

By Senator Holzendorf

2-1245-99

1                                   A bill to be entitled

2           An act relating to insurance; creating s.

3           626.092, F.S.; prohibiting employee leasing

4           representatives from selling certain types of

5           insurance unless they are licensed as insurance

6           agents by the Department of Insurance;

7           prohibiting specified activities by persons

8           that do not hold an insurance license; amending

9           s. 626.916, F.S.; providing that certain

10          conditions that are required before insurance

11          coverage is eligible for export do not apply to

12          contracts or policies that procure coverage in

13          a geographic area for which the Florida

14          Windstorm Underwriting Association is providing

15          coverage; providing an effective date.

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

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19           Section 1. Section 626.092, Florida Statutes, is

20          created to read:

21               626.092 Employee leasing representatives.--

22               (1) An individual employed by or otherwise

23          representing leasing companies licensed under part XI of

24          chapter 468 may not sell a product or service that includes

25          worker's compensation insurance or life, accident, and health

26          insurance unless properly licensed by the department to sell

27          that line of insurance.

28               (2) With respect to any such insurances, a person may

29          not, unless licensed as an agent:

30               (a) Solicit insurance or procure applications for

31          insurance;

1           (b) In this state, receive or give a receipt for any  
2 money on account of or for any insurer, or receive or give a  
3 receipt for money from other persons to be transmitted to any  
4 insurer for a policy, contract, or certificate of insurance or  
5 any renewal of such policy, contract, or certificate, although  
6 such policy, certificate, or contract is not signed by him or  
7 her as agent or representative of the insurer;

8           (c) Directly or indirectly represent himself or  
9 herself to be an agent of any insurer or as an agent, to  
10 collect or forward any insurance premium, or to solicit,  
11 negotiate, effect, procure, receive, deliver, or forward,  
12 directly or indirectly, any insurance contract or renewal of a  
13 contract or any endorsement relating to an insurance contract,  
14 or attempt to effect the same, of property or insurable  
15 business activities or interests, located in this state;

16           (d) In this state, engage or hold himself or herself  
17 out as engaging in the business of analyzing or abstracting  
18 insurance policies or of counseling or advising or giving  
19 opinions, other than as a licensed attorney at law, relative  
20 to insurance or insurance contracts, for fee, commission, or  
21 other compensation, other than as a salaried, bona fide  
22 full-time employee so counseling and advising his or her  
23 employer relative to the insurance interests of the employer  
24 and of the subsidiaries or business affiliates of the  
25 employer; or

26           (e) In anyway directly or indirectly make or cause to  
27 be made, or attempt to make or cause to be made, any contract  
28 of insurance for or on account of any insurer.

29           (3) For purposes of this section, the term "sell"  
30 includes the enrollment of employees for a product or service  
31 that includes the coverage set forth in this section, and a

1 sale must be transacted by a representative who is licensed as  
2 an agent.

3 Section 2. Section 626.916, Florida Statutes, is  
4 amended to read:

5 626.916 Eligibility for export.--

6 (1) No insurance coverage shall be eligible for export  
7 unless it meets all of the following conditions:

8 (a) The full amount of insurance required must not be  
9 procurable, after a diligent effort has been made by the  
10 producing agent to do so, from among the insurers authorized  
11 to transact and actually writing that kind and class of  
12 insurance in this state, and the amount of insurance exported  
13 shall be only the excess over the amount so procurable from  
14 authorized insurers. Surplus lines agents must verify that a  
15 diligent effort has been made by requiring a properly  
16 documented statement of diligent effort from the retail or  
17 producing agent. However, to be in compliance with the  
18 diligent effort requirement, the surplus lines agent's  
19 reliance must be reasonable under the particular circumstances  
20 surrounding the export of that particular risk. Reasonableness  
21 shall be assessed by taking into account factors which  
22 include, but are not limited to, a regularly conducted program  
23 of verification of the information provided by the retail or  
24 producing agent. Declinations must be documented on a  
25 risk-by-risk basis. If it is not possible to obtain the full  
26 amount of insurance required by layering the risk, it is  
27 permissible to export the full amount.

28 (b) The premium rate at which the coverage is exported  
29 shall not be lower than that rate applicable, if any, in  
30 actual and current use by a majority of the authorized  
31 insurers for the same coverage on a similar risk.

1           (c) The policy or contract form under which the  
2 insurance is exported shall not be more favorable to the  
3 insured as to the coverage or rate than under similar  
4 contracts on file and in actual current use in this state by  
5 the majority of authorized insurers actually writing similar  
6 coverages on similar risks; except that a coverage may be  
7 exported under a unique form of policy designed for use with  
8 respect to a particular subject of insurance if a copy of such  
9 form is filed with the department by the surplus lines agent  
10 desiring to use the same and is subject to the disapproval of  
11 the department within 10 days of filing such form exclusive of  
12 Saturdays, Sundays, and legal holidays if it finds that the  
13 use of such special form is not reasonably necessary for the  
14 principal purposes of the coverage or that its use would be  
15 contrary to the purposes of this Surplus Lines Law with  
16 respect to the reasonable protection of authorized insurers  
17 from unwarranted competition by unauthorized insurers.

18           (d) Except as to extended coverage in connection with  
19 fire insurance policies and except as to windstorm insurance,  
20 the policy or contract under which the insurance is exported  
21 shall not provide for deductible amounts, in determining the  
22 existence or extent of the insurer's liability, other than  
23 those available under similar policies or contracts in actual  
24 and current use by one or more authorized insurers.

25           (2) The department may by rules and regulations  
26 declare eligible for export generally, and notwithstanding the  
27 provisions of paragraphs (a), (b), (c), and (d) of subsection  
28 (1), any class or classes of insurance coverage or risk for  
29 which it finds, after a hearing, that there is no reasonable  
30 or adequate market among authorized insurers. Any such rules  
31 and regulations shall continue in effect during the existence

1 of the conditions upon which predicated, but subject to  
2 termination by the department.

3 (3)(a) Subsection (1) does not apply to wet marine and  
4 transportation or aviation risks which are subject to s.  
5 626.917.

6 (b) Paragraphs (1)(a), (b), and (c) do not apply to  
7 contracts or policies that procure coverage in a geographic  
8 area for which the Florida Windstorm Underwriting Association  
9 is providing coverage.

10 (4) A reasonable per-policy fee, not to exceed \$25,  
11 may be charged by the filing surplus lines agent for each  
12 policy certified for export.

13 Section 3. This act shall take effect July 1, 1999.

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SENATE SUMMARY

17 Prohibits employee leasing representatives from selling  
18 certain types of insurance unless they are licensed as  
19 insurance agents by the Department of Insurance.  
20 Prohibits specified activities by persons that do not  
21 hold an insurance license. Provides that certain  
22 conditions that are required before insurance coverage is  
23 eligible for export do not apply to contracts or policies  
24 that procure coverage in a geographic area for which the  
25 Florida Windstorm Underwriting Association is providing  
26 coverage.

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