



# Lone Star Lines

The Quarterly Publication of the Surplus Lines Stamping Office of Texas

## 77th Texas Legislature **Update**

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Legislators have filed several bills during the 77th Texas legislative session that may affect the surplus lines industry, if passed. The bill numbers (at press time) appear below, along with a brief description.

**SB 414 by Madla**  
(Companion Bill - HB 1163 by Eiland)

This is a major reform of Texas agent licensing laws, to comply with licensing uniformity/reciprocity requirements of the federal Gramm-Leach-Bliley Act (GLBA) of 1999. Among many changes, the bill reduces the number of license types, revises continuing education requirements, and grants the Commissioner of Insurance broad rule-making authority when needed to ensure Texas law conforms to GLBA.

A major revision for surplus lines insurance is the licensing of non-resident agents. Also, the bill provides that a surplus lines license will be issued to a corporation, limited liability company, or partnership if at least one officer, director, or active partner has passed the surplus lines exam; if the agency currently holds a general P&C or MGA license; if the agency provides proof of financial responsibility; and if the agency conducts surplus lines insurance activities only through individuals holding a surplus lines license. This latter provision is a significant departure from current practice, as it would require substantial increases in the number of individuals with a SL license in most agencies. The effective date of the bill is September 1, 2001.

**SB 1004 by Sibley**

Broadens the definition of "business of insurance" under Section 101.051 to

include any insurance activity, regardless of the residency of the insured or location of the risk. Current law limits regulatory jurisdiction to transactions involving Texas residents and Texas risks. The bill also explicitly authorizes the Commissioner of Insurance to request the Travis County district attorney to proceed with criminal prosecution against persons or entities engaged in unauthorized insurance, in addition to other actions available to him. An adjuster investigating a loss involving a policy issued by an unauthorized insurer must report this fact to TDI, regardless of whether the policy covers a Texas resident or location.

**HB 188 by Burnham**

Permits a third party plaintiff to name the defendant's liability insurer as a party in a lawsuit. This would allow the plaintiff to directly sue the defendant's insurer, conceivably resulting in the insurer being liable for damages in excess of any policy limits under the insured's coverage.

**HB 1000 by Naishtat**

Authorizes for-profit nursing homes to purchase liability insurance from the Texas Medical Liability Insurance Underwriting Association, commonly referred to as the Joint Underwriting Association (JUA). Currently, the surplus lines market is the sole source of this coverage.

**HB 1036 by Thompson**

Requires disclosure of certain information to a third party claimant, through a "disclosure document". The document must inform the claimant

that the insurer does not represent the claimant; the interests of the insurer or insured may conflict with those of the claimant; the claimant is not required to accept a settlement offer by the insurer; and the claimant has the right to consult with an attorney or seek other assistance at any time to evaluate the fairness of any request for information or settlement offer from the insurer. The required language of the disclosure document would be drafted by the Office of Public Insurance Counsel and then adopted by the Commissioner of Insurance. The bill applies to surplus lines insurers.

### HB 1383 by Dunnam

Would add Article 21.56B to the Texas Insurance Code. The bill requires the Commissioner, in consultation with the State Bar, to adopt rules to ensure the independence of counsel provided to an insured under a liability policy. These rules must specify circumstances when the insurer cannot provide to the insured the services of an attorney employed by or under contract to the insurer. The bill applies to any insurer issuing a liability policy in Texas, including a surplus lines insurer.

### HB 1408 by Junnell

Would add Article 21.29 to the Texas Insurance Code, which requires an insurer to promptly refund any unearned premium for a policy. The Commissioner is charged with adopting rules necessary for implementation. The bill applies to surplus lines insurers.

### HB 1703 by Smithee

Would permit a nonadmitted captive insurer to operate in Texas, provided the captive insures only the risks, including D&O exposures, of its parent and affiliates. The bill carves out the activities of a nonadmitted captive from the definition of "business of insurance" under Section 101.051, in effect creating a broad captive insurer exemption provision in the Insurance Code. At present, the law exempts only "management or accounting activity" on behalf of a nonadmitted captive. HB 1703 permits any activity by or on the sole behalf of the captive.

### HB 2555 by Eiland

The Financial Information Privacy Protection Act is added as Chapter 28A to Title 1 of the Texas Insurance Code. Requirements in the bill conform to provisions under the

federal Gramm-Leach-Bliley Act prohibiting the release of certain non-public personal information held by financial institutions. The bill requires a "licensee" (generally, insurer) to provide a "clear and conspicuous" notice to "consumers" (generally, applicants) and "customers" (generally, policyholders) regarding the licensee's policies on release of private information. An initial privacy notice, annual notice, and revised privacy notice are required. Privacy notices are not applicable to commercial lines policies. Consumers may direct that a licensee not disclose personal financial information about that consumer to a nonaffiliated third party ("opt out").

Surplus lines agents (styled "excess line brokers" in the bill) and surplus lines insurers are considered to be in compliance with the act if they do not disclose private information to a nonaffiliated third party for any purpose (except as permitted by law), if a single privacy notice is given to the customer when the policy is delivered. The bill specifies the required wording and size of the privacy notice.

### HB 3079 by Smithee

While relating primarily to tax issues of interest to admitted insurers (e.g., credit for examination expenses), this bill also expands liability for payment of unauthorized insurance taxes to include the agent of an unauthorized insurer.

### HB 3477 by Eiland

Provides that Travis County may be the venue for any allegation of a violation of the Insurance Code or another insurance law of Texas.

Two significant tax "events" transpired over the past weeks. First, in late January the Third District Texas Court of Appeals issued its opinion in *Dow Chemical Co. v. Rylander*, effectively holding Texas' independently procured tax statute invalid. Refer to the discussion on page 3 for more on this important decision. Secondly, after several years of debate and drafting, the Comptroller adopted its long-expected update to the regulation on surplus lines premium taxes, as 34 TAC 3.822. It covers many important surplus lines tax issues (in some



instances codifying what was heretofore regulatory interpretation of law), including definition of exempt premiums, clarification of the surplus lines "agent of record", allocation and reporting of premium on policies covering multi-state exposures, election and reporting of an agent's tax basis, required prepayment of taxes, credit for tax on bad debts, tax on financed transactions, and tax "rebating". The effective date of the regulation was March 20th. A copy of the new rule was included in the April Stamping Office bulletin and is also available for review at the Stamping Office web site ([www.slsot.org](http://www.slsot.org)) under "Hot News".

*Phil Ballinger, CPCU, ASLI  
General Manager*

*Note: You can learn more about these bills, see status updates on each, and read the bill text in their entirety by clicking on the "Legislation" button located on the Stamping Office web site at [www.slsot.org](http://www.slsot.org). H*

## Board of Director News

Commissioner Jose Montemayor has appointed George Adkins, John L. Wortham & Son, Houston; Jimmy E. Garcia, City Public Service, San Antonio; and Nathan E. Holt, GAINSCO Companies, Ft. Worth to serve three-year terms as members of the Stamping Office Board of Directors. Congratulations to these new members.

At the Annual Meeting of the SLSOT Board of Directors, the following were elected as officers: Chairman, Donald E. Meyer, Texas General Agency; Vice-Chair, Susan B. Bulla, City of Ft. Worth; Secretary, W. Stephen Conner, Crump Insurance Services of Texas, Inc. H

### n Helpful Hint

When submitting multiple batches within the same box, be sure each Transmittal and Verification Slip is affixed to the items listed and that each batch is bundled separately from the others. H

## 2001 Surplus Lines Regulation / Tax Seminars

The following is a list of dates and locations of the 2001 SLSOT seminars. These seminars will feature speakers from the SLSOT, Texas Department of Insurance, and the Comptroller of Public Accounts. As the 77th Texas Legislature is currently in session, the seminars will focus on legislative and regulatory issues pertaining to the surplus lines industry. A bulletin will be distributed to Texas surplus lines agents and companies several months before the seminars that will include the seminar agenda as well as registration information. You can find information and on-line registration on our web site at [www.slsot.org](http://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.

## Court Topples Texas Independently Procured Insurance Tax

On January 25th the Third District Court of Appeals ruled in *Dow Chemical Co. v. Rylander* that Texas' independently procured (IP) insurance tax law was invalid. In the clearest affirmation of the 1962 US Supreme Court *Todd Shipyards* decision in recent memory, the opinion stated "this Court is bound by *Todd Shipyards* unless and until the Supreme Court overrules it". *Todd Shipyards* held that the Texas IP tax violated the federal McCarran-Ferguson Act. In March, Texas appealed the *Dow* decision to the Texas Supreme Court.

If *Dow* is upheld, the implications are significant. Although having no immediate direct legal application outside Texas, the decision already serves as an emphatic reminder that *Todd Shipyards* is the reigning law of the land. Under what authority, therefore, can other states claim to collect their own IP taxes? *Dow* also conflicts with NAPSLO's recommended solution to the payment of taxes on policies covering multi-state exposures. Under this plan, surplus lines taxes would be due in the primary state (e.g., where the agent holds a surplus lines license), with taxes

allocated to other states paid on an independently procured basis. If IP taxes are invalid, how are taxes on the "other states" exposures to be paid? (A possible solution here is the "single situs" approach, with all taxes paid to the primary state, regardless of location of insured exposures.) Competitively, *Dow* could drive business away from Texas surplus lines agents by encouraging insureds to go directly to unlicensed insurers, thus avoiding payment of taxes. Finally, the State of Texas stands to lose revenue. In 1999, Texas collected nearly \$7 million in IP taxes. H

### Who's New?

We welcome Angelica Perez and Janet Bunner to our staff. Ms. Perez is a Data Entry Clerk in the Data Entry Department. Ms. Bunner joins us as Records Prep Clerk in the



Bunner



Perez

Document Processing Department.

### Staff Changes

We also congratulate the following staff on their new positions: Stephanie Noesser promoted to Human Resources

Manager; Brian Wilds promoted to Director of Financial Analysis & Accounting; Tammy McDonald promoted to Data Entry Examiner I; Dana Strunk promoted to Data Entry Clerk; and Monte Hall promoted to Agent Services Coordinator. H



Lone Star Lines  
 Surplus Lines Stamping Office of Texas  
 P.O. Box 9906  
 Austin, Texas 78766-0906

Return Service Requested

### Comparison of SLSOT Premium Processed by Line of Business

Annual Statement Line of Business	Premium through 3/01	Premium through 3/00	Percent Change
1 Fire (incl. allied lines)	\$58,746,731	\$46,146,726	27.3%
2 Allied lines	\$2,788,183	\$1,555,421	79.3%
3 Farmowners multiple peril	\$438,948	\$453,517	-3.2%
4 Homeowners multiple peril	\$8,420,222	\$8,917,566	-5.6%
5 Commercial multiple peril	\$4,058,529	\$4,456,916	-8.9%
6 Mortgage guaranty	\$0	\$0	
8 Ocean marine	\$738,854	\$2,695,693	-72.6%
9 Inland marine	\$7,631,146	\$5,696,769	34.0%
10 Financial guaranty	\$0	\$0	
11 Medical malpractice	\$6,845,226	\$4,961,301	38.0%
12 Earthquake	\$55,389		
13 Group accident & health	\$16,810,635	\$14,298,018	17.6%
14 Credit A&H (group & indiv)	\$0	\$0	
15 All other A&H	\$53,230	\$12,464	327.0%
16 Workers' compensation	\$0	\$0	
17 Other liability	\$138,225,441	\$110,243,886	25.4%
18 Products liability	\$4,760,565	\$4,165,910	14.3%
19.1 Priv pass auto no fault	\$0	\$0	
19.2 Other priv pass auto lia	\$7,352	\$17,754	-58.6%
19.3 Comm. auto no fault PIP	\$0	\$0	
19.4 Other comm. auto liab	\$8,525,351	\$7,382,249	15.5%
21.1 Priv pass auto physical	\$210,552	\$222,356	-5.3%
21.2 Comm auto phys.damage	\$13,423,483	\$10,226,825	31.3%
22 Aircraft (all perils)	\$677,297	\$442,291	53.1%
23 Fidelity	\$199,902	\$74,640	167.8%
24 Surety	\$17,662	\$40,353	-56.2%
26 Burglary & theft	\$890,110	\$361,046	146.5%
27 Boiler & machinery	\$2,596	(\$34,053)	107.6%
28 Credit	\$12,688,908	\$9,578,492	32.5%
31 Aggregate/other business	\$16,318	\$87	8592.4%
TOTAL	\$286,232,630	\$231,916,227	23.4%

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.

Lone Star Lines Staff:  
 Phil Ballinger, CPCU, ASLI  
 Dalén Chisholm  
 Elaine White, ASLI  
 Brian Wilds, CPA, ASLI

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:

Lone Star Lines  
 SLSOT  
 P.O. Box 9906  
 Austin, Texas 78766-0906  
 phone (512) 346-3274  
 fax (512) 346-3422

SLSOT web site:  
<http://www.slsot.org>  
 Internet E-Mail address:  
[info@slsot.org](mailto:info@slsot.org)

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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