

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
INSURANCE
FINAL ANALYSIS**

BILL #: CS/HB 339

RELATING TO: Surplus Lines Insurance

SPONSOR(S): Committee on Insurance (CAC); Representative Bainter

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 12 NAYS 0
 - (2) FINANCE AND TAXATION YEAS 13 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The Legislature created the Florida Surplus Lines Service Office (service office) in 1997 as a self-regulating organization to supplement the regulatory functions of the Department of Insurance (DOI). While the DOI maintains regulatory authority over surplus lines insurers and surplus lines agents, the service office is responsible for administrative duties, such as maintaining records reported from surplus lines agents regarding policies issued in the state. All licensed surplus lines agents, as a condition of holding a license as a surplus lines agent in this state, are required to be members of this non-profit organization.

In addition to granting the service office the authority to request information regarding policies and to examine the records of surplus lines agents, HB 339 would transfer a number of administrative duties to the service office. Changes include:

- ◆ Surplus lines agents would be required to file a quarterly affidavit with the service office regarding policies issued, rather than a quarterly report.
- ◆ An insured that procures coverage directly from a surplus lines insurer, rather than through an agent, also would be required to report it to the service office, rather than to the DOI.
- ◆ Independently procured coverage would be subject to the same 0.3 percent service fee on premium as are surplus lines policies procured through an agent. The service fee is used for the cost of operation of the service office.
- ◆ Surplus lines agents would be required to remit the surplus lines tax in a form payable to the DOI.
- ◆ Surplus lines agents who fail to remit the service fee would be subject to administrative penalties or fines.

This bill would not have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

“Surplus lines insurance” is insurance coverage provided by an insurer that is not licensed in Florida, but is allowed to do business in the state because the particular coverage offered is not available from Florida-licensed companies. Generally, businesses engaged in high-risk activities are covered by a surplus lines policy.

Insurance coverage may be procured from unauthorized (i.e., not holding a Florida certificate of authority) insurers if the coverage is eligible for placement with a surplus lines insurer (placement also known as export), the insurer is an eligible surplus lines insurer, the insurance is placed through a Florida-licensed surplus lines agent, and the other requirements of the surplus lines law, ss. 626.913-626.937, F.S., are met. According to the Florida Surplus Lines Service Office (service office), as of November 1999, surplus lines insurers wrote 618,156 policies in the state, representing direct written premiums of \$766 million.

In general, insurance is eligible for export to surplus lines insurers if the coverage cannot, after diligent effort by the agent, be procured from any admitted insurer; if the premium is no lower than the rate actually in use by a majority of admitted insurers for the same coverage on a similar risk; if the policy form is no more favorable to the insured, as to coverage or rate, than the forms currently in use by a majority of admitted insurers; and if the policy contains no deductible other than those currently in use by any admitted insurer.

In order for an insurer to be an eligible surplus lines insurer, it must have been licensed in its state or country of domicile for at least three years, must have surplus of at least \$15 million (this requirement is being phased in between December 31, 1994 and December 31, 2003, with the 1999 surplus requirement equal to \$6.5 million for surplus lines insurers that were eligible on January 1, 1994), must have a good reputation, and must meet the trustworthiness and criminal history requirements that apply to admitted insurers under s. 624.404(3), F.S. The Department of Insurance (DOI) may waive the three-year licensing requirement if the insurer provides a product that is not available in this state or if the insurer has operated for at least one year and has a surplus of at least \$25 million.

The Legislature created the Florida Surplus Lines Service Office in 1997 as a self-regulating organization to supplement the regulatory functions of the DOI. While the DOI maintains regulatory authority over surplus lines insurers and surplus lines agents, the service office maintains records reported from surplus lines agents regarding policies

issued in the state. All licensed surplus lines agents, as a condition of holding a license as a surplus lines agent in this state, are required to be members of this non-profit organization. The DOI approves the operating plan and the annual budget of the service office.

Surplus lines agents are required to file with the service office a copy of, or information on, each surplus lines policy (per policy report). Surplus lines agents are also required to report to the service office any claims filed under these policies (claims report). The service office receives, records, and reviews all surplus lines insurance policies or documents; provides monthly reports to the DOI; and prepares quarterly reports of each surplus lines agent's business. The service office also collects and remits to the DOI the surplus lines tax, reconciles reports from non-admitted insurers and surplus lines agents, and provides a report of the reconciliation to the DOI.

In addition to the per-policy reports and the claims reports that the surplus lines agents are required to file with the service office, surplus lines agents are also required to file a quarterly report with the service office including the aggregate gross premiums charged, the aggregate net premiums, a listing of all policies, and any other information that may be required by the DOI. Current law allows the DOI to charge an administrative penalty of up to \$50 per day upon those surplus lines agents not filing quarterly reports in a timely manner.

Surplus lines agents are required to maintain certain records on each policy written. These records are subject to examination by the DOI.

Currently, independently procured coverage (i.e., surplus lines insurance procured by the insured directly from a surplus lines insurer) is not subject to the service fee, but is subject to the 5 percent premium tax. Insureds that independently procure coverage from a surplus lines insurer are required to report certain information about the policy to the DOI.

Surplus lines policies are subject to a 5 percent premium tax known as the "surplus lines tax," which is paid by the policyholder, collected by the surplus lines agent, and remitted to the service office on a quarterly basis. The service office then remits the tax to the DOI. Current law allows the DOI to charge an administrative penalty of up to \$500 a day for those surplus lines agents not remitting the premium tax in a timely manner.

Policies procured from a surplus lines agent are subject to a service fee of up to 0.3 percent service fee on the premium to be paid by the insured. This fee is remitted monthly to the service office by the agent and is used to pay for the operational costs of the service office. The service office charges the full 0.3 percent fee.

C. EFFECT OF PROPOSED CHANGES:

The Florida Surplus Lines Service Office (service office) would be given the authority to request information on policies and to examine the records of a surplus lines agent.

A surplus lines agent would no longer be required to file with the service office a quarterly report stating the aggregate business of that agent. Each surplus lines agent would be required to file an affidavit with the service office stating that a record of the surplus lines insurance transacted by that agent has been submitted to the service office. The authority to determine the format of the reports required of the alien and foreign insurers would be transferred from the DOI to the service office.

An insured that procures coverage directly from a surplus lines insurer would be required to report it to the service office, rather than to the DOI. This would enable the service office to account for all surplus lines insurance transacted in the state. The insured would also be obligated to pay to the service office the 0.3 percent service fee on the premium for the independently procured coverage. The service office estimates there are 30 to 40 entities that independently procure coverage in Florida.

Surplus lines agents who neglect to pay the service fee in a timely manner could be subject to an administrative fine of up to \$500 a day.

The DOI would be given the authority to deny the application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent for the failure to pay the service fee on surplus lines premiums.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 626.923, F.S., to give the service office the authority to request certain information on policies from a surplus lines agent.

Section 2 amends s. 626.930, F.S., to give the service office the authority to examine the records of a surplus lines agent.

Section 3 amends s. 626.931, F.S., regarding quarterly reports. Each surplus lines agent would be required to file with the service office an affidavit stating that all information regarding surplus lines insurance issued by that agent has been submitted as required. The surplus lines agent would no longer be required to report to the service office information regarding policies issued and premiums collected on a quarterly basis.

Section 4 amends s. 626.932, F.S., to specify that each surplus lines agent shall remit the surplus lines tax to the service office in a form payable to the DOI.

Section 5 amends s. 626.933, F.S., to provide for the recovery of the service fee which is not timely paid by the surplus lines agent.

Section 6 amends s. 626.935, F.S., to provide that the DOI could deny an application or suspend, revoke, or refuse to renew the appointment of a surplus lines agent if that agent fails to pay the surplus lines service fee.

Section 7 amends s. 626.936, F.S., relating to administrative fines for surplus lines agents who fail to file quarterly reports or pay the surplus lines tax. This section would be amended to provide for administrative fines for surplus lines agents who fail to file the affidavit or pay the service fee.

Section 8 amends s. 626.9361, F.S., to specify that reports shall be filed with the service office rather than to the DOI.

Section 9 amends s. 626.938, F.S., to require that those insureds that independently procure insurance directly from a surplus lines insurer report information on each policy to the service office, rather than the DOI. Independently procured coverage would also be subject to the same 0.3 percent service as surplus lines insurance procured from a surplus lines agent.

Section 10 states that this bill would take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insureds that independently procure coverage from an unauthorized alien or foreign insurer would be required to pay a service fee of 0.3 percent of the premium. According to the service office based on information supplied by the DOI, there were \$19 million in premiums written on independently procured coverage through November 1999. This would generate \$57,557 in fees. The budget for the service office for the 1999 calendar year is \$2.2 million. The anticipated budget for calendar year 2000 is \$2.5 million, subject to DOI approval.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 18, 2000, the Committee adopted a "strike everything" amendment and an amendment to that amendment and adopted the bill as a committee substitute. This "strike everything" amendment makes technical changes to HB 339. CS/HB 339 differs from the original bill in the following ways:

- ◆ A drafting oversight is corrected in the directory language of section 2 of the bill.
- ◆ The catch line of s. 626.931, F.S., is changed from "Quarterly Report" to "Agent Affidavit and Insurer Reporting Requirement." As part of the bill as filed, agents would submit an affidavit, rather than a quarterly report.
- ◆ References to the "quarterly report" are changed to the "affidavit."

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

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Stephen Hogge

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DATE: May 8, 2000

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**AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
APPROPRIATIONS:**

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON INSURANCE:

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