

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 624.610, F.S.; setting the conditions for the
4 allowance of credit for reinsurance; providing
5 definitions; providing for grounds for denial
6 or revocation of an assuming insurer's
7 accreditation; providing criteria for the
8 disallowance of credit for reinsurance for a
9 ceding insurer; providing for the payment of
10 costs and expenses; providing conditions for
11 the allowance or disallowance of credit for
12 reinsurance for assuming insurers maintaining
13 trust funds in qualified United States
14 financial institutions; providing intent that
15 there is no conflict with arbitration
16 agreements; providing for security; providing
17 for the inclusion of certain health maintenance
18 organizations within the term "ceding insurer";
19 providing conditions for the disallowance of
20 credit with respect to a ceding domestic
21 insurer; providing conditions for credit for
22 reinsurance in cases of insolvency; providing
23 for rights against a reinsurer; providing
24 prohibitions applying to authorized insurers,
25 other than certain surplus lines insurance;
26 providing procedures and information required
27 for a summary statement of each treaty;
28 providing for exemptions from requirement of
29 summary statements; providing for waiver;
30 providing for cancellation; providing that
31 there is no credit when there is no transfer of

1 risk; granting authority to the Department of
2 Insurance for rulemaking; providing an
3 effective date for the application of cessions;
4 amending ss. 626.923, 626.930, 626.931,
5 626.932, 626.933, 626.935, 626.936, and
6 626.9361, F.S.; revising the requirements for
7 surplus lines insurance to provide the same
8 authority to the Florida Surplus Lines Service
9 Office that is currently provided to the
10 Department of Insurance; amending s. 627.4035,
11 F.S.; providing for payment of insurance claims
12 by debit card or other form of electronic funds
13 transfer; amending s. 628.903, F.S.; revising
14 the definition of "insured" and "industrial
15 insured captive insurer"; providing as
16 exception for certain advice given by a
17 certified public accountant; amending s.
18 627.171, F.S.; allowing insurers to increase
19 the number of policies the rates of which are
20 subject to the consent of the insured;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 624.610, Florida Statutes, 1998
26 Supplement, is amended to read:

27 (Substantial rewording of section. See
28 s. 624.610, F.S., for present text.)

29 624.610 Reinsurance.--

30 (1) The purpose of this section is to protect the
31 interests of insureds, claimants, ceding insurers, assuming

1 insurers, and the public. It is the intent of the Legislature
2 to ensure adequate regulation of insurers and reinsurers and
3 adequate protection for those to whom they owe obligations.
4 In furtherance of that state interest, the Legislature
5 requires that upon the insolvency of a non-United States
6 insurer or reinsurer which provides security to fund its
7 United States obligations in accordance with this section,
8 such security shall be maintained in the United States and
9 claims shall be filed with and valued by the State Insurance
10 Commissioner with regulatory oversight, and the assets shall
11 be distributed in accordance with the insurance laws of the
12 state in which the trust is domiciled that are applicable to
13 the liquidation of domestic United States insurance companies.
14 The Legislature declares that the matters contained in this
15 section are fundamental to the business of insurance in
16 accordance with 15 U.S.C. ss. 1011-1012.

17 (2) Credit for reinsurance must be allowed a ceding
18 insurer as either an asset or a deduction from liability on
19 account of reinsurance ceded only when the reinsurer meets the
20 requirements of paragraph (3)(a), paragraph (3)(b), or
21 paragraph (3)(c). Credit must be allowed under paragraph
22 (3)(a) or paragraph (3)(b) only for cessions of those kinds or
23 lines of business that the assuming insurer is licensed,
24 authorized, or otherwise permitted to write or assume in its
25 state of domicile or, in the case of a United States branch of
26 an alien assuming insurer, in the state through which it is
27 entered and licensed or authorized to transact insurance or
28 reinsurance.

29 (3)(a) Credit must be allowed when the reinsurance is
30 ceded to an assuming insurer that is authorized to transact
31 insurance or reinsurance in this state.

1 (b)1. Credit must be allowed when the reinsurance is
2 ceded to an assuming insurer that is accredited as a reinsurer
3 in this state. An accredited reinsurer is one that:

4 a. Files with the department evidence of its
5 submission to this state's jurisdiction;

6 b. Submits to this state's authority to examine its
7 books and records;

8 c. Is licensed or authorized to transact insurance or
9 reinsurance in at least one state, or in the case of a United
10 States branch of an alien assuming insurer, is entered
11 through, licensed, or authorized to transact insurance or
12 reinsurance in at least one state;

13 d. Files annually with the department a copy of its
14 annual statement filed with the insurance department of its
15 state of domicile any quarterly statements if required by its
16 state of domicile or such quarterly statements if specifically
17 requested by the department, and a copy of its most recent
18 audited financial statement; and

19 (I) Maintains a surplus as regards policyholders in an
20 amount not less than \$20,000,000 and whose accreditation has
21 not been denied by the department within 90 days of its
22 submission; or

23 (II) Maintains a surplus as regards policyholders in
24 an amount not less than \$20,000,000 and whose accreditation
25 has been approved by the department.

26 2. The department may deny or revoke an assuming
27 insurer's accreditation if the assuming insurer does not
28 submit the required documentation pursuant to subparagraph
29 (b)1., if the assuming insurer fails to meet all of the
30 standards required of an accredited reinsurer, or if the
31 assuming insurer's accreditation would be hazardous to the

1 policyholders of this state. In determining whether to deny or
2 revoke accreditation, the department may consider the
3 qualifications of the assuming insurer with respect to all the
4 following subjects:

5 a. Its financial stability;

6 b. The lawfulness and quality of its investments;

7 c. The competency, character, and integrity of its
8 management;

9 d. The competency, character, and integrity of persons
10 who own or have a controlling interest in the assuming
11 insurer; and

12 e. Whether claims under its contracts are promptly and
13 fairly adjusted and are promptly and fairly paid in accordance
14 with the law and the terms of the contracts.

15 3. Credit must not be allowed a ceding insurer if the
16 assuming insurer's accreditation has been revoked by the
17 department after notice and the opportunity for a hearing.

18 4. The actual costs and expenses incurred by the
19 department to review a reinsurer's request for accreditation
20 and subsequent reviews must be charged to and collected from
21 the requesting reinsurer. If the reinsurer fails to pay the
22 actual costs and expenses promptly when due, the department
23 may refuse to accredit the reinsurer or may revoke the
24 reinsurer's accreditation.

25 (c)1. Credit must be allowed when the reinsurance is
26 ceded to an assuming insurer that maintains a trust fund in a
27 qualified United States financial institution, as defined in
28 paragraph (5)(b), for the payment of the valid claims of its
29 United States ceding insurers and their assigns and successors
30 in interest. To enable the department to determine the
31 sufficiency of the trust fund, the assuming insurer shall

1 report annually to the department information substantially
2 the same as that required to be reported on the NAIC Annual
3 Statement form by authorized insurers. The assuming insurer
4 shall submit to examination of its books and records by the
5 department and bear the expense of examination.

6 2.a. Credit for reinsurance must not be granted under
7 this subsection unless the form of the trust and any
8 amendments to the trust have been approved by:

9 (I) The commissioner of the state where the trust is
10 domiciled; or

11 (II) The commissioner of another state who, pursuant
12 to the terms of the trust instrument, has accepted principal
13 regulatory oversight of the trust.

14 b. The form of the trust and any trust amendments must
15 be filed with the commissioner of every state in which the
16 ceding insurer beneficiaries of the trust are domiciled. The
17 trust instrument must provide that contested claims are valid
18 and enforceable upon the final order of any court of competent
19 jurisdiction in the United States. The trust must vest legal
20 title to its assets in its trustees for the benefit of the
21 assuming insurer's United States ceding insurers and their
22 assigns and successors in interest. The trust and the assuming
23 insurer are subject to examination as determined by the
24 commissioner.

25 c. The trust remains in effect for as long as the
26 assuming insurer has outstanding obligations due under the
27 reinsurance agreements subject to the trust. No later than
28 February 28 of each year, the trustee of the trust shall
29 report to the commissioner in writing the balance of the trust
30 and list the trust's investments at the preceding year-end,
31

1 and shall certify that the trust will not expire prior to the
2 following December 31.

3 3. The following requirements apply to the following
4 categories of assuming insurer:

5 a. The trust fund for a single assuming insurer
6 consists of funds in trust in an amount not less than the
7 assuming insurer's liabilities attributable to reinsurance
8 ceded by United States ceding insurers, and, in addition, the
9 assuming insurer shall maintain a trustee surplus of not less
10 than \$20 million. The funds in the trust and trustee surplus
11 consist of assets of a quality substantially similar to that
12 required in part II of chapter 625.

13 b.(I) In the case of a group including incorporated
14 and individual unincorporated underwriters:

15 (A) For reinsurance ceded under reinsurance agreements
16 with an inception, amendment, or renewal date on or after
17 August 1, 1995, the trust consists of a trustee account in an
18 amount not less than the group's several liabilities
19 attributable to business ceded by United States domiciled
20 ceding insurers to any member of the group;

21 (B) For reinsurance ceded under reinsurance agreements
22 with an inception date on or before July 31, 1995, and not
23 amended or renewed after that date, notwithstanding the other
24 provisions of this section, the trust consists of a trustee
25 account in an amount not less than the group's several
26 insurance and reinsurance liabilities attributable to business
27 written in the United States; and

28 (C) In addition to these trusts, the group shall
29 maintain in trust a trustee surplus of which \$100 million
30 must be held jointly for the benefit of the United States
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1 domiciled ceding insurers of any member of the group for all
2 years of account.

3 (II) The incorporated members of the group must not be
4 engaged in any business other than underwriting of a member of
5 the group, and are subject to the same level of regulation and
6 solvency control by the group's domiciliary regulator as the
7 unincorporated members.

8 (III) Within 90 days after its financial statements
9 are due to be filed with the group's domiciliary regulator,
10 the group shall provide to the commissioner an annual
11 certification by the group's domiciliary regulator of the
12 solvency of each underwriter member; or if a certification is
13 unavailable, financial statements, prepared by independent
14 public accountants, of each underwriter member of the group.

15 (d) Credit must be allowed when the reinsurance is
16 ceded to an assuming insurer not meeting the requirements of
17 paragraph (a), paragraph (b), or paragraph (c), but only as to
18 the insurance of risks located in jurisdictions where the
19 reinsurance is required to be purchased by a particular entity
20 by applicable law or regulation of that jurisdiction.

21 (e) If the assuming insurer is not authorized or
22 accredited to transact insurance or reinsurance in this state
23 pursuant to paragraph (a) or paragraph (b), the credit
24 permitted by paragraph (c) must not be allowed unless the
25 assuming insurer agrees in the reinsurance agreements:

26 1.a. That in the event of the failure of the assuming
27 insurer to perform its obligations under the terms of the
28 reinsurance agreement, the assuming insurer, at the request of
29 the ceding insurer, shall submit to the jurisdiction of any
30 court of competent jurisdiction in any state of the United
31 States, will comply with all requirements necessary to give

1 the court jurisdiction, and will abide by the final decision
2 of the court or of any appellate court in the event of an
3 appeal; and

4 b. To designate the commissioner, pursuant to s.
5 48.151, or a designated attorney as its true and lawful
6 attorney upon whom may be served any lawful process in any
7 action, suit, or proceeding instituted by or on behalf of the
8 ceding company.

9 2. This paragraph is not intended to conflict with or
10 override the obligation of the parties to a reinsurance
11 agreement to arbitrate their disputes, if this obligation is
12 created in the agreement.

13 (f) If the assuming insurer does not meet the
14 requirements of paragraph (a) or paragraph (b), the credit
15 permitted by paragraph (c) is not allowed unless the assuming
16 insurer agrees in the trust agreements, in substance, to the
17 following conditions:

18 1. Notwithstanding any other provisions in the trust
19 instrument, if the trust fund is inadequate because it
20 contains an amount less than the amount required by paragraph
21 (c), or if the grantor of the trust has been declared
22 insolvent or placed into receivership, rehabilitation,
23 liquidation, or similar proceedings under the laws of its
24 state or country of domicile, the trustee shall comply with an
25 order of the commissioner with regulatory oversight over the
26 trust or with an order of a United States court of competent
27 jurisdiction directing the trustee to transfer to the
28 commissioner with regulatory oversight all of the assets of
29 the trust fund.

30 2. The assets must be distributed by and claims must
31 be filed with and valued by the commissioner with regulatory

1 oversight in accordance with the laws of the state in which
2 the trust is domiciled which are applicable to the liquidation
3 of domestic insurance companies.

4 3. If the commissioner with regulatory oversight
5 determines that the assets of the trust fund or any part
6 thereof are not necessary to satisfy the claims of the United
7 States ceding insurers of the grantor of the trust, the assets
8 or part thereof must be returned by the commissioner with
9 regulatory oversight to the trustee for distribution in
10 accordance with the trust agreement.

11 4. The grantor shall waive any right otherwise
12 available to it under United States law that is inconsistent
13 with this provision.

14 (4) An asset allowed or a deduction from liability
15 taken for the reinsurance ceded by an insurer to an assuming
16 insurer not meeting the requirements of subsections (2) and
17 (3) is allowed in an amount not exceeding the liabilities
18 carried by the ceding insurer. The deduction must be in the
19 amount of funds held by or on behalf of the ceding insurer,
20 including funds held in trust for the ceding insurer, under a
21 reinsurance contract with the assuming insurer as security for
22 the payment of obligations thereunder, if the security is held
23 in the United States subject to withdrawal solely by, and
24 under the exclusive control of, the ceding insurer, or, in the
25 case of a trust, held in a qualified United States financial
26 institution, as defined in paragraph (5)(b). This security may
27 be in the form of:

28 (a) Cash in United States dollars;

29 (b) Securities listed by the Securities Valuation
30 Office of the National Association of Insurance Commissioners

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1 and qualifying as admitted assets pursuant to part II of
2 chapter 625;

3 (c) Clean, irrevocable, unconditional letters of
4 credit, issued or confirmed by a qualified United States
5 financial institution, as defined in paragraph (5)(a),
6 effective no later than December 31 of the year for which the
7 filing is made, and in the possession of, or in trust for, the
8 ceding company on or before the filing date of its annual
9 statement; or

10 (d) Any other form of security acceptable to the
11 department.

12 (5)(a) For purposes of paragraph (4)(c) regarding
13 letters of credit, a "qualified United States institution"
14 means an institution that:

15 1. Is organized, or in the case of a United States
16 office of a foreign banking organization, is licensed under
17 the laws of the United States or any state thereof;

18 2. Is regulated, supervised, and examined by United
19 States or state authorities having regulatory authority over
20 banks and trust companies; and

21 3. Has been determined by either the department or the
22 Securities Valuation Office of the National Association of
23 Insurance Commissioners to meet such standards of financial
24 condition and standing as are considered necessary and
25 appropriate to regulate the quality of financial institutions
26 whose letters of credit will be acceptable to the department.

27 (b) For purposes of those provisions of this law which
28 specify institutions that are eligible to act as a fiduciary
29 of a trust, a "qualified United States financial institution"
30 means an institution that is a member of the Federal Reserve
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1 System or that has been determined by the department to meet
2 the following criteria:

3 1. Is organized, or, in the case of a United States
4 branch or agency office of a foreign banking organization, is
5 licensed, under the laws of the United States or any state
6 thereof and has been granted authority to operate with
7 fiduciary powers; and

8 2. Is regulated, supervised, and examined by federal
9 or state authorities having regulatory authority over banks
10 and trust companies.

11 (6) For the purposes of this section only, the term
12 "ceding insurer" includes any health maintenance organization
13 operating under a certificate of authority issued under part I
14 of chapter 641.

15 (7) After notice and an opportunity for a hearing, the
16 department may disallow any credit that it finds would be
17 contrary to the proper interests of the policyholders or
18 stockholders of a ceding domestic insurer.

19 (8) Credit must be allowed to any ceding insurer for
20 reinsurance otherwise complying with this section only when
21 the reinsurance is payable by the assuming insurer on the
22 basis of the liability of the ceding insurer under the
23 contract or contracts reinsured without diminution because of
24 the insolvency of the ceding insurer. Such credit must be
25 allowed to the ceding insurer for reinsurance otherwise
26 complying with this section only when the reinsurance
27 agreement provides that payments by the assuming insurer will
28 be made directly to the ceding insurer or its receiver, except
29 when:

30 (a) The reinsurance contract specifically provides
31 payment to the named insured, assignee, or named beneficiary

1 of the policy issued by the ceding insurer in the event of the
2 insolvency of the ceding insurer; or

3 (b) The assuming insurer, with the consent of the
4 named insured, has assumed the policy obligations of the
5 ceding insurer as direct obligations of the assuming insurer
6 in substitution for the obligations of the ceding insurer to
7 the named insured.

8 (9) No person, other than the ceding insurer, has any
9 rights against the reinsurer which are not specifically set
10 forth in the contract of reinsurance or in a specific written,
11 signed agreement between the reinsurer and the person.

12 (10) An authorized insurer may not knowingly accept as
13 assuming reinsurer any risk covering subject of insurance
14 which is resident, located, or to be performed in this state
15 and which is written directly by any insurer not then
16 authorized to transact such insurance in this state, other
17 than as to surplus lines insurance lawfully written under part
18 VIII of chapter 626.

19 (11)(a) Any domestic or commercially domiciled insurer
20 ceding directly written risks of loss under this section shall
21 within 30 days of receipt of a cover note or similar
22 confirmation of coverage, or, without exception, no later than
23 6 months after the effective date of the reinsurance treaty,
24 file with the department one copy of a summary statement
25 containing the following information about each treaty:

26 1. The contract period;
27 2. The nature of the reinsured's business;
28 3. An indication as to whether the treaty is
29 proportional, nonproportional, coinsurance, modified
30 coinsurance, or indemnity, as applicable;

31 4. The ceding company's loss retention per risk;

- 1 5. The reinsured limits;
2 6. Any special contract restrictions;
3 7. A schedule of reinsurers assuming the risks of
4 loss;
5 8. An indication as to whether payments to the
6 assuming insurer are based on written premiums or earned
7 premiums;
8 9. Identification of any intermediary or broker used
9 in obtaining the reinsurance and the commission paid them if
10 known; and
11 10. Ceding commissions and allowances.
12 (b) The summary statement must be signed and attested
13 to by either the chief executive officer or the chief
14 financial officer of the reporting insurer. In addition to the
15 summary statement, the Insurance Commissioner may require the
16 filing of any supporting information relating to the ceding of
17 such risks as she or he deems necessary. If the summary
18 statement prepared by the ceding insurer discloses that the
19 net effect of a reinsurance treaty or treaties (or series of
20 treaties with one or more affiliated reinsurers entered into
21 for the purpose of avoiding the following threshold amount) at
22 any time results in an increase of more than 25 percent to the
23 insurer's surplus as to policyholders, then the insurer shall
24 certify in writing to the department that the relevant
25 reinsurance treaty or treaties complies with the accounting
26 requirements contained in any rule adopted by the department
27 under subsection (10) or subsection (12). If such certificate
28 is filed after the summary statement of such reinsurance
29 treaty or treaties, the insurer shall refile the summary
30 statement with the certificate. In any event, the certificate
31

1 must state that a copy of the certificate was sent to the
2 reinsurer under the reinsurance treaty.

3 (c) This subsection applies to cessions of directly
4 written risk or loss. This subsection does not apply to
5 contracts of facultative reinsurance or to any ceding insurer
6 with surplus as to policyholders that exceeds \$100 million as
7 of the immediately preceding December 31. Additionally, any
8 ceding insurer otherwise subject to this section with less
9 than \$500,000 in direct premiums written in this state during
10 the preceding calendar year or with less than 1,000
11 policyholders at the end of the preceding calendar year is
12 exempt from the requirements of this subsection. However, any
13 ceding insurer otherwise subject to this section with more
14 than \$250,000 in direct premiums written in this state during
15 the preceding calendar quarter is not exempt from the
16 requirements of this subsection.

17 (d) An authorized insurer not otherwise exempt from
18 the provisions of this subsection shall provide the
19 information required by this subsection with underlying and
20 supporting documentation upon written request of the
21 department.

22 (e) The department may, upon a showing of good cause,
23 waive the requirements of this subsection.

24 (12) If the department finds that a reinsurance
25 agreement creates a substantial risk of insolvency to either
26 insurer entering into the reinsurance agreement, the
27 department may by order require a cancellation of the
28 reinsurance agreement.

29 (13) No credit shall be allowed for reinsurance with
30 regard to which the reinsurance agreement does not create a
31 meaningful transfer of risk of loss to the reinsurer.

1 (14) The department may adopt rules and regulations
2 implementing the provisions of this section. Rules are
3 authorized to protect the interests of insureds, claimants,
4 ceding insurers, assuming insurers and the public. These rules
5 shall be in substantial compliance with:

6 (a) The National Association of Insurance
7 Commissioners model regulations relating to credit for
8 reinsurance;

9 (b) The 1998 National Association of Insurance
10 Commissioners Accounting Practices and Procedures Manual for
11 Property and Casualty Insurers;

12 (c) The 1998 National Association of Insurance
13 Commissioners Accounting Practices and Procedures Manual for
14 Life and Health Insurers; and

15 (d) The National Association of Insurance
16 Commissioners model regulation for Credit for Reinsurance and
17 Life and Health Reinsurance Agreements.

18
19 The department may further adopt rules to provide for
20 transition from existing requirements for the approval of
21 reinsurers to the accreditation of reinsurers pursuant to this
22 section.

23 (15) Any reinsurer approved pursuant to subparagraph
24 (3)(a)2. as of December 31, 1999, which fails to obtain
25 accreditation pursuant to this section prior to December 30,
26 2002, shall have its approval terminated by operation of law
27 on that date.

28 (16) This act shall apply to all cessions on or after
29 January 1, 2000, under reinsurance agreements that have an
30 inception, anniversary, or renewal date on or after January 1,
31 2000.

1 Section 2. Section 626.923, Florida Statutes, is
2 amended to read:

3 626.923 Filing copy of policy or certificate.--A
4 surplus lines agent shall, within 30 days after the date of a
5 request by the department or the Florida Surplus Lines Service
6 Office, furnish ~~the department~~ an exact copy of any and all
7 requested policies, including applications, certificates,
8 cover notes, or other forms of confirmation of insurance
9 coverage or any substitutions thereof or endorsements thereto.
10 The department or the Florida Surplus Lines Service Office may
11 also request and the agent shall furnish, within 30 days after
12 the date of the request, the agent's memorandum as to the
13 substance of any change represented by a substitute
14 certificate, cover note, other form of confirmation of
15 insurance coverage, or endorsement as compared with the
16 coverage as originally placed or issued.

17 Section 3. Section 626.930, Florida Statutes, is
18 amended to read:

19 626.930 Records of surplus lines agent.--

20 (1) Each surplus lines agent shall keep in his or her
21 office in this state a full and true record for a period of 5
22 years of each surplus lines contract, including applications
23 and all certificates, cover notes, and other forms of
24 confirmation of insurance coverage and any substitutions
25 thereof or endorsements thereto relative to said contract
26 procured by the agent and showing such of the following items
27 as may be applicable:

28 (a) Amount of the insurance and perils insured
29 against;

30 (b) Brief general description of property insured and
31 where located;

- 1 (c) Gross premium charged;
2 (d) Return premium paid, if any;
3 (e) Rate of premium charged upon the several items of
4 property;
5 (f) Effective date of the contract, and the terms
6 thereof;
7 (g) Name and post office address of the insured;
8 (h) Name and home-office address of the insurer;
9 (i) Amount collected from the insured; and
10 (j) Other information as may be required by the
11 department.

12 (2) The record shall at all times be open to
13 examination by the department or the Florida Surplus Lines
14 Service Office without notice and shall be so kept available
15 and open ~~to the department~~ for 5 years next following
16 expiration or cancellation of the contract.

17 (3) Each surplus lines agent shall maintain all
18 surplus lines business records in his or her general lines
19 agency office, if licensed as a general lines agent, or in his
20 or her managing general agency office, if licensed as a
21 managing general agent or the full-time salaried employee of
22 such general agent.

23 Section 4. Section 626.931, Florida Statutes, is
24 amended to read:

25 626.931 Quarterly report.--

26 (1) Each surplus lines agent shall on or before the
27 end of the month next following each calendar quarter file
28 with the Florida Surplus Lines Service Office an affidavit, on
29 forms as prescribed and furnished by the Florida Surplus Lines
30 Service Office, stating that ~~a verified report of~~ all surplus
31 lines insurance transacted by him or her during such calendar

1 quarter has been submitted to the Florida Surplus Lines
2 Service Office as required.

3 (2) The reports and supporting information shall be in
4 a computer-readable format as determined by the Florida
5 Surplus Lines Service Office ~~department or shall be submitted~~
6 ~~on forms prescribed by the department~~ and shall show:

7 (a) Aggregate gross premiums charged;

8 (b) Aggregate of returned premiums and taxes paid to
9 insureds;

10 (c) Aggregate of net premiums;

11 (d) A listing of all policies, certificates, cover
12 notes, or other forms of confirmation of insurance coverage or
13 any substitutions thereof or endorsements thereto; and

14 (e) Additional information as required by the
15 department or Florida Surplus Lines Service Office.

16 (3) The report shall include the affidavit of the
17 surplus lines agent, on forms as prescribed and furnished by
18 the Florida Surplus Lines Service Office ~~department~~, as to
19 efforts made to place coverages with authorized insurers and
20 the results thereof.

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

28 (5) Each alien insurer accepting premiums ~~which are~~
29 ~~subject to taxes and~~ which are described in this section
30 shall, on or before June 30 of each year, file with the
31 Florida Surplus Lines Service Office a verified report of all

1 surplus lines insurance transacted by such insurer for
2 insurance risks located in this state during the preceding
3 calendar year, provided the first such report shall be with
4 respect to calendar year 1999 ~~1994~~.

5 (6) The Insurance Commissioner shall have the
6 authority to waive the filing requirements described in
7 subsections (4) and (5).

8 (7) Each insurer's report and supporting information
9 shall be in a computer-readable format as determined by the
10 Florida Surplus Lines Service Office ~~department~~ or shall be
11 submitted on forms prescribed by the Florida Surplus Lines
12 Service Office ~~department~~ and shall show for each applicable
13 agent:

- 14 (a) The aggregate gross Florida premiums charged;
15 (b) The aggregate of returned Florida premiums;
16 (c) The aggregate of net Florida premiums;
17 (d) A listing of all policies, certificates, cover
18 notes, or other forms of confirmation of insurance coverage or
19 any substitutions thereof or endorsements thereto and the
20 identifying number; and
21 (e) Any additional information required by the
22 department or Florida Surplus Lines Service Office.

23 Section 5. Section 626.932, Florida Statutes, is
24 amended to read:

25 626.932 Surplus lines tax.--

26 (1) The premiums charged for surplus lines coverages
27 are subject to a premium receipts tax of 5 percent of all
28 gross premiums charged for such insurance. The surplus lines
29 agent shall collect from the insured the amount of the tax at
30 the time of the delivery of the cover note, certificate of
31 insurance, policy, or other initial confirmation of insurance,

1 in addition to the full amount of the gross premium charged by
2 the insurer for the insurance. The surplus lines agent is
3 prohibited from absorbing such tax or, as an inducement for
4 insurance or for any other reason, rebating all or any part of
5 such tax or of his or her commission.

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

17 (b) The agent shall pay interest on the amount of any
18 delinquent tax 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 tax 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, or
26 with respect to, vessels, cargo, or aircraft written under s.
27 626.917, or as to insurance of risks of the state government
28 or its agencies, or of any county or municipality or of any
29 agency thereof.

30 (5) The department shall deposit 55 percent of all
31 taxes collected under this section to the credit of the

1 Insurance Commissioner's Regulatory Trust Fund. Forty-five
2 percent of all taxes collected under this section shall be
3 deposited into the General Revenue Fund.

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

14 Section 6. Section 626.933, Florida Statutes, is
15 amended to read:

16 626.933 Collection of tax and service fee.--If the tax
17 and service fee payable by a surplus lines agent under this
18 Surplus Lines Law is not so paid within the time prescribed,
19 the same shall be recoverable in a suit brought by the
20 department against the surplus lines agent and the surety or
21 sureties on the bond filed by the surplus lines agent under s.
22 626.928.

23 Section 7. Section 626.935, Florida Statutes, is
24 amended to read:

25 626.935 Suspension, revocation, or refusal of surplus
26 lines agent's license.--

27 (1) The department shall deny an application for,
28 suspend, revoke, or refuse to renew the appointment of a
29 surplus lines agent and all other licenses and appointments
30 held by the licensee under this code, upon any of the
31 following grounds:

1 (a) Removal of the licensee's office from the state.

2 (b) Removal of the accounts and records of his or her
3 surplus lines business from this state during the period when
4 such accounts and records are required to be maintained under
5 s. 626.930.

6 (c) Closure of the licensee's office for a period of
7 more than 30 consecutive days.

8 (d) Failure to make and file his or her ~~quarterly~~
9 reports when due as required by s. 626.931.

10 (e) Failure to pay the tax and service fee on surplus
11 lines premiums, as provided for in this Surplus Lines Law.

12 (f) Failure to maintain the bond as required by s.
13 626.928.

14 (g) Suspension, revocation, or refusal to renew or
15 continue the license or appointment as a general lines agent,
16 service representative, or managing general agent.

17 (h) Lack of qualifications as for an original surplus
18 lines agent's license.

19 (i) Violation of this Surplus Lines Law.

20 (j) For any other applicable cause for which the
21 license of a general lines agent could be suspended, revoked,
22 or refused under s. 626.611.

23 (2) The department may, in its discretion, deny an
24 application for, suspend, revoke, or refuse to renew the
25 license or appointment of any surplus lines agent upon any
26 applicable ground for which a general lines agent's license
27 could be suspended, revoked, or refused under s. 626.621.

28 (3) In the suspension or revocation of, or the refusal
29 to issue or renew, the license or appointment of a surplus
30 lines agent, the department shall follow the same procedures,
31 as applicable, as provided for suspension, revocation, or

1 refusal of licenses of general lines agents, but subject to s.
2 626.936 as to failure to file a quarterly report or pay the
3 tax.

4 (4) The following sections also apply, to the extent
5 so applicable, as to surplus lines agents:

6 (a) Section 626.641.

7 (b) Section 626.651.

8 (c) Section 626.661.

9 (d) Section 626.681.

10 (e) Section 626.691.

11 Section 8. Section 626.936, Florida Statutes, is
12 amended to read:

13 626.936 Failure to file reports ~~report~~ or pay tax or
14 service fee; administrative penalty.--

15 (1) Any licensed surplus lines agent who neglects to
16 file a report or a quarterly affidavit ~~report~~ in the form and
17 within the time required or provided for in the Surplus Lines
18 Law may be fined up to \$50 per day for each day the neglect
19 continues, beginning the day after the report or quarterly
20 affidavit ~~report~~ was due until the date the report is received
21 by the Florida Surplus Lines Service Office ~~department~~. All
22 ~~The department shall deposit all sums collected by it~~ under
23 this section shall be deposited into the Insurance
24 Commissioner's Regulatory Trust Fund.

25 (2) Any licensed surplus lines agent who neglects to
26 pay the taxes and service fees as required under the Surplus
27 Lines Law and within the time required may be fined up to \$500
28 per day for each day the failure to pay continues, beginning
29 the day after the tax and service fees were ~~was~~ due. The agent
30 shall pay interest on the amount of any delinquent tax due, at
31 the rate of 9 percent per year, compounded annually, beginning

1 the day the amount becomes delinquent. The department shall
2 deposit all sums collected by it under this section into the
3 Insurance Commissioner's Regulatory Trust Fund.

4 Section 9. Section 626.9361, Florida Statutes, is
5 amended to read:

6 626.9361 Failure to file report; administrative
7 penalty.--Any eligible surplus lines insurer who fails to file
8 a ~~quarterly~~ report in the form and within the time required or
9 provided for in the Surplus Lines Law may be fined up to \$500
10 per day for each day such failure continues, beginning the day
11 after the report was due, until the date the report is
12 received by the Florida Surplus Lines Service Office
13 ~~department~~. Failure to file a ~~quarterly~~ report may also
14 result in withdrawal of eligibility as a surplus lines insurer
15 in this state. All sums collected by the department under this
16 section shall be deposited into the Insurance Commissioner's
17 Regulatory Trust Fund.

18 Section 10. Subsection (3) of section 627.4035,
19 Florida Statutes, is amended to read:

20 627.4035 Cash payment of premiums; claims.--

21 (3) All payments of claims made in this state under
22 any contract of insurance shall be paid in cash consisting of
23 coins, currency, checks, drafts, or money orders and, if by
24 check or draft, shall be in such form as will comply with the
25 standards for cash items adopted by the Federal Reserve System
26 to facilitate the sorting, routing, and mechanized processing
27 of such items. If authorized by the recipient, payment of
28 claims may be made by debit card or other forms of electronic
29 transfer.

30 Section 11. Section 628.903, Florida Statutes, is
31 amended to read:

1 628.903 "Industrial insured captive insurer"
2 defined.--For purposes of this part:
3 (1) An "industrial insured" means an insured which:
4 (a) Has gross assets in excess of \$10~~\$50~~ million and~~+~~
5 ~~(b)~~ procures insurance through the use of a full-time
6 employee of the insured who acts as an insurance manager or
7 buyer or through the services of a person licensed as a
8 property and casualty insurance agent, broker, or consultant
9 in such person's state of domicile;
10 ~~(b)~~~~(c)~~ Has at least 25 ~~100~~ full-time employees; and
11 ~~(c)~~~~(d)~~ Has Pays annual aggregate premiums for all
12 insurance risks that total ~~of~~ at least \$100,000~~\$200,000~~ for
13 ~~each line of insurance purchased from the industrial insured~~
14 ~~captive insurer or at least \$75,000, with respect to any line~~
15 ~~of coverage excess of at least \$25 million in the annual~~
16 ~~aggregate. The purchase of umbrella or general liability~~
17 ~~coverage excess of \$25 million in the annual aggregate shall~~
18 ~~be deemed to be the purchase of a single line of insurance.~~
19 (2) An "industrial insured captive insurer" is a
20 captive insurer that:
21 (a) Has as its stockholders or members only industrial
22 insureds that are reinsured pursuant to subparagraph (b)2. or
23 insured by the industrial insured captive insurer, or has as
24 its sole stockholder a corporation, which corporation's sole
25 stockholders are industrial insureds that are reinsured
26 pursuant to subparagraph (b)2. or insured by the industrial
27 insured captive insurer; ~~and~~
28 (b)1. Provides insurance only to the industrial
29 insureds that are its stockholders or members, and affiliates
30 thereof, or to the stockholders, and affiliates thereof, of
31 its parent corporation; or

1 2. Provides reinsurance to insurers only on risks
2 written by such insurers for the industrial insureds who are
3 the stockholders or members, and affiliates thereof, of the
4 industrial insured captive insurer, or the stockholders, and
5 affiliates thereof, of the parent corporation of the
6 industrial insured captive insurer.

7
8 For the purposes of this paragraph, the term "affiliate" means
9 a person that directly, or indirectly through one or more
10 intermediaries, controls, is controlled by, or is under common
11 control with one or more of the stockholders or members of the
12 industrial insured captive insurer or one or more of the
13 stockholders of the parent corporation of the industrial
14 insured captive insurer; ~~and~~

15 (c) Possesses and maintains:

16 1. Unimpaired paid-in capital of at least \$5 million;

17 and

18 2. Unimpaired surplus of at least \$15 million.

19 Section 12. This part does not apply to a certified
20 public accountant licensed under chapter 473, Florida
21 Statutes, who is acting within the scope of the practice of
22 public accounting, as defined in section 473.302, Florida
23 Statutes, provided that the activities of the certified public
24 accountant are limited to advising a client of the necessity
25 of obtaining insurance, the amount of insurance needed, or the
26 line of coverage needed, and provided that the certified
27 public accountant does not directly or indirectly receive or
28 share in any commission, referral fee, or solicitor's fee.

29 Section 13. Section 627.171, Florida Statutes, is
30 amended to read:

31 627.171 Excess or reduced rates.--

1 (1) With written consent of the insured signed prior
2 to the policy inception date and filed with the insurer, the
3 insurer may use a rate in excess of or lower than the
4 otherwise applicable filed rate on any specific risk. The
5 signed consent form must include the filed rate as well as the
6 excess or reduced rate for the risk insured and a copy of the
7 form must be maintained by the insurer for 3 years and be
8 available for review by the department.

9 (2) An insurer may not use excess or reduced rates
10 pursuant to this section for more than 20 ~~10~~ percent of its
11 commercial insurance policies written or renewed in each
12 calendar year for any line of commercial insurance or for more
13 than 5 percent of its personal lines insurance policies
14 written or renewed in each calendar year for any line of
15 personal insurance.

16 (3) An insurer may not use an excess or reduced rate
17 pursuant to this section unless the rate is based on
18 underwriting considerations and is not based on arbitrary or
19 unfairly discriminatory considerations.

20 Section 14. This act shall take effect upon becoming a
21 law.