

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"; amending s. 626.022,
16 F.S.; providing an exception from certain
17 insurance licensing requirements for certified
18 public accountants acting within the scope of
19 their profession; amending s. 627.171, F.S.;
20 allowing insurers to increase the number of
21 policies the rates of which are subject to the
22 consent of the insured; providing an effective
23 date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 624.610, Florida Statutes, 1998
28 Supplement, is amended to read:

29 (Substantial rewording of section. See
30 s. 624.610, F.S., for present text.)
31 624.610 Reinsurance.--

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

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

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

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

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

9 b. Submits to this state's authority to examine its
10 books and records;

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

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

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

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

29 2. The department may deny or revoke an assuming
30 insurer's accreditation if the assuming insurer does not
31 submit the required documentation pursuant to subparagraph

1 (b)1., if the assuming insurer fails to meet all of the
2 standards required of an accredited reinsurer, or if the
3 assuming insurer's accreditation would be hazardous to the
4 policyholders of this state. In determining whether to deny or
5 revoke accreditation, the department may consider the
6 qualifications of the assuming insurer with respect to all the
7 following subjects:

8 a. Its financial stability;
9 b. The lawfulness and quality of its investments;
10 c. The competency, character, and integrity of its
11 management;

12 d. The competency, character, and integrity of persons
13 who own or have a controlling interest in the assuming
14 insurer; and

15 e. Whether claims under its contracts are promptly and
16 fairly adjusted and are promptly and fairly paid in accordance
17 with the law and the terms of the contracts.

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

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

28 (c)1. Credit must be allowed when the reinsurance is
29 ceded to an assuming insurer that maintains a trust fund in a
30 qualified United States financial institution, as defined in
31 paragraph (5)(b), for the payment of the valid claims of its

1 United States ceding insurers and their assigns and successors
2 in interest. To enable the department to determine the
3 sufficiency of the trust fund, the assuming insurer shall
4 report annually to the department information substantially
5 the same as that required to be reported on the NAIC Annual
6 Statement form by authorized insurers. The assuming insurer
7 shall submit to examination of its books and records by the
8 department and bear the expense of examination.

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

12 (I) The commissioner of the state where the trust is
13 domiciled; or

14 (II) The commissioner of another state who, pursuant
15 to the terms of the trust instrument, has accepted principal
16 regulatory oversight of the trust.

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

28 c. The trust remains in effect for as long as the
29 assuming insurer has outstanding obligations due under the
30 reinsurance agreements subject to the trust. No later than
31 February 28 of each year, the trustee of the trust shall

1 report to the commissioner in writing the balance of the trust
2 and list the trust's investments at the preceding year-end,
3 and shall certify that the trust will not expire prior to the
4 following December 31.

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

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

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

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

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

30 (C) In addition to these trusts, the group shall
31 maintain in trust a trustee surplus of which \$100 million

1 must be held jointly for the benefit of the United States
2 domiciled ceding insurers of any member of the group for all
3 years of account.

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

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

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

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

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

1 States, will comply with all requirements necessary to give
2 the court jurisdiction, and will abide by the final decision
3 of the court or of any appellate court in the event of an
4 appeal; and

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

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

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

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

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1 2. The assets must be distributed by and claims must
2 be filed with and valued by the commissioner with regulatory
3 oversight in accordance with the laws of the state in which
4 the trust is domiciled which are applicable to the liquidation
5 of domestic insurance companies.

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

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

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

30 (a) Cash in United States dollars;
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1 (b) Securities listed by the Securities Valuation
2 Office of the National Association of Insurance Commissioners
3 and qualifying as admitted assets pursuant to part II of
4 chapter 625;

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

12 (d) Any other form of security acceptable to the
13 department.

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

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

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

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

29 (b) For purposes of those provisions of this law which
30 specify institutions that are eligible to act as a fiduciary
31 of a trust, a "qualified United States financial institution"

1 means an institution that is a member of the Federal Reserve
2 System or that has been determined by the department to meet
3 the following criteria:

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

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

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

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

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

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1 (a) The reinsurance contract specifically provides
2 payment to the named insured, assignee, or named beneficiary
3 of the policy issued by the ceding insurer in the event of the
4 insolvency of the ceding insurer; or

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

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

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

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

- 28 1. The contract period;
- 29 2. The nature of the reinsured's business;

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1 3. An indication as to whether the treaty is
2 proportional, nonproportional, coinsurance, modified
3 coinsurance, or indemnity, as applicable;

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

5 5. The reinsured limits;

6 6. Any special contract restrictions;

7 7. A schedule of reinsurers assuming the risks of
8 loss;

9 8. An indication as to whether payments to the
10 assuming insurer are based on written premiums or earned
11 premiums;

12 9. Identification of any intermediary or broker used
13 in obtaining the reinsurance and the commission paid them if
14 known; and

15 10. Ceding commissions and allowances.

16 (b) The summary statement must be signed and attested
17 to by either the chief executive officer or the chief
18 financial officer of the reporting insurer. In addition to the
19 summary statement, the Insurance Commissioner may require the
20 filing of any supporting information relating to the ceding of
21 such risks as she or he deems necessary. If the summary
22 statement prepared by the ceding insurer discloses that the
23 net effect of a reinsurance treaty or treaties (or series of
24 treaties with one or more affiliated reinsurers entered into
25 for the purpose of avoiding the following threshold amount) at
26 any time results in an increase of more than 25 percent to the
27 insurer's surplus as to policyholders, then the insurer shall
28 certify in writing to the department that the relevant
29 reinsurance treaty or treaties complies with the accounting
30 requirements contained in any rule adopted by the department
31 under subsection (10) or subsection (12). If such certificate

1 is filed after the summary statement of such reinsurance
2 treaty or treaties, the insurer shall refile the summary
3 statement with the certificate. In any event, the certificate
4 must state that a copy of the certificate was sent to the
5 reinsurer under the reinsurance treaty.

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

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

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

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

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

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

9 (a) The National Association of Insurance
10 Commissioners model regulations relating to credit for
11 reinsurance;

12 (b) The 1998 National Association of Insurance
13 Commissioners Accounting Practices and Procedures Manual for
14 Property and Casualty Insurers;

15 (c) The 1998 National Association of Insurance
16 Commissioners Accounting Practices and Procedures Manual for
17 Life and Health Insurers; and

18 (d) The National Association of Insurance
19 Commissioners model regulation for Credit for Reinsurance and
20 Life and Health Reinsurance Agreements.

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

26 (15) Any reinsurer approved pursuant to subparagraph
27 (3)(a)2. as of December 31, 1999, which fails to obtain
28 accreditation pursuant to this section prior to December 30,
29 2002, shall have its approval terminated by operation of law
30 on that date.

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1 (16) This act shall apply to all cessions on or after
2 January 1, 2000, under reinsurance agreements that have an
3 inception, anniversary, or renewal date on or after January 1,
4 2000.

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

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

21 Section 3. Section 626.930, Florida Statutes, is
22 amended to read:

23 626.930 Records of surplus lines agent.--

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

- 1 (a) Amount of the insurance and perils insured
2 against;
- 3 (b) Brief general description of property insured and
4 where located;
- 5 (c) Gross premium charged;
- 6 (d) Return premium paid, if any;
- 7 (e) Rate of premium charged upon the several items of
8 property;
- 9 (f) Effective date of the contract, and the terms
10 thereof;
- 11 (g) Name and post office address of the insured;
- 12 (h) Name and home-office address of the insurer;
- 13 (i) Amount collected from the insured; and
- 14 (j) Other information as may be required by the
15 department.
- 16 (2) The record shall at all times be open to
17 examination by the department or the Florida Surplus Lines
18 Service Office without notice and shall be so kept available
19 and open ~~to the department~~ for 5 years next following
20 expiration or cancellation of the contract.
- 21 (3) Each surplus lines agent shall maintain all
22 surplus lines business records in his or her general lines
23 agency office, if licensed as a general lines agent, or in his
24 or her managing general agency office, if licensed as a
25 managing general agent or the full-time salaried employee of
26 such general agent.
- 27 Section 4. Section 626.931, Florida Statutes, is
28 amended to read:
- 29 626.931 Quarterly report.--
- 30 (1) Each surplus lines agent shall on or before the
31 end of the month next following each calendar quarter file

1 with the Florida Surplus Lines Service Office an affidavit, on
2 forms as prescribed and furnished by the Florida Surplus Lines
3 Service Office, stating that a verified report of all surplus
4 lines insurance transacted by him or her during such calendar
5 quarter has been submitted to the Florida Surplus Lines
6 Service Office as required.

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

11 (a) Aggregate gross premiums charged;

12 (b) Aggregate of returned premiums and taxes paid to
13 insureds;

14 (c) Aggregate of net premiums;

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

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

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

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

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 a verified report of all
5 surplus lines insurance transacted by such insurer for
6 insurance risks located in this state during the preceding
7 calendar year, provided the first such report shall be with
8 respect to calendar year 1999 ~~1994~~.

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

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

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

27 Section 5. Section 626.932, Florida Statutes, is
28 amended to read:

29 626.932 Surplus lines tax.--

30 (1) The premiums charged for surplus lines coverages
31 are subject to a premium receipts tax of 5 percent of all

1 gross premiums charged for such insurance. The surplus lines
2 agent shall collect from the insured the amount of the tax at
3 the time of the delivery of the cover note, certificate of
4 insurance, policy, or other initial confirmation of insurance,
5 in addition to the full amount of the gross premium charged by
6 the insurer for the insurance. The surplus lines agent is
7 prohibited from absorbing such tax or, as an inducement for
8 insurance or for any other reason, rebating all or any part of
9 such tax or of his or her commission.

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

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

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

29 (4) This section does not apply as to insurance of, or
30 with respect to, vessels, cargo, or aircraft written under s.
31 626.917, or as to insurance of risks of the state government

1 or its agencies, or of any county or municipality or of any
2 agency thereof.

3 (5) The department shall deposit 55 percent of all
4 taxes collected under this section to the credit of the
5 Insurance Commissioner's Regulatory Trust Fund. Forty-five
6 percent of all taxes collected under this section shall be
7 deposited into the General Revenue Fund.

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

18 Section 6. Section 626.933, Florida Statutes, is
19 amended to read:

20 626.933 Collection of tax and service fee.--If the tax
21 and service fee payable by a surplus lines agent under this
22 Surplus Lines Law is not so paid within the time prescribed,
23 the same shall be recoverable in a suit brought by the
24 department against the surplus lines agent and the surety or
25 sureties on the bond filed by the surplus lines agent under s.
26 626.928.

27 Section 7. Section 626.935, Florida Statutes, is
28 amended to read:

29 626.935 Suspension, revocation, or refusal of surplus
30 lines agent's license.--

31

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

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

7 (b) Removal of the accounts and records of his or her
8 surplus lines business from this state during the period when
9 such accounts and records are required to be maintained under
10 s. 626.930.

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

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

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

17 (f) Failure to maintain the bond as required by s.
18 626.928.

19 (g) Suspension, revocation, or refusal to renew or
20 continue the license or appointment as a general lines agent,
21 service representative, or managing general agent.

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

24 (i) Violation of this Surplus Lines Law.

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

28 (2) The department may, in its discretion, deny an
29 application for, suspend, revoke, or refuse to renew the
30 license or appointment of any surplus lines agent upon any
31

1 applicable ground for which a general lines agent's license
2 could be suspended, revoked, or refused under s. 626.621.

3 (3) In the suspension or revocation of, or the refusal
4 to issue or renew, the license or appointment of a surplus
5 lines agent, the department shall follow the same procedures,
6 as applicable, as provided for suspension, revocation, or
7 refusal of licenses of general lines agents, but subject to s.
8 626.936 as to failure to file a quarterly report or pay the
9 tax.

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

12 (a) Section 626.641.

13 (b) Section 626.651.

14 (c) Section 626.661.

15 (d) Section 626.681.

16 (e) Section 626.691.

17 Section 8. Section 626.936, Florida Statutes, is
18 amended to read:

19 626.936 Failure to file reports ~~report~~ or pay tax or
20 service fee; administrative penalty.--

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

31

1 (2) Any licensed surplus lines agent who neglects to
2 pay the taxes and service fees as required under the Surplus
3 Lines Law and within the time required may be fined up to \$500
4 per day for each day the failure to pay continues, beginning
5 the day after the tax and service fees were ~~was~~ due. The agent
6 shall pay interest on the amount of any delinquent tax due, at
7 the rate of 9 percent per year, compounded annually, beginning
8 the day the amount becomes delinquent. The department shall
9 deposit all sums collected by it under this section into the
10 Insurance Commissioner's Regulatory Trust Fund.

11 Section 9. Section 626.9361, Florida Statutes, is
12 amended to read:

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

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

27 627.4035 Cash payment of premiums; claims.--

28 (3) All payments of claims made in this state under
29 any contract of insurance shall be paid in cash consisting of
30 coins, currency, checks, drafts, or money orders and, if by
31 check or draft, shall be in such form as will comply with the

1 standards for cash items adopted by the Federal Reserve System
2 to facilitate the sorting, routing, and mechanized processing
3 of such items. If authorized by the recipient, payment of
4 claims may be made by debit card or other forms of electronic
5 transfer.

6 Section 11. Section 628.903, Florida Statutes, is
7 amended to read:

8 628.903 "Industrial insured captive insurer"
9 defined.--For purposes of this part:

10 (1) An "industrial insured" means an insured which:

11 (a) Has gross assets in excess of \$10~~\$50~~ million and~~+~~
12 ~~(b)~~ procures insurance through the use of a full-time
13 employee of the insured who acts as an insurance manager or
14 buyer or through the services of a person licensed as a
15 property and casualty insurance agent, broker, or consultant
16 in such person's state of domicile;

17 ~~(b)(c)~~ Has at least 25 ~~100~~ full-time employees; and

18 ~~(c)(d)~~ Has Pays annual aggregate premiums for all
19 insurance risks that total ~~of~~ at least \$100,000~~\$200,000~~ ~~for~~
20 ~~each line of insurance purchased from the industrial insured~~
21 ~~captive insurer or at least \$75,000, with respect to any line~~
22 ~~of coverage excess of at least \$25 million in the annual~~
23 ~~aggregate. The purchase of umbrella or general liability~~
24 ~~coverage excess of \$25 million in the annual aggregate shall~~
25 ~~be deemed to be the purchase of a single line of insurance.~~

26 (2) An "industrial insured captive insurer" is a
27 captive insurer that:

28 (a) Has as its stockholders or members only industrial
29 insureds that are reinsured pursuant to subparagraph (b)2. or
30 insured by the industrial insured captive insurer, or has as
31 its sole stockholder a corporation, which corporation's sole

1 stockholders are industrial insureds that are reinsured
2 pursuant to subparagraph (b)2. or insured by the industrial
3 insured captive insurer; ~~and~~

4 (b)1. Provides insurance only to the industrial
5 insureds that are its stockholders or members, and affiliates
6 thereof, or to the stockholders, and affiliates thereof, of
7 its parent corporation; or

8 2. Provides reinsurance to insurers only on risks
9 written by such insurers for the industrial insureds who are
10 the stockholders or members, and affiliates thereof, of the
11 industrial insured captive insurer, or the stockholders, and
12 affiliates thereof, of the parent corporation of the
13 industrial insured captive insurer.

14

15 For the purposes of this paragraph, the term "affiliate" means
16 a person that directly, or indirectly through one or more
17 intermediaries, controls, is controlled by, or is under common
18 control with one or more of the stockholders or members of the
19 industrial insured captive insurer or one or more of the
20 stockholders of the parent corporation of the industrial
21 insured captive insurer; ~~and-~~

22 (c) Possesses and maintains:

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

24 and

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

26 Section 12. Paragraph (d) is added to subsection (1)
27 of section 626.022, Florida Statutes, 1998 Supplement, to
28 read:

29 626.022 Scope of part.--

30 (1) This part applies as to insurance agents,
31 solicitors, service representatives, adjusters, and insurance

1 agencies; as to any and all kinds of insurance; and as to
2 stock insurers, mutual insurers, reciprocal insurers, and all
3 other types of insurers, except that:

4 (d) This part does not apply to a certified public
5 accountant licensed under chapter 473, Florida Statutes, who
6 is acting within the scope of the practice of public
7 accounting, as defined in section 473.302, Florida Statutes,
8 provided that the activities of the certified public
9 accountant are limited to advising a client of the necessity
10 of obtaining insurance, the amount of insurance needed, or the
11 line of coverage needed, and provided that the certified
12 public accountant does not directly or indirectly receive or
13 share in any commission, referral fee, or solicitor's fee.

14 Section 13. Section 627.171, Florida Statutes, is
15 amended to read:

16 627.171 Excess or reduced rates.--

17 (1) With written consent of the insured signed prior
18 to the policy inception date and filed with the insurer, the
19 insurer may use a rate in excess of or lower than the
20 otherwise applicable filed rate on any specific risk. The
21 signed consent form must include the filed rate as well as the
22 excess or reduced rate for the risk insured and a copy of the
23 form must be maintained by the insurer for 3 years and be
24 available for review by the department.

25 (2) An insurer may not use excess or reduced rates
26 pursuant to this section for more than 20 ~~10~~ percent of its
27 commercial insurance policies written or renewed in each
28 calendar year for any line of commercial insurance or for more
29 than 5 percent of its personal lines insurance policies
30 written or renewed in each calendar year for any line of
31 personal insurance.

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

5 Section 14. This act shall take effect upon becoming a
6 law.

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