

By the Committee on Banking and Insurance

311-617-01

1                                   A bill to be entitled  
2           An act relating to public records exemptions;  
3           amending s. 626.921, F.S.; abrogating the  
4           repeal of an exemption from public-records  
5           requirements for certain surplus lines  
6           insurance information submitted to the  
7           Department of Insurance or available for  
8           inspection by the department; expanding the  
9           exemption to apply to certain surplus lines  
10          insurance information submitted to the Florida  
11          Surplus Lines Service Office; specifying that  
12          the exemption applies to information specific  
13          to a particular policy or policyholder;  
14          providing for future repeal and legislative  
15          review; providing a finding of public  
16          necessity; providing an effective date.

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

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20           Section 1. Section 626.921, Florida Statutes, is  
21 amended to read:

22           626.921 Florida Surplus Lines Service Office.--

23           (1) There is hereby created a nonprofit association to  
24 be known as the Florida Surplus Lines Service Office. The  
25 Legislature hereby finds and declares that the establishment  
26 of a surplus lines self-regulating organization is necessary  
27 to establish a system that will permit better access by  
28 consumers to approved unauthorized insurers. Accordingly, the  
29 Legislature declares that this section shall be liberally  
30 construed and applied to promote its underlying purposes,  
31 which will protect consumers seeking insurance in this state,

1 permit surplus lines insurance to be placed with approved  
2 surplus lines insurers, establish a self-regulating  
3 organization which will promote and permit orderly access to  
4 surplus lines insurance in this state, enhance the number and  
5 types of insurance products available to consumers in this  
6 state, provide a source of advice and counsel for the benefit  
7 of consumers, surplus lines agents, insurers, and government  
8 agencies concerning the operation of the surplus lines  
9 insurance market, and protect the revenues of this state.

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

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

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

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

8 (c) Prepare and deliver to each surplus lines agent  
9 quarterly reports of each surplus lines agent's business in  
10 such form as the department may prescribe, and collect and  
11 remit to the department the surplus lines tax as provided for  
12 in s. 626.932.

13 (d) Perform a reconciliation of the policies written  
14 in the nonadmitted market, as provided by nonadmitted  
15 insurers, with the policies reported to the service office by  
16 the surplus lines agents, and prepare and deliver to the  
17 department a report on the results of the reconciliation in  
18 such form as the department may prescribe.

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

21 (f) Collect from each surplus lines agent a service  
22 fee of up to 0.3 percent, as determined by the department, of  
23 the total gross premium of each surplus lines policy or  
24 document reported under this section, for the cost of  
25 operation of the service office. The service fee shall be  
26 paid by the insured.

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

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

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

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

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

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

10           (a) Five individuals appointed by the department from  
11 the regular membership of the Florida Surplus Lines  
12 Association.

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

16           (c) The Insurance Consumer Advocate.

17           (d) One individual appointed by the department, who  
18 shall be a risk manager for a large domestic commercial  
19 enterprise.

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21 Each board member shall be appointed to serve beginning on the  
22 date designated by the plan of operation and shall serve at  
23 the pleasure of the department for a 3-year term, such term  
24 initially to be staggered by the plan of operation so that  
25 three appointments expire in 1 year, three appointments expire  
26 in 2 years, and three appointments expire in 3 years. Members  
27 may be reappointed for subsequent terms. The board of  
28 governors shall elect such officers as may be provided in the  
29 plan of operation.

30           (5)(a) The association shall submit to the department  
31 a plan of operation, and any amendments thereto, to provide

1 operating procedures for the administration of the service  
2 office. The plan of operation and any amendments thereto shall  
3 become effective upon approval by order of the department.

4 (b) If the association fails to submit a suitable plan  
5 of operation within 180 days following the effective date of  
6 this act, or if at any time thereafter the association fails  
7 to submit suitable amendments to the plan of operation, the  
8 department shall, after notice and hearing, adopt a plan of  
9 operation, or amendments to a plan of operation, and adopt  
10 such rules as are necessary or advisable to effectuate the  
11 provisions of this section. Such rules shall continue in force  
12 until modified by the department or superseded by a plan of  
13 operation submitted by the association and approved by the  
14 department.

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

17 (6) The department shall, at such times deemed  
18 necessary, make or cause to be made an examination of the  
19 association. The costs of any such examination shall be paid  
20 by the association. During the course of such examination,  
21 the governors, officers, agents, employees, and members of the  
22 association may be examined under oath regarding the operation  
23 of the service office and shall make available all books,  
24 records, accounts, documents, and agreements pertaining  
25 thereto.

26 (7) There shall be no liability on the part of, and no  
27 cause of action of any nature shall arise against, any member  
28 or its agents or employees, agents or employees of the  
29 association, members of the board of governors of the  
30 association, or the department or its representatives, for any  
31 action taken by them in the performance of their duties or

1 responsibilities under this subsection. Such immunity does not  
2 apply to actions for breach of any contract or agreement  
3 pertaining to insurance, or any willful tort.

4 (8) Information furnished to the department under s.  
5 626.923 or contained in the records subject to examination by  
6 the department under s. 626.930 and information furnished to  
7 the Florida Surplus Lines Service Office under this section is  
8 confidential and exempt from the provisions of s. 119.07(1)  
9 and s. 24(a), Art. I of the State Constitution if the  
10 disclosure of the information would reveal information  
11 specific to a particular policy or policyholder ~~a trade secret~~  
12 ~~as defined in s. 688.002.~~ This subsection is subject to the  
13 Open Government Sunset Review Act of 1995 in accordance with  
14 s. 119.15, and shall stand repealed on October 2, 2006 ~~October~~  
15 ~~2, 2001~~, unless reviewed and saved from repeal through  
16 reenactment by the Legislature. The exemption does not apply  
17 to any proceeding instituted by the department against an  
18 agent or insurer.

19 Section 2. The Legislature finds that it is a public  
20 necessity that certain records of the Department of Insurance  
21 and the Florida Surplus Lines Service Office be held  
22 confidential and exempt. The disclosure of surplus lines  
23 policy information submitted to the Department of Insurance or  
24 to the Florida Surplus Lines Service Office, to the extent  
25 that such information reveals information specific to a  
26 particular policy or policyholder, would be harmful to  
27 insurers or agents due to the economic value of such  
28 information if revealed to competitors. Such information may  
29 also reveal economic information about the policyholder that  
30 would be harmful as an invasion of privacy of the

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1 policyholder. Accordingly, it is a public necessity that such  
2 information be held confidential and exempt.

3 Section 3. This act shall take effect October 1, 2001.  
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6 SENATE SUMMARY

7 Reenacts an exemption from public records requirements  
8 for certain surplus lines insurance information submitted  
9 to the Department of Insurance or available for  
10 inspection by the department. Removes the scheduled  
11 October 2, 2001, repeal. Expands the exemption to apply  
12 to certain surplus lines insurance information submitted  
13 to the Florida Surplus Lines Service Office. Specifies  
14 that the exemption applies to information specific to a  
15 particular policy or policyholder. Provides for future  
16 legislative review and repeal. Provides a finding of  
17 public necessity.  
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