

1 A bill to be entitled
2 An act relating to surplus lines insurance;
3 providing a short title; amending s. 626.918,
4 F.S.; revising language with respect to
5 eligible surplus lines insurers; amending s.
6 626.921, F.S.; creating a nonprofit association
7 named the "Florida Surplus Lines Service
8 Office"; providing findings; requiring surplus
9 lines agents to be members of the association;
10 providing duties; requiring the office to
11 collect a service fee from surplus lines
12 agents; providing for a board of governors;
13 providing for appointment of board members;
14 requiring a plan of operation to be submitted
15 to the Department of Insurance; requiring the
16 department to conduct examinations of the
17 association; providing for limitations of
18 liability for the association under certain
19 circumstances; providing for confidentiality of
20 certain information; amending s. 626.931, F.S.;
21 requiring surplus lines agents, foreign
22 insurers, and alien insurers to file a
23 quarterly report with the Florida Surplus Lines
24 Service Office; amending s. 626.932, F.S.;
25 requiring surplus lines agents to pay a surplus
26 lines tax to the office; requiring the service
27 office to remit the taxes and interest to the
28 department within 10 days; excluding from the
29 term "premium" a service fee; creating s.
30 626.9325, F.S.; imposing a service fee on
31 premiums charged for surplus lines insurance;

1 requiring surplus lines agents to collect the
2 fee and pay the fee to the office; requiring
3 interest under certain circumstances; providing
4 for application; specifying use of such fees;
5 providing definitions; amending s. 626.918,
6 F.S.; providing surplus and other requirements
7 regarding certain surplus lines insurers;
8 providing effective dates.
9

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

11
12 Section 1. This act may be cited as the "Dana Roehrig
13 Act."

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

16 626.918 Eligible surplus lines insurers.--

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

20 (d)1. The insurer must have and maintain surplus as to
21 policyholders of not less than \$15 million; in addition, or,
22 if an alien insurer, must also have and maintain in the United
23 States a trust fund for the protection of all its
24 policyholders in the United States under terms deemed by the
25 department to be reasonably adequate, in an amount not less
26 than 5.4~~\$~~15 million. Any such surplus as to policyholders or
27 trust fund shall be represented by investments consisting of
28 eligible investments for like funds of like domestic insurers
29 under part II of chapter 625 provided, however, that in the
30 case of an alien insurance company, any such surplus as to
31 policyholders may be represented by investments permitted by

1 the domestic regulator of such alien insurance company if such
2 investments are substantially similar in terms of quality,
3 liquidity, and security to eligible investments for like funds
4 of like domestic insurers under part II of chapter 625;

5 2. For those surplus lines insurers that were eligible
6 on January 1, 1994, and that maintained their eligibility
7 thereafter, the required surplus as to policyholders shall be:

8 a. On December 31, 1994, and until December 30, 1995,
9 \$2.5 million.

10 b. On December 31, 1995, and until December 30, 1996,
11 \$3.5 million.

12 c. On December 31, 1996, and until December 30, 1997,
13 \$4.5 million.

14 d. On December 31, 1997, and until December 30, 1998,
15 \$5.5 million.

16 e. On December 31, 1998, and until December 30, 1999,
17 \$6.5 million.

18 f. On December 31, 1999, and until December 30, 2000,
19 \$8 million.

20 g. On December 31, 2000, and until December 30, 2001,
21 \$9.5 million.

22 h. On December 31, 2001, and until December 30, 2002,
23 \$11 million.

24 i. On December 31, 2002, and until December 30, 2003,
25 \$13 million.

26 j. On December 31, 2003, and thereafter, \$15 million.

27 3. The capital and surplus requirements as set forth
28 in subparagraph 2. do not apply in the case of an insurance
29 exchange created by the laws of individual states, where the
30 exchange maintains capital and surplus pursuant to the
31 requirements of that state, or maintains capital and surplus

1 in an amount not less than \$50 million in the aggregate. For
2 an insurance exchange which maintains funds in the amount of
3 at least \$12 million for the protection of all insurance
4 exchange policyholders, each individual syndicate shall
5 maintain minimum capital and surplus in an amount not less
6 than \$3 million. If the insurance exchange does not maintain
7 funds in the amount of at least \$12 million for the protection
8 of all insurance exchange policyholders, each individual
9 syndicate shall meet the minimum capital and surplus
10 requirements set forth in subparagraph 2.

11 Section 3. Section 626.921, Florida Statutes, 1996
12 Supplement, is amended to read:

13 (Substantial rewording of section. See
14 s. 626.921, F.S., 1996 Supp.,
15 for present text.)

16 626.921 Florida Surplus Lines Service Office.--

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

1 of consumers, surplus lines agents, insurers, and government
2 agencies concerning the operation of the surplus lines
3 insurance market, and protect the revenues of this state.

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

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

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

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

1 (c) Prepare and deliver to each surplus lines agent
2 quarterly reports of each surplus lines agent's business in
3 such form as the department may prescribe, and collect and
4 remit to the department the surplus lines tax as provided for
5 in s. 626.932.

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

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

14 (f) Collect from each surplus lines agent a service
15 fee of up to 0.3 percent, as determined by the department, of
16 the total gross premium of each surplus lines policy or
17 document reported under this section, for the cost of
18 operation of the service office. The service fee shall be
19 paid by the insured.

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

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

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

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

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

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

3 (a) Five individuals appointed by the department from
4 the regular membership of the Florida Surplus Lines
5 Association.

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

9 (c) The Insurance Consumer Advocate.

10 (d) One individual appointed by the department, who
11 shall be a risk manager for a large domestic commercial
12 enterprise.

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

23 (5)(a) The association shall submit to the department
24 a plan of operation, and any amendments thereto, to provide
25 operating procedures for the administration of the service
26 office. The plan of operation and any amendments thereto shall
27 become effective upon approval by order of the department.

28 (b) If the association fails to submit a suitable plan
29 of operation within 180 days following the effective date of
30 this act, or if at any time thereafter the association fails
31 to submit suitable amendments to the plan of operation, the

1 department shall, after notice and hearing, adopt a plan of
2 operation, or amendments to a plan of operation, and adopt
3 such rules as are necessary or advisable to effectuate the
4 provisions of this section. Such rules shall continue in
5 force until modified by the department or superseded by a plan
6 of operation submitted by the association and approved by the
7 department.

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

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

19 (7) There shall be no liability on the part of, and no
20 cause of action of any nature shall arise against, any member
21 or its agents or employees, agents or employees of the
22 association, members of the board of governors of the
23 association, or the department or its representatives, for any
24 action taken by them in the performance of their duties or
25 responsibilities under this subsection. Such immunity does not
26 apply to actions for breach of any contract or agreement
27 pertaining to insurance, or any willful tort.

28 (8) Information furnished to the department under s.
29 626.923 or contained in the records subject to examination by
30 the department under s. 626.930 is confidential and exempt
31 from the provisions of s. 119.07(1) and s. 24(a), Art. I of

1 the State Constitution if the disclosure of the information
2 would reveal a trade secret as defined in s. 688.002. This
3 subsection is subject to the Open Government Sunset Review Act
4 of 1995 in accordance with s. 119.15, and shall stand repealed
5 on October 2, 2001, unless reviewed and saved from repeal
6 through reenactment by the Legislature. The exemption does
7 not apply to any proceeding instituted by the department
8 against an agent or insurer.

9 Section 4. Effective January 1, 1998, subsections (1),
10 (4), and (5) of section 626.931, Florida Statutes, are amended
11 to read:

12 626.931 Quarterly report.--

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

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

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

3 Section 5. Effective January 1, 1998, subsections (2)
4 and (6) of section 626.932, Florida Statutes, are amended to
5 read:

6 626.932 Surplus lines tax.--

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

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

20 (6) For the purposes of this section, the term
21 "premium" means the consideration for insurance by whatever
22 name called and includes any assessment, or any membership,
23 policy, survey, inspection, service, or similar fee or charge
24 in consideration for an insurance contract, which items are
25 deemed to be a part of the premium. The per-policy fee
26 authorized by s. 626.916(4) is specifically included within
27 the meaning of the term "premium." However, the service fee
28 imposed pursuant to s. 626.9325 is excluded from the meaning
29 of the term "premium."

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

1 626.9325 Service fee.--

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

12 (2)(a) The surplus lines agent shall pay monthly to
13 the Florida Surplus Lines Service Office the fees related to
14 all policies reported during the previous calendar month in
15 accordance with the plan of operation of the Florida Surplus
16 Lines Service Office.

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

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

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

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

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

9 Section 7. Paragraph (d) of subsection (2) of section
10 626.918, Florida Statutes, is amended to read:

11 626.918 Eligible surplus lines insurers.--

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

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

24 2. For those surplus lines insurers that were eligible
25 on January 1, 1994, and that maintained their eligibility
26 thereafter, the required surplus as to policyholders shall be:

27 a. On December 31, 1994, and until December 30, 1995,
28 \$2.5 million.

29 b. On December 31, 1995, and until December 30, 1996,
30 \$3.5 million.

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1 c. On December 31, 1996, and until December 30, 1997,
2 \$4.5 million.

3 d. On December 31, 1997, and until December 30, 1998,
4 \$5.5 million.

5 e. On December 31, 1998, and until December 30, 1999,
6 \$6.5 million.

7 f. On December 31, 1999, and until December 30, 2000,
8 \$8 million.

9 g. On December 31, 2000, and until December 30, 2001,
10 \$9.5 million.

11 h. On December 31, 2001, and until December 30, 2002,
12 \$11 million.

13 i. On December 31, 2002, and until December 30, 2003,
14 \$13 million.

15 j. On December 31, 2003, and thereafter, \$15 million.

16 3. The capital and surplus requirements as set forth
17 in subparagraph 2. do not apply in the case of an insurance
18 exchange created by the laws of individual states, where the
19 exchange maintains capital and surplus pursuant to the
20 requirements of that state, or maintains capital and surplus
21 in an amount not less than \$50 million in the aggregate. For
22 an insurance exchange which maintains funds in the amount of
23 at least \$12 million for the protection of all insurance
24 exchange policyholders, each individual syndicate shall
25 maintain minimum capital and surplus in an amount not less
26 than \$3 million. If the insurance exchange does not maintain
27 funds in the amount of at least \$12 million for the protection
28 of all insurance exchange policyholders, each individual
29 syndicate shall meet the minimum capital and surplus
30 requirements set forth in subparagraph 2.

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1 4. A surplus lines insurer which is a member of an
2 insurance holding company that includes a member which is a
3 Florida domestic insurer as set forth in its holding company
4 registration statement, as set forth in s. 628.801 and rules
5 promulgated thereunder, may elect to maintain surplus as to
6 policyholders in an amount equal to the requirements of s.
7 624.408, subject to the requirement that the surplus lines
8 insurer shall at all times be in compliance with the
9 requirements of chapter 625.

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11 The election shall be submitted to the department and shall be
12 effective upon being satisfied that the requirements of this
13 sub-subparagraph have been met. The initial date of election
14 shall be the date of department approval. The election
15 approval application shall be on a form adopted by department
16 rule.

17 Section 8. Severability.--If any provision of this act
18 or the application thereof to any person or circumstance is
19 held invalid, the invalidity shall not affect other provisions
20 or applications of the act which can be given effect without
21 the invalid provision or application, and to this end the
22 provisions of this act are declared severable.

23 Section 9. Except as otherwise provided herein, this
24 act shall take effect October 1, 1997.
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