

By Representative Bainter

1 A bill to be entitled
2 An act relating to surplus lines insurance;
3 amending s. 626.921, F.S.; creating a nonprofit
4 association named the "Florida Surplus Lines
5 Service Office"; providing findings; requiring
6 surplus lines agents to be members of the
7 association; providing duties; requiring the
8 office to collect a service fee from surplus
9 lines agents; providing for a board of
10 governors; providing for appointment of board
11 members; requiring a plan of operation to be
12 submitted to the Department of Insurance;
13 requiring the department to conduct
14 examinations of the association; providing for
15 limitations of liability for the association
16 under certain circumstances; providing for
17 confidentiality of certain information;
18 amending s. 626.931, F.S.; requiring surplus
19 lines agents, foreign insurers, and alien
20 insurers to file a quarterly report with the
21 Florida Surplus Lines Service Office; amending
22 s. 626.932, F.S.; requiring surplus lines
23 agents to pay a surplus lines tax to the
24 office; requiring the service office to remit
25 the taxes and interest to the department within
26 10 days; excluding from the term "premium" a
27 service fee; creating s. 626.9325, F.S.;
28 imposing a service fee on premiums charged for
29 surplus lines insurance; requiring surplus
30 lines agents to collect the fee and pay the fee
31 to the office; requiring interest under certain

1 circumstances; providing for application;
2 specifying use of such fees; providing
3 definitions; providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:

6
7 Section 1. Section 626.921, Florida Statutes, 1996
8 Supplement, is amended to read:

9 (Substantial rewording of section. See
10 s. 626.921, F.S., 1996 Supp.,
11 for present text.)

12 626.921 Florida Surplus Lines Service Office.--

13 (1) There is hereby created a nonprofit association to
14 be known as the Florida Surplus Lines Service Office. The
15 Legislature hereby finds and declares that the establishment
16 of a surplus lines self-regulating organization is necessary
17 to establish a system that will permit better access by
18 consumers to approved unauthorized insurers. Accordingly, the
19 Legislature declares that this section shall be liberally
20 construed and applied to promote its underlying purposes,
21 which will protect consumers seeking insurance in this state,
22 permit surplus lines insurance to be placed with approved
23 surplus lines insurers, establish a self-regulating
24 organization which will promote and permit orderly access to
25 surplus lines insurance in this state, enhance the number and
26 types of insurance products available to consumers in this
27 state, provide a source of advice and counsel for the benefit
28 of consumers, surplus lines agents, insurers, and government
29 agencies concerning the operation of the surplus lines
30 insurance market, and protect the revenues of this state.
31

1 (2) All surplus lines agents shall, as a condition of
2 holding a license as a surplus lines agent in this state, be
3 deemed to be members of this association and shall report to
4 and file with the service office a copy of or information on
5 each surplus lines insurance policy or document as provided in
6 the plan of operation adopted under subsection (5). Upon
7 receipt of any claim notice reported under a surplus lines
8 policy which is subject to the filing requirements of this
9 section, the insurer, or an adjuster representing the insurer,
10 must advise the service office of such claim, identifying the
11 policy under which coverage is claimed, and the service office
12 shall determine whether the policy has been filed as required
13 by this section. The service office shall immediately report
14 the particulars of any unfiled policy to the department for
15 enforcement of compliance with the Florida Surplus Lines Law.

16 (3) The association shall perform its functions under
17 a plan of operation adopted under subsection (5). It shall
18 exercise its powers through a board of governors established
19 under subsection (4). The association shall be regulated by
20 the department and is subject to the applicable provisions of
21 this code and the rules of the department. The service office
22 shall conduct the following activities provided in the plan of
23 operation adopted under subsection (5):

24 (a) Receive, record, and review all surplus lines
25 insurance policies or documents.

26 (b) Maintain records of the surplus lines policies
27 reported to the service office and prepare monthly reports for
28 the department in such form as the department may prescribe.

29 (c) Prepare and deliver to each surplus lines agent
30 quarterly reports of each surplus lines agent's business in
31 such form as the department may prescribe, and collect and

1 remit to the department the surplus lines tax as provided for
2 in s. 626.932.

3 (d) Perform a reconciliation of the policies written
4 in the nonadmitted market, as provided by nonadmitted
5 insurers, with the policies reported to the service office by
6 the surplus lines agents, and prepare and deliver to the
7 department a report on the results of the reconciliation in
8 such form as the department may prescribe.

9 (e) Submit to the department for review and approval
10 an annual budget for the operation of the service office.

11 (f) Collect from each surplus lines agent a service
12 fee of 0.3 percent of the total gross premium of each surplus
13 lines policy or document reported under this section, for the
14 cost of operation of the service office. The service fee
15 shall be paid by the insured.

16 (g) Employ and retain such personnel as are necessary
17 to carry out the duties of the service office.

18 (h) Borrow money, as necessary, to effect the purposes
19 of the service office.

20 (i) Enter into contracts, as necessary, to effect the
21 purposes of the service office.

22 (j) Perform such other acts as will facilitate and
23 encourage compliance with the surplus lines law of this state
24 and rules adopted thereunder.

25 (k) Provide such other services as are incidental or
26 related to the purposes of the service office.

27 (4) The association shall operate under the
28 supervision of a board of governors consisting of:

29 (a) Five individuals appointed by the department from
30 the regular membership of the Florida Surplus Lines
31 Association.

1 (b) Two individuals appointed by the department, one
2 from each of the two largest domestic agents' associations,
3 each of whom shall be licensed surplus lines agents.

4 (c) The Insurance Consumer Advocate.

5 (d) One individual appointed by the department, who
6 shall be a risk manager for a large domestic commercial
7 enterprise.

8
9 Each board member shall be appointed to serve beginning on the
10 date designated by the plan of operation and shall serve at
11 the pleasure of the department for a 3-year term, such term
12 initially to be staggered by the plan of operation so that
13 three appointments expire in 1 year, three appointments expire
14 in 2 years, and three appointments expire in 3 years. Members
15 may be reappointed for subsequent terms. The board of
16 governors shall elect such officers as may be provided in the
17 plan of operation.

18 (5)(a) The association shall submit to the department
19 a plan of operation, and any amendments thereto, to provide
20 operating procedures for the administration of the service
21 office. The plan of operation and any amendments thereto shall
22 become effective upon approval by order of the department.

23 (b) If the association fails to submit a suitable plan
24 of operation within 180 days following the effective date of
25 this act, or if at any time thereafter the association fails
26 to submit suitable amendments to the plan of operation, the
27 department shall, after notice and hearing, adopt a plan of
28 operation, or amendments to a plan of operation, and adopt
29 such rules as are necessary or advisable to effectuate the
30 provisions of this section. Such rules shall continue in
31 force until modified by the department or superseded by a plan

1 of operation submitted by the association and approved by the
2 department.

3 (c) All surplus lines agents licensed in this state
4 must comply with the plan of operation.

5 (6) The department shall, at such times deemed
6 necessary, make or cause to be made an examination of the
7 association. The costs of any such examination shall be paid
8 by the association. During the course of such examination,
9 the governors, officers, agents, employees, and members of the
10 association may be examined under oath regarding the operation
11 of the service office and shall make available all books,
12 records, accounts, documents, and agreements pertaining
13 thereto.

14 (7) In the absence of gross negligence, fraud, or bad
15 faith, there shall be no liability on the part of, and no
16 causes of action of any nature shall arise against, the
17 association, its governors, officers, agents, or employees,
18 the department, or employees or representatives of the
19 department, or the commissioner, for any action taken or
20 omitted by them in performance of their powers and duties
21 under this section.

22 (8) Information furnished to the department under s.
23 626.923 or contained in the records subject to examination by
24 the department under s. 626.930 is confidential and exempt
25 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
26 the State Constitution if the disclosure of the information
27 would reveal a trade secret as defined in s. 688.002. This
28 subsection is subject to the Open Government Sunset Review Act
29 of 1995 in accordance with s. 119.15, and shall stand repealed
30 on October 2, 2001, unless reviewed and saved from repeal
31 through reenactment by the Legislature. The exemption does

1 not apply to any proceeding instituted by the department
2 against an agent or insurer.

3 Section 2. Subsections (1), (4), and (5) of section
4 626.931, Florida Statutes, are amended to read:

5 626.931 Quarterly report.--

6 (1) Each surplus lines agent shall on or before the
7 end of the month next following each calendar quarter file
8 with the Florida Surplus Lines Service Office ~~department~~ a
9 verified report of all surplus lines insurance transacted by
10 him during such calendar quarter.

11 (4) Each foreign insurer accepting premiums which are
12 subject to taxes and which are described in this section
13 shall, on or before the end of the month following each
14 calendar quarter, file with the Florida Surplus Lines Service
15 Office ~~department~~ a verified report of all surplus lines
16 insurance transacted by such insurer for insurance risks
17 located in this state during such calendar quarter.

18 (5) Each alien insurer accepting premiums which are
19 subject to taxes and which are described in this section
20 shall, on or before June 30 of each year, file with the
21 Florida Surplus Lines Service Office ~~department~~ a verified
22 report of all surplus lines insurance transacted by such
23 insurer for insurance risks located in this state during the
24 preceding calendar year, provided the first such report shall
25 be with respect to calendar year 1994.

26 Section 3. Subsections (2) and (6) of section 626.932,
27 Florida Statutes, are amended to read:

28 626.932 Surplus lines tax.--

29 (2)(a) The surplus lines agent shall pay to the
30 Florida Surplus Lines Service Office ~~department~~ the tax
31 related to each calendar quarter's business as reported, and

1 at the same time as provided for the filing of the quarterly
2 report, under s. 626.931. The Florida Surplus Lines Service
3 Office shall forward to the department the taxes and any
4 interest collected pursuant to paragraph (b), within 10 days
5 of receipt, along with a copy of the quarterly reports
6 received.

7 (b) The agent shall pay interest on the amount of any
8 delinquent tax due, at the rate of 9 percent per year,
9 compounded annually, beginning the day the amount becomes
10 delinquent.

11 (6) For the purposes of this section, the term
12 "premium" means the consideration for insurance by whatever
13 name called and includes any assessment, or any membership,
14 policy, survey, inspection, service, or similar fee or charge
15 in consideration for an insurance contract, which items are
16 deemed to be a part of the premium. The per-policy fee
17 authorized by s. 626.916(4) is specifically included within
18 the meaning of the term "premium." However, the service fee
19 imposed pursuant to s. 626.9325 is excluded from the meaning
20 of the term "premium."

21 Section 4. Section 626.9325, Florida Statutes, is
22 created to read:

23 626.9325 Service fee.--

24 (1) The premiums charged for surplus lines insurance
25 are subject to a service fee as provided in s. 626.921(3)(f).
26 The surplus lines agent shall collect from the insured the
27 amount of the fee at the time of the delivery of the policy,
28 or other initial confirmation of insurance, in addition to the
29 full amount of the gross premium charged by the insurer for
30 the insurance. The surplus lines agent is prohibited from
31 absorbing such fee or, as an inducement for insurance or for

1 any other reason, rebating all or any part of such fee or of
2 his commission.

3 (2)(a) The surplus lines agent shall pay monthly to
4 the Florida Surplus Lines Service Office the fees related to
5 all policies reported during the previous calendar month in
6 accordance with the plan of operation of the Florida Surplus
7 Lines Service Office.

8 (b) The agent shall pay interest on the amount of any
9 delinquent fees due, at the rate of 9 percent per year,
10 compounded annually, beginning the day the amount becomes
11 delinquent.

12 (3) If a surplus lines policy covers risks or
13 exposures only partially in this state, the fee payable shall
14 be computed on the portion of the premium which is properly
15 allocable to the risks or exposures located in this state.

16 (4) This section does not apply as to insurance of
17 risks of the state government or its agencies, or of any
18 county or municipality or of any agency thereof.

19 (5) The association shall use the fees to fund the
20 cost of operations of the Florida Surplus Lines Service
21 Office.

22 (6) For the purposes of this section, the term
23 "premium" means the consideration for insurance by whatever
24 name called and includes any assessment, or any membership,
25 policy, survey, inspection, service, or similar fee or charge
26 in consideration for an insurance contract, which items are
27 deemed to be a part of the premium. The per-policy fee
28 authorized by s. 626.916(4) is specifically included within
29 the meaning of the term "premium."

30 Section 5. This act shall take effect October 1, 1997.

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HOUSE SUMMARY

Creates a nonprofit association named the Florida Surplus Lines Service Office and requires surplus lines agents to be members of the association. Requires the office to prepare a plan of operation and requires the department to conduct examinations of the association. Requires surplus lines agents, foreign insurers, and alien insurers to file a quarterly report with the office. Requires surplus lines agents to pay a surplus lines tax to the office. Imposes a service fee on premiums charged for surplus lines insurance and requires surplus lines agents to collect the fee and pay the fee to the office. See bill for details.