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DATE: April 20, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: CS/HB 309
RELATING TO: Surplus Lines Insurance
SPONSOR(S): Committee on Insurance & Representative Crow
TIED BILL(S):

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

- (1) INSURANCE YEAS 12 NAYS 0
 - (2) FISCAL POLICY AND RESOURCES YEAS 10 NAYS 1
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (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, CS/HB 309 would transfer a number of administrative duties to the service office. Changes include:

- Requiring surplus lines agents to file a quarterly affidavit with the service office regarding policies issued, rather than a quarterly report;
- Requiring insured procuring coverage directly from surplus lines insurers to report it to the service office, rather than to the DOI;
- Subjecting independently procured coverage to the same 0.3 percent service fee on premium as surplus lines policies procured through an agent; and
- Subjecting surplus lines agents to administrative penalties or fines for failing to remit the service fee.

The Revenue Estimating Conference adopted a negative, one-time, cash estimate of (\$.1m) for fiscal year 2001-02. The impact is the result of a one time lag in transmitting the tax (premium receipt tax; five percent of all gross premiums charged for such insurance) and interest collected from the Florida Surplus Lines Office to the Department of Insurance. The annualized, recurring estimate is zero.

The Committee on Fiscal Policy & Resources adopted one amendment at its April 17, 2001 meeting. The amendment raises the cap on the "reasonable per-policy fee" from \$25 to \$35. The Revenue Estimating Conference has adopted for the amendment a negative fiscal impact of (\$.3m) for fiscal year 2001-02 and a recurring negative fiscal impact of (\$.4m) in fiscal year 2002-03.

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 insurers (i.e., insurers not holding a Florida certificate of authority), if the coverage is eligible for placement (or “export”) with a surplus lines insurer, 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), for the 2000 calendar year, surplus lines insurers wrote 605,379 policies in the state, representing direct written premiums of over \$1.05 billion.

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 2001 surplus requirement equal to \$9.5 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. Additionally, a Florida-licensed surplus lines agent must request Department approval of the surplus lines insurer as an “eligible” insurer. The Department of Insurance (DOI) may waive the three-year licensing requirement if the insurer provides a product that otherwise 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 required to be filed with the service office, surplus lines agents also are 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. Insured independently procuring coverage from a surplus lines insurer are required to report certain information about the policy to the DOI. According to the service office, from information supplied by the DOI, there were 223 entities reporting independently procured coverage for 2000.

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 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. In addition, surplus lines agents may charge the insured a \$25 fee for placing the risk with a surplus lines insurer.

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.

The conditions for becoming an eligible surplus lines insurer would be amended. The Florida Surplus Lines Service Office, rather than a surplus lines agent, would make the request for eligibility to the Department of Insurance.

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. In addition, surplus lines agents would no longer be

required to report claims 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 0.3 percent service fee on the premium would be extended to independently procured coverage. 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. 626.918, F.S., to amend the conditions for becoming an eligible surplus lines insurer. The Florida Surplus Lines Service Office, rather than a surplus lines agent, would make the request for eligibility to the Department of Insurance.

Section 2 amends s. 626.921, F.S., to remove the requirement that surplus lines insurers report claims to the Florida Surplus Lines Service Office.

Section 3 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 4 amends s. 626.930, F.S., to give the service office the authority to examine the records of a surplus lines agent.

Section 5 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 to the service office. 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 6 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 7 amends s. 626.933, F.S., to provide for the recovery of the service fee, when the surplus lines agent does not remit it in a timely way to the service office.

Section 8 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 or fails to file his or her affidavit.

Section 9 amends s. 626.936, F.S., relating to administrative fines for surplus lines agents who fail to file per policy 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 10 amends s. 626.9361, F.S., to specify that reports shall be filed with the service office rather than to the DOI.

Section 11 amends s. 626.938, F.S., to require that those insured 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 12 states that this bill would take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference adopted a negative, one-time, cash estimate of (\$.1m) for fiscal year 2001-02. The impact is the result of a one time lag in transmitting the tax (premium receipt tax; five percent of all gross premiums charged for such insurance) and interest collected from the Florida Surplus Lines Office to the Department of Insurance. The annualized, recurring estimate is zero.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insured, 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 was \$33.7 million in direct written premium on independently procured coverage in 2000. This would have generated approximately \$101,000 in service fees. The budget for the service office for the 2000 calendar year was \$2.6 million, and the budget for calendar year 2001 is \$2.7 million.

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:

The Committee on Fiscal Policy and Resources adopted one amendment at its April 17, 2001 meeting. The amendment amends s. 626.916 to raise the cap on the "reasonable per-policy fee" from \$25 to \$35 that the filing surplus lines agent may charge on each policy certified for export. The Revenue Estimating Conference has adopted a negative fiscal impact of (\$.3m) for fiscal year 2001-02 and a recurring negative fiscal impact of (\$.4m) in fiscal year 2002-03.

The Committee on Insurance adopted two amendments to HB 309 on March 7, 2001, and reported the bill as a committee substitute. The committee substitute differs from the original bill as follows:

- As a condition of becoming an eligible surplus lines insurer in the state, a request would be made to the Department of Insurance by the Florida Surplus Lines Service Office, rather than by a surplus lines agent.
- The requirement that surplus lines insurers report claims to the Florida Surplus Lines Service Office would be eliminated.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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