Comptroller. I hope to see you there.

Phil Ballinger, CPCU, ASLI
General Manager

Legislation continued...

statute, as interpreted by TDI staff, is fairly clear in requiring such individuals to be licensed. **SB 414** is effective on September 1, 2001.

Another bill with provisions directly related to surplus lines is **HB 2811**, a non-substantive revision of certain sections of the Insurance Code, including Article 1.14-2. Last session's efforts in recodifying other Insurance Code sections, including the former Article 1.14-1, resulted in some unintended substantive changes. The Legislature made **HB 2811** effective in 2003, allowing for two years to work out the kinks in the legislation.

In addition to the two bills outlined above, the Legislature passed a handful of bills that indirectly affect surplus lines insurance in Texas.

HB 548 amends the Insurance Code to provide that the business of insurance includes the activities of a surety company. The bill also establishes the duties and time limits for a commercial surety in settling claims. Only a relatively small percentage of surety bonds written in Texas are written in surplus lines. The Commissioner of Insurance is delegated rulemaking authority pursuant to **HB 548**.

HB 1408 requires all insurance companies, including surplus lines insurers, to promptly reimburse to the insured all unearned premium "reserves." The statute is not clear concerning the process for surplus lines insurers and agents to comply with this statute. For

instance, a surplus lines agent may hold unearned premiums due an insured, but the insured may place a demand to the insurer directly. This bill does not address such a situation. The Commissioner is authorized to promulgate rules in connection with this bill.

HB 2830 provides that unlicensed insurance activities within Texas affecting non-residents is considered unauthorized insurance unless otherwise exempted. For instance, an unlicensed person or company located in Texas that transacts business with non-residents only and not with Texas residents will be in violation of this new law.

SB 1690 amends the Insurance Code to exempt an insurance organization, other than a surplus lines insurer, that is authorized to do insurance business in this state from paying a tax levied in proportion to the gross premium receipts levied by this state or any county or municipality. The bill also exempts title insurance companies and title insurance agents from paying any additional premium tax in proportion to their gross premium receipts levied by this state or any county or municipality. **H**

[Editor's Note: For an expanded electronic version of this article, complete with links to the legislation, please send an e-mail request to Mr. Gonzales at agonzales@winstead.com]

Agent Licensing

Texas became the first "large state" to adopt interstate reciprocal agent licensing standards as required by the Gramm-Leach-Bliley Act with the signing June 13th of SB 414 by Governor Perry. Among many important provisions, the bill:

- Requires that at least one officer or partner of an agency be individually licensed (instead of all officers or partners), in addition to all others acting as agents. Residency

Changes Effective September 1, 2001

requirements are eliminated.

- Authorizes issuance of a nonresident surplus lines license.
- Authorizes licensing of nonresident partnership and corporate agencies.
- Permits direct solicitation by nonresident agents.
- Consolidates LRA and solicitors licenses into a General Property & Casualty license.
- Increases mandatory limits for agent's E&O insurance to \$250,000. **H**

Texas Surplus Lines Regulation / Tax Seminars

**Texas
Surplus
Lines**

*Insurance
Regulation*



**SEMINAR
2001**

Sponsored by the
Surplus Lines Stamping Office of Texas

The Surplus Lines Stamping Office of Texas will host three seminars in September, featuring speakers from the SLSOT, Texas Department of Insurance, and the Comptroller of Public Accounts. The presentations, which will focus on legislative and regulatory issues, are directed to principals and other key agency staff. A brochure was distributed to Texas surplus lines agents and companies in June. Details and registration information can be found on our web site at www.slsot.org.

Topics Include:

- New Surplus Lines Regulations
- New Premium Tax Regulations
- Review of 77th Texas Legislature
- NAIC Actions from Gramm-Leach-Bliley
- Agent Licensing/Non-Resident SL Licenses
- Reporting of Premium of Multi-State Exposures
- Comptroller Audits of Surplus Lines Agents
- E-Filing With the Stamping Office
- Privacy Notice Requirements
- Dow Chemical Co. v. Rylander

Register on-line at
www.slsot.org

San Antonio - San Antonio Convention Center
September 4, 2001 - 1:30 p.m. - 5:00 p.m.

Arlington - Arlington Convention Center
September 7, 2001 - 8:30 a.m. - 12:00 p.m.

Houston - Westin Galleria
September 18, 2001 - 8:30 a.m. - 12:00 p.m.

Helpful Hints

-- Be sure the policy number on endorsements is exactly the same as the number shown on the original policy.

-- If an endorsement has return premium, be sure the amount shown on the Transmittal and Verification Slip also reflects the credit. **H**

SLSOT Computer Software Development Update

by Elaine White, ASLI, Director of Data Services

For over a year, the Stamping Office has been working on a complete redesign of our computer software. We're now in the testing stage and very enthusiastic about the changes we are going to implement. We have a target date of October 2001 for converting to the new system.

One we have gone "live" with the new system, we will be working to design the electronic filing capabilities so many of us are waiting for. We appreciate the input we are receiving from a committee of agents, which will assist us in the development of this phase of the project. **H**

Commissioner's Bulletin Clarifies Privacy Notice Deadline

A June 26th Commissioner's Bulletin indicates TDI will adopt emergency rules by July 13, 2001 to guide insurers and agents in complying with the privacy provisions of the federal Gramm-Leach-Bliley Act and also SB 712 (passed during the 77th Texas Legislature). GLB mandates that insurers and agents establish written policies for the protection of nonpublic personal information, provide a notice to customers regarding the disclosure of such information, and give customers the right to

prohibit the sharing of information with unaffiliated third parties ("opting out"). Note that these requirements only apply to information obtained for personal lines coverages (personal, family, and household purposes). Information obtained for commercial lines coverages is not subject to the privacy provisions. The bulletin states "affected entities" will not need to provide any required privacy notices until sixty days after the effective date of the rules, which TDI intends to be based upon the NAIC's model privacy regulation. **H**

For a copy of the bulletin, visit www.slsot.org/hotnews.htm

Odds & Ends

The Texas supreme Court has declined to hear the state's appeal in *Dow v. Rylander*. In January, the Texas Third Court of Appeals ruled that the Texas independently procured insurance tax was invalid. The Comptroller & AG are deciding whether to appeal to the US Supreme Court. **H** Congratulations to Texas Commissioner of Insurance Jose Montemayor, reappointed by Gov. Perry earlier this year, then unanimously confirmed by the Texas Senate during the recently-concluded 77th Legislature, to serve another 2-year term. **H** The NAIC is updating its MGA Model Act this year. The act defines an MGA in part as an agent writing GWP equal to at least 5% of an insurer's capital & surplus. Many Texas agents holding an MGA license wouldn't meet that definition. **H** With the passage of SB 414, Texas joins the ranks of states with reciprocal/uniform agent licensing laws required by Gramm-Leach-Bliley. At last count, 35 states already have or are on the verge of passing such laws. **H** Through June, TDI has removed ten insurers from the Surplus Lines Insurers List this year. Six of these were non-US carriers.



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Comparison of SLSOT Premium Processed by Line of Business

Annual Statement Line of Business	Premium through 6/01	Premium through 6/00	Percent Change
1 Fire (incl. allied lines)	\$160,819,251	\$112,888,059	42.5%
2 Allied lines	\$4,932,385	\$4,749,802	3.8%
3 Farmowners multiple peril	\$876,770	\$913,888	-4.1%
4 Homeowners multiple peril	\$19,421,417	\$20,321,570	-4.4%
5 Commercial multiple peril	\$8,783,187	\$13,932,608	-37.0%
6 Mortgage guaranty	\$0	\$0	
8 Ocean marine	\$2,522,905	\$4,565,602	-44.7%
9 Inland marine	\$17,051,190	\$12,492,867	36.5%
10 Financial guaranty	\$0	\$0	
11 Medical malpractice	\$13,489,391	\$7,983,273	69.0%
12 Earthquake	\$53,205	\$0	
13 Group accident & health	\$40,093,029	\$28,578,607	40.3%
14 Credit A&H (group & indiv)	\$0	\$0	
15 All other A&H	\$17,350	\$16,762	3.5%
16 Workers' compensation	\$0	\$0	
17 Other liability	\$300,858,623	\$247,010,964	21.8%
18 Products liability	\$9,888,029	\$8,890,309	11.2%
19.1 Priv pass auto no fault	\$0	\$0	
19.2 Other priv pass auto lia	\$73,807	\$37,196	98.4%
19.3 Comm. auto no fault PIP	\$0	\$0	
19.4 Other comm. auto liab	\$19,617,690	\$16,078,433	22.0%
21.1 Priv pass auto physical	\$479,825	\$479,536	0.1%
21.2 Comm auto phys.damage	\$26,810,913	\$21,846,493	22.7%
22 Aircraft (all perils)	\$939,674	\$1,012,884	-7.2%
23 Fidelity	\$573,990	\$227,602	152.2%
24 Surety	\$33,964	\$109,443	-69.0%
26 Burglary & theft	\$1,390,500	\$946,461	46.9%
27 Boiler & machinery	\$11,047	\$108,257	-89.8%
28 Credit	\$29,464,439	\$18,454,736	59.7%
31 Aggregate/other business	\$89,725	\$57,366	56.4%
TOTAL	\$658,292,306	\$521,702,718	26.2%

Note: Due to rounding figures may not total

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The "Lone Star Lines" is published quarterly by the Surplus Lines Stamping Office of Texas for surplus lines agents, companies, and others involved in surplus lines business.

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We invite readers to suggest topics for articles that may be of interest to others. Any submissions or inquiries should be sent to the following address:

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You can locate a text copy of this and previous issues of this newsletter on our web site at:
<http://www.slsot.org/slsotpub.htm>

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