

By the Committee on Banking and Insurance

311-1493-01

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12 ~~of 1995 in accordance with s. 119.15, and shall stand repealed~~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

17 (b) Information furnished to the Florida Surplus Lines
18 Service Office under the Surplus Lines Law is confidential and
19 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
20 I of the State Constitution if the disclosure of the
21 information would reveal information specific to a particular
22 policy or policyholder. This exemption does not prevent the
23 disclosure of any information by the Florida Surplus Lines
24 Service Office to the department, but the exemption applies to
25 records obtained by the department from the Florida Surplus
26 Lines Service Office. The exemption does not apply to any
27 proceeding instituted by the department against an agent or
28 insurer. This paragraph is subject to the Open Government
29 Sunset Review Act of 1995 in accordance with s. 119.15, and
30 shall stand repealed on October 2, 2006, unless reviewed and
31 saved from repeal through reenactment by the Legislature.

1 Section 2. The Legislature finds that it is a public
2 necessity that certain records of the Department of Insurance
3 and the Florida Surplus Lines Service Office be held
4 confidential and exempt. The disclosure of surplus lines
5 policy information submitted to the Department of Insurance or
6 to the Florida Surplus Lines Service Office, to the extent
7 that such information reveals information specific to a
8 particular policy or policyholder, would be harmful to
9 insurers or agents due to the economic value of such
10 information if revealed to competitors. Such information may
11 also reveal economic information about the policyholder that
12 would be harmful as an invasion of privacy of the
13 policyholder. Accordingly, it is a public necessity that such
14 information be held confidential and exempt.

15 Section 3. This act shall take effect October 1, 2001.

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17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 COMMITTEE SUBSTITUTE FOR
19 SB 1026

20 Applies the public records exemption to information furnished
21 to the Florida Surplus Lines Service Office "under the Surplus
22 Lines Law" (ss. 626.913-626.937, F.S.), rather than
23 information furnished "under this section" (s. 626.921, F.S.).
The exemption would still apply only to those records that
reveal information specific to a particular policy or
policyholder.

24 Clarifies that the bill does not prevent the Service Office
25 from providing any information or records to the Department of
Insurance.

26 Provides for future repeal and review of the expanded public
27 records exemption that applies to records obtained by the
28 Surplus Lines Service Office, but does not provide for repeal
and review of the current exemption for records obtained by
the Department of Insurance.

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