

By the Committee on Financial Services and Representative
Bainter

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

1 interest under certain circumstances; providing
2 for application; specifying use of such fees;
3 providing definitions; amending s. 626.918,
4 F.S.; providing surplus and other requirements
5 regarding certain surplus lines insurers;
6 amending s. 631.52, F.S.; providing that
7 certain surplus lines insurers may elect to be
8 members of the Florida Insurance Guaranty
9 Association; providing effective dates.

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

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13 Section 1. This act may be cited as the "Dana Roehrig
14 Act."

15 Section 2. Section 626.921, Florida Statutes, 1996
16 Supplement, is amended to read:

17 (Substantial rewording of section. See
18 s. 626.921, F.S., 1996 Supp.,
19 for present text.)

20 626.921 Florida Surplus Lines Service Office.--

21 (1) There is hereby created a nonprofit association to
22 be known as the Florida Surplus Lines Service Office. The
23 Legislature hereby finds and declares that the establishment
24 of a surplus lines self-regulating organization is necessary
25 to establish a system that will permit better access by
26 consumers to approved unauthorized insurers. Accordingly, the
27 Legislature declares that this section shall be liberally
28 construed and applied to promote its underlying purposes,
29 which will protect consumers seeking insurance in this state,
30 permit surplus lines insurance to be placed with approved
31 surplus lines insurers, establish a self-regulating

1 organization which will promote and permit orderly access to
2 surplus lines insurance in this state, enhance the number and
3 types of insurance products available to consumers in this
4 state, provide a source of advice and counsel for the benefit
5 of consumers, surplus lines agents, insurers, and government
6 agencies concerning the operation of the surplus lines
7 insurance market, and protect the revenues of this state.

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

23 (3) The association shall perform its functions under
24 a plan of operation adopted under subsection (5). It shall
25 exercise its powers through a board of governors established
26 under subsection (4). The association shall be regulated by
27 the department and is subject to the applicable provisions of
28 this code and the rules of the department. The service office
29 shall conduct the following activities provided in the plan of
30 operation adopted under subsection (5):

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- 1 (a) Receive, record, and review all surplus lines
2 insurance policies or documents.
- 3 (b) Maintain records of the surplus lines policies
4 reported to the service office and prepare monthly reports for
5 the department in such form as the department may prescribe.
- 6 (c) Prepare and deliver to each surplus lines agent
7 quarterly reports of each surplus lines agent's business in
8 such form as the department may prescribe, and collect and
9 remit to the department the surplus lines tax as provided for
10 in s. 626.932.
- 11 (d) Perform a reconciliation of the policies written
12 in the nonadmitted market, as provided by nonadmitted
13 insurers, with the policies reported to the service office by
14 the surplus lines agents, and prepare and deliver to the
15 department a report on the results of the reconciliation in
16 such form as the department may prescribe.
- 17 (e) Submit to the department for review and approval
18 an annual budget for the operation of the service office.
- 19 (f) Collect from each surplus lines agent a service
20 fee of up to 0.3 percent, as determined by the department, of
21 the total gross premium of each surplus lines policy or
22 document reported under this section, for the cost of
23 operation of the service office. The service fee shall be
24 paid by the insured.
- 25 (g) Employ and retain such personnel as are necessary
26 to carry out the duties of the service office.
- 27 (h) Borrow money, as necessary, to effect the purposes
28 of the service office.
- 29 (i) Enter into contracts, as necessary, to effect the
30 purposes of the service office.
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1 (j) Perform such other acts as will facilitate and
2 encourage compliance with the surplus lines law of this state
3 and rules adopted thereunder.

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

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

8 (a) Five individuals appointed by the department from
9 the regular membership of the Florida Surplus Lines
10 Association.

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

14 (c) The Insurance Consumer Advocate.

15 (d) One individual appointed by the department, who
16 shall be a risk manager for a large domestic commercial
17 enterprise.

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19 Each board member shall be appointed to serve beginning on the
20 date designated by the plan of operation and shall serve at
21 the pleasure of the department for a 3-year term, such term
22 initially to be staggered by the plan of operation so that
23 three appointments expire in 1 year, three appointments expire
24 in 2 years, and three appointments expire in 3 years. Members
25 may be reappointed for subsequent terms. The board of
26 governors shall elect such officers as may be provided in the
27 plan of operation.

28 (5)(a) The association shall submit to the department
29 a plan of operation, and any amendments thereto, to provide
30 operating procedures for the administration of the service
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1 office. The plan of operation and any amendments thereto shall
2 become effective upon approval by order of the department.

3 (b) If the association fails to submit a suitable plan
4 of operation within 180 days following the effective date of
5 this act, or if at any time thereafter the association fails
6 to submit suitable amendments to the plan of operation, the
7 department shall, after notice and hearing, adopt a plan of
8 operation, or amendments to a plan of operation, and adopt
9 such rules as are necessary or advisable to effectuate the
10 provisions of this section. Such rules shall continue in
11 force until modified by the department or superseded by a plan
12 of operation submitted by the association and approved by the
13 department.

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

16 (6) The department shall, at such times deemed
17 necessary, make or cause to be made an examination of the
18 association. The costs of any such examination shall be paid
19 by the association. During the course of such examination,
20 the governors, officers, agents, employees, and members of the
21 association may be examined under oath regarding the operation
22 of the service office and shall make available all books,
23 records, accounts, documents, and agreements pertaining
24 thereto.

25 (7) In the absence of gross negligence, fraud, or bad
26 faith, there shall be no liability on the part of, and no
27 causes of action of any nature shall arise against, the
28 association, its governors, officers, agents, or employees,
29 the department, or employees or representatives of the
30 department, or the commissioner, for any action taken or
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1 omitted by them in performance of their powers and duties
2 under this section.
3 (8) Information furnished to the department under s.
4 626.923 or contained in the records subject to examination by
5 the department under s. 626.930 is confidential and exempt
6 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
7 the State Constitution if the disclosure of the information
8 would reveal a trade secret as defined in s. 688.002. This
9 subsection is subject to the Open Government Sunset Review Act
10 of 1995 in accordance with s. 119.15, and shall stand repealed
11 on October 2, 2001, unless reviewed and saved from repeal
12 through reenactment by the Legislature. The exemption does
13 not apply to any proceeding instituted by the department
14 against an agent or insurer.

15 Section 3. Effective January 1, 1998, subsections (1),
16 (4), and (5) of section 626.931, Florida Statutes, are amended
17 to read:

18 626.931 Quarterly report.--

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

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

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

9 Section 4. Effective January 1, 1998, subsections (2)
10 and (6) of section 626.932, Florida Statutes, are amended to
11 read:

12 626.932 Surplus lines tax.--

13 (2)(a) The surplus lines agent shall pay to the
14 Florida Surplus Lines Service Office ~~department~~ the tax
15 related to each calendar quarter's business as reported, and
16 at the same time as provided for the filing of the quarterly
17 report, under s. 626.931. The Florida Surplus Lines Service
18 Office shall forward to the department the taxes and any
19 interest collected pursuant to paragraph (b), within 10 days
20 of receipt, along with a copy of the quarterly reports
21 received.

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

26 (6) For the purposes of this section, the term
27 "premium" means the consideration for insurance by whatever
28 name called and includes any assessment, or any membership,
29 policy, survey, inspection, service, or similar fee or charge
30 in consideration for an insurance contract, which items are
31 deemed to be a part of the premium. The per-policy fee

1 authorized by s. 626.916(4) is specifically included within
2 the meaning of the term "premium." However, the service fee
3 imposed pursuant to s. 626.9325 is excluded from the meaning
4 of the term "premium."

5 Section 5. Section 626.9325, Florida Statutes, is
6 created to read:

7 626.9325 Service fee.--

8 (1) The premiums charged for surplus lines insurance
9 are subject to a service fee as provided in s. 626.921(3)(f).
10 The surplus lines agent shall collect from the insured the
11 amount of the fee at the time of the delivery of the policy,
12 or other initial confirmation of insurance, in addition to the
13 full amount of the gross premium charged by the insurer for
14 the insurance. The surplus lines agent is prohibited from
15 absorbing such fee or, as an inducement for insurance or for
16 any other reason, rebating all or any part of such fee or of
17 his commission.

18 (2)(a) The surplus lines agent shall pay monthly to
19 the Florida Surplus Lines Service Office the fees related to
20 all policies reported during the previous calendar month in
21 accordance with the plan of operation of the Florida Surplus
22 Lines Service Office.

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

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

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

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

7 (6) For the purposes of this section, the term
8 "premium" means the consideration for insurance by whatever
9 name called and includes any assessment, or any membership,
10 policy, survey, inspection, service, or similar fee or charge
11 in consideration for an insurance contract, which items are
12 deemed to be a part of the premium. The per-policy fee
13 authorized by s. 626.916(4) is specifically included within
14 the meaning of the term "premium."

15 Section 6. Paragraph (d) of subsection (2) of section
16 626.918, Florida Statutes, is amended to read:

17 626.918 Eligible surplus lines insurers.--

18 (2) No unauthorized insurer shall be or become an
19 eligible surplus lines insurer unless made eligible by the
20 department in accordance with the following conditions:

21 (d)1. The insurer must have and maintain surplus as to
22 policyholders of not less than \$15 million; or, if an alien
23 insurer, must have and maintain in the United States a trust
24 fund for the protection of all its policyholders in the United
25 States under terms deemed by the department to be reasonably
26 adequate, in an amount not less than \$15 million. Any such
27 surplus as to policyholders or trust fund shall be represented
28 by investments consisting of eligible investments for like
29 funds of like domestic insurers under part II of chapter 625;

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1 2. For those surplus lines insurers that were eligible
2 on January 1, 1994, and that maintained their eligibility
3 thereafter, the required surplus as to policyholders shall be:
4 a. On December 31, 1994, and until December 30, 1995,
5 \$2.5 million.
6 b. On December 31, 1995, and until December 30, 1996,
7 \$3.5 million.
8 c. On December 31, 1996, and until December 30, 1997,
9 \$4.5 million.
10 d. On December 31, 1997, and until December 30, 1998,
11 \$5.5 million.
12 e. On December 31, 1998, and until December 30, 1999,
13 \$6.5 million.
14 f. On December 31, 1999, and until December 30, 2000,
15 \$8 million.
16 g. On December 31, 2000, and until December 30, 2001,
17 \$9.5 million.
18 h. On December 31, 2001, and until December 30, 2002,
19 \$11 million.
20 i. On December 31, 2002, and until December 30, 2003,
21 \$13 million.
22 j. On December 31, 2003, and thereafter, \$15 million.
23 3. The capital and surplus requirements as set forth
24 in subparagraph 2. do not apply in the case of an insurance
25 exchange created by the laws of individual states, where the
26 exchange maintains capital and surplus pursuant to the
27 requirements of that state, or maintains capital and surplus
28 in an amount not less than \$50 million in the aggregate. For
29 an insurance exchange which maintains funds in the amount of
30 at least \$12 million for the protection of all insurance
31 exchange policyholders, each individual syndicate shall

1 maintain minimum capital and surplus in an amount not less
2 than \$3 million. If the insurance exchange does not maintain
3 funds in the amount of at least \$12 million for the protection
4 of all insurance exchange policyholders, each individual
5 syndicate shall meet the minimum capital and surplus
6 requirements set forth in subparagraph 2.

7 4. A surplus lines insurer which is a member of an
8 insurance holding company that includes a member which is a
9 Florida domestic insurer as set forth in its holding company
10 registration statement, as set forth in s. 628.801 and rules
11 promulgated thereunder, may elect to maintain surplus as to
12 policyholders in an amount equal to the requirements of s.
13 624.408, subject to the following requirements:

14 a. The surplus lines insurer shall at all times be in
15 compliance with the requirements of chapter 625.

16 b. The surplus lines insurer shall at all times be a
17 member of the Florida Insurance Guaranty Association.

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19 The election shall be submitted to the department and shall be
20 effective upon being satisfied that the requirements of this
21 sub-subparagraph have been met. The initial date of election
22 shall be the date of department approval. The election
23 approval application shall be on a form adopted by department
24 rule.

25 Section 7. Subsection (13) of section 631.52, Florida
26 Statutes, is amended to read:

27 631.52 Scope.--This part shall apply to all kinds of
28 direct insurance, except:

29 (13) Surplus lines, except if the insurer has elected
30 to participate as a member insurer of the association;

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1 Section 8. Except as otherwise provided herein, this
2 act shall take effect October 1, 1997.
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