

By the Committee on Banking and Insurance; and Senator Holzendorf

311-1457-01

1 A bill to be entitled
2 An act relating to surplus lines insurance;
3 amending ss. 626.916, 626.918, 626.921,
4 626.923, 626.930, 626.931, 626.932, 626.933,
5 626.935, 626.936, 626.9361, 626.938, F.S.;
6 revising certain requirements for surplus lines
7 insurance to provide the Florida Surplus Lines
8 Service Office with the same authority granted
9 to the Department of Insurance; revising limits
10 on fees that may be charged with respect to
11 certain policies certified for export; revising
12 certain quarterly reporting requirements;
13 providing for collection of a service fee;
14 providing a penalty for failure to make certain
15 reports and pay service fees; providing for an
16 administrative fine for such failure; providing
17 for disposition of surplus lines taxes and
18 service fees; providing an effective date.

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

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22 Section 1. Subsection (4) of section 626.916, Florida
23 Statutes, is amended to read:

24 626.916 Eligibility for export.--

25 (4) A reasonable per-policy fee, not to exceed \$35
26 ~~\$25~~, may be charged by the filing surplus lines agent for each
27 policy certified for export.

28 Section 2. Subsection (2) of section 626.918, Florida
29 Statutes, is amended to read:

30 626.918 Eligible surplus lines insurers.--

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1 (2) No unauthorized insurer shall be or become an
2 eligible surplus lines insurer unless made eligible by the
3 department in accordance with the following conditions:

4 (a) Eligibility of the insurer must be requested in
5 writing by the Florida Surplus Lines Service Office ~~a~~
6 ~~Florida-licensed surplus lines agent~~;

7 (b) The insurer must be currently an authorized
8 insurer in the state or country of its domicile as to the kind
9 or kinds of insurance proposed to be so placed and must have
10 been such an insurer for not less than the 3 years next
11 preceding or must be the wholly owned subsidiary of such
12 authorized insurer or must be the wholly owned subsidiary of
13 an already eligible surplus lines insurer as to the kind or
14 kinds of insurance proposed for a period of not less than the
15 3 years next preceding. However, the department may waive the
16 3-year requirement if the insurer provides a product or
17 service not readily available to the consumers of this state
18 or has operated successfully for a period of at least 1 year
19 next preceding and has capital and surplus of not less than
20 \$25 million;

21 (c) Before granting eligibility, the requesting
22 surplus lines agent or the insurer shall furnish the
23 department with a duly authenticated copy of its current
24 annual financial statement in the English language and with
25 all monetary values therein expressed in United States
26 dollars, at an exchange rate (in the case of statements
27 originally made in the currencies of other countries)
28 then-current and shown in the statement, and with such
29 additional information relative to the insurer as the
30 department may request;

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1 (d)1. The insurer must have and maintain surplus as to
2 policyholders of not less than \$15 million; in addition, an
3 alien insurer must also have and maintain in the United States
4 a trust fund for the protection of all its policyholders in
5 the United States under terms deemed by the department to be
6 reasonably adequate, in an amount not less than \$5.4 million.
7 Any such surplus as to policyholders or trust fund shall be
8 represented by investments consisting of eligible investments
9 for like funds of like domestic insurers under part II of
10 chapter 625 provided, however, that in the case of an alien
11 insurance company, any such surplus as to policyholders may be
12 represented by investments permitted by the domestic regulator
13 of such alien insurance company if such investments are
14 substantially similar in terms of quality, liquidity, and
15 security to eligible investments for like funds of like
16 domestic insurers under part II of chapter 625;

17 2. For those surplus lines insurers that were eligible
18 on January 1, 1994, and that maintained their eligibility
19 thereafter, the required surplus as to policyholders shall be:

20 a. On December 31, 1994, and until December 30, 1995,
21 \$2.5 million.

22 b. On December 31, 1995, and until December 30, 1996,
23 \$3.5 million.

24 c. On December 31, 1996, and until December 30, 1997,
25 \$4.5 million.

26 d. On December 31, 1997, and until December 30, 1998,
27 \$5.5 million.

28 e. On December 31, 1998, and until December 30, 1999,
29 \$6.5 million.

30 f. On December 31, 1999, and until December 30, 2000,
31 \$8 million.

1 g. On December 31, 2000, and until December 30, 2001,
2 \$9.5 million.

3 h. On December 31, 2001, and until December 30, 2002,
4 \$11 million.

5 i. On December 31, 2002, and until December 30, 2003,
6 \$13 million.

7 j. On December 31, 2003, and thereafter, \$15 million.

8 3. The capital and surplus requirements as set forth
9 in subparagraph 2. do not apply in the case of an insurance
10 exchange created by the laws of individual states, where the
11 exchange maintains capital and surplus pursuant to the
12 requirements of that state, or maintains capital and surplus
13 in an amount not less than \$50 million in the aggregate. For
14 an insurance exchange which maintains funds in the amount of
15 at least \$12 million for the protection of all insurance
16 exchange policyholders, each individual syndicate shall
17 maintain minimum capital and surplus in an amount not less
18 than \$3 million. If the insurance exchange does not maintain
19 funds in the amount of at least \$12 million for the protection
20 of all insurance exchange policyholders, each individual
21 syndicate shall meet the minimum capital and surplus
22 requirements set forth in subparagraph 2.;

23 4. A surplus lines insurer which is a member of an
24 insurance holding company that includes a member which is a
25 Florida domestic insurer as set forth in its holding company
26 registration statement, as set forth in s. 628.801 and rules
27 adopted thereunder, may elect to maintain surplus as to
28 policyholders in an amount equal to the requirements of s.
29 624.408, subject to the requirement that the surplus lines
30 insurer shall at all times be in compliance with the
31 requirements of chapter 625.

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2 The election shall be submitted to the department and shall be
3 effective upon the department's being satisfied that the
4 requirements of subparagraph 4. have been met. The initial
5 date of election shall be the date of department approval. The
6 election approval application shall be on a form adopted by
7 department rule. The department may approve an election form
8 submitted pursuant to subparagraph 4. only if it was on file
9 with the department before February 28, 1998;

10 (e) The insurer must be of good reputation as to the
11 providing of service to its policyholders and the payment of
12 losses and claims;

13 (f) The insurer must be eligible, as for authority to
14 transact insurance in this state, under s. 624.404(3); and

15 (g) This subsection does not apply as to unauthorized
16 insurers made eligible under s. 626.917 as to wet marine and
17 aviation risks.

18 Section 3. Subsection (2) of section 626.921, Florida
19 Statutes, is amended to read:

20 626.921 Florida Surplus Lines Service Office.--

21 (2) All surplus lines agents shall, as a condition of
22 holding a license as a surplus lines agent in this state, be
23 deemed to be members of this association and shall report to
24 and file with the service office a copy of or information on
25 each surplus lines insurance policy or document as provided in
26 the plan of operation adopted under subsection (5). ~~Upon~~
27 ~~receipt of any claim notice reported under a surplus lines~~
28 ~~policy which is subject to the filing requirements of this~~
29 ~~section, the insurer, or an adjuster representing the insurer,~~
30 ~~must advise the service office of such claim, identifying the~~
31 ~~policy under which coverage is claimed, and the service office~~

1 ~~shall determine whether the policy has been filed as required~~
2 ~~by this section.~~The service office shall immediately report
3 the particulars of any unfiled policy to the department for
4 enforcement of compliance with the Florida Surplus Lines Law.

5 Section 4. 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 5. Subsection (2) of section 626.930, Florida
22 Statutes, is amended to read:

23 626.930 Records of surplus lines agent.--

24 (2) The record shall at all times be open to
25 examination by the department or the Florida Surplus Lines
26 Service Office without notice and shall be so kept available
27 and open ~~to the department~~ for 5 years next following
28 expiration or cancellation of the contract.

29 Section 6. Section 626.931, Florida Statutes, is
30 amended to read:

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1 626.931 Agent affidavit and insurer reporting
2 requirements ~~Quarterly report~~.--

3 (1) Each surplus lines agent shall on or before the
4 end of the month next following each calendar quarter file
5 with the Florida Surplus Lines Service Office an affidavit, on
6 forms as prescribed and furnished by the Florida Surplus Lines
7 Service Office, stating that a verified report of all surplus
8 lines insurance transacted by him or her during such calendar
9 quarter has been submitted to the Florida Surplus Lines
10 Service Office as required.

11 ~~(2) The reports and supporting information shall be in~~
12 ~~a computer-readable format as determined by the department or~~
13 ~~shall be submitted on forms prescribed by the department and~~
14 ~~shall show:~~

15 ~~(a) Aggregate gross premiums charged;~~

16 ~~(b) Aggregate of returned premiums and taxes paid to~~
17 ~~insureds;~~

18 ~~(c) Aggregate of net premiums;~~

19 ~~(d) A listing of all policies, certificates, cover~~
20 ~~notes, or other forms of confirmation of insurance coverage or~~
21 ~~any substitutions thereof or endorsements thereto; and~~

22 ~~(e) Additional information as required by the~~
23 ~~department.~~

24 ~~(2)(3) The report shall include~~ The affidavit of the
25 surplus lines agent shall include, on forms as prescribed and
26 furnished by the department, as to efforts made to place
27 coverages with authorized insurers and the results thereof.

28 ~~(3)(4) Each foreign insurer accepting premiums which~~
29 ~~are subject to taxes and which are described in this section~~
30 shall, on or before the end of the month following each
31 calendar quarter, file with the Florida Surplus Lines Service

1 Office a verified report of all surplus lines insurance
2 transacted by such insurer for insurance risks located in this
3 state during such calendar quarter.

4 ~~(4)(5)~~ Each alien insurer accepting premiums ~~which are~~
5 ~~subject to taxes and which are described in this section~~
6 shall, on or before June 30 of each year, file with the
7 Florida Surplus Lines Service Office a verified report of all
8 surplus lines insurance transacted by such insurer for
9 insurance risks located in this state during the preceding
10 calendar year, ~~provided the first such report shall be with~~
11 ~~respect to calendar year 1994.~~

12 ~~(5)(6)~~ The Insurance Commissioner shall have the
13 authority to waive the filing requirements described in
14 subsections ~~(3)(4)~~ and ~~(4)(5)~~.

15 ~~(6)(7)~~ Each insurer's report and supporting
16 information shall be in a computer-readable format as
17 determined by the Florida Surplus Lines Service Office
18 ~~department~~ or shall be submitted on forms prescribed by the
19 Florida Surplus Lines Service Office ~~department~~ and shall show
20 for each applicable agent:

21 ~~(a) The aggregate gross Florida premiums charged;~~

22 ~~(b) The aggregate of returned Florida premiums;~~

23 ~~(c) The aggregate of net Florida premiums;~~

24 ~~(a)(d)~~ A listing of all policies, certificates, cover
25 notes, or other forms of confirmation of insurance coverage or
26 any substitutions thereof or endorsements thereto and the
27 identifying number; and

28 ~~(b)(e)~~ Any additional information required by the
29 department or Florida Surplus Lines Service Office.

30 Section 7. Paragraph (a) of subsection (2) of section
31 626.932, Florida Statutes, is amended to read:

1 626.932 Surplus lines tax.--

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

13 Section 8. Section 626.933, Florida Statutes, is
14 amended to read:

15 626.933 Collection of tax and service fee--If the tax
16 or service fee payable by a surplus lines agent under this
17 Surplus Lines Law is not so paid within the time prescribed,
18 the same shall be recoverable in a suit brought by the
19 department against the surplus lines agent and the surety or
20 sureties on the bond filed by the surplus lines agent under s.
21 626.928.

22 Section 9. Paragraphs (d) and (e) of subsection (1) of
23 section 626.935, Florida Statutes, are amended to read:

24 626.935 Suspension, revocation, or refusal of surplus
25 lines agent's license.--

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

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

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

5 Section 10. Section 626.936, Florida Statutes, is
6 amended to read:

7 626.936 Failure to file reports ~~report~~ or pay tax or
8 service fee; administrative penalty.--

9 (1) Any licensed surplus lines agent who neglects to
10 file a ~~quarterly~~ report or an affidavit in the form and within
11 the time required or provided for in the Surplus Lines Law may
12 be fined up to \$50 per day for each day the neglect continues,
13 beginning the day after the ~~quarterly~~ report or affidavit was
14 due until the date the report or affidavit is received ~~by the~~
15 ~~department~~. ~~The department shall deposit~~ All sums collected
16 ~~by it~~ under this section shall be deposited into the Insurance
17 Commissioner's Regulatory Trust Fund.

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

28 Section 11. Section 626.9361, Florida Statutes, is
29 amended to read:

30 626.9361 Failure to file report; administrative
31 penalty.--Any eligible surplus lines insurer who fails to file

1 a ~~quarterly~~ report in the form and within the time required or
2 provided for in the Surplus Lines Law may be fined up to \$500
3 per day for each day such failure continues, beginning the day
4 after the report was due, until the date the report is
5 received ~~by the department~~. Failure to file a ~~quarterly~~
6 report may also result in withdrawal of eligibility as a
7 surplus lines insurer in this state. All sums collected by the
8 department under this section shall be deposited into the
9 Insurance Commissioner's Regulatory Trust Fund.

10 Section 12. Subsections (1), (3), (4), and (10) of
11 section 626.938, Florida Statutes, are amended to read:

12 626.938 Report and tax of independently procured
13 coverages.--

14 (1) Every insured who in this state procures or causes
15 to be procured or continues or renews insurance with an
16 unauthorized foreign or alien insurer, or any self-insurer who
17 in this state so procures or continues excess loss,
18 catastrophe, or other insurance, upon a subject of insurance
19 resident, located, or to be performed within this state, other
20 than insurance procured through a surplus lines agent pursuant
21 to the Surplus Lines Law of this state or exempted from tax
22 under s. 626.932(4), shall, within 30 days after the date such
23 insurance was so procured, continued, or renewed, file a
24 report of the same with the Florida Surplus Lines Service
25 Office ~~department~~ in writing and upon forms designated by the
26 Florida Surplus Lines Service Office ~~department~~ and furnished
27 to such an insured upon request, or in a computer readable
28 format as determined by the Florida Surplus Lines Service
29 Office. The report shall show the name and address of the
30 insured or insureds, the name and address of the insurer, the
31 subject of the insurance, a general description of the

1 coverage, the amount of premium currently charged therefor,
2 and such additional pertinent information as is reasonably
3 requested by the Florida Surplus Lines Service Office
4 ~~department~~.

5 (3) For the general support of the government of this
6 state, there is levied upon the obligation, chose in action,
7 or right represented by the premium charged for such insurance
8 a tax at the rate of 5 percent of the gross amount of such
9 premium and a 0.3 percent service fee pursuant to s. 626.9325.
10 The insured shall withhold the amount of the tax and service
11 fee from the amount of premium charged by and otherwise
12 payable to the insurer for such insurance, ~~and,~~ Within 30
13 days after the insurance ~~is was so~~ procured, continued, or
14 renewed, and simultaneously coincidentally with the filing of
15 the report provided for in subsection (1) with the Florida
16 Surplus Lines Service Office department of the report provided
17 for in subsection (1), the insured shall make payable to the
18 Department of Insurance pay the amount of the tax and make
19 payable to the Florida Surplus Lines Service Office the amount
20 of the service fee. The insured shall remit the tax and the
21 service fee to the Florida Surplus Lines Service Office
22 department. The Florida Surplus Lines Service Office shall
23 forward to the department the taxes, and any interest
24 collected pursuant to subsection (5), within 10 days after
25 receipt.

26 (4) If the insured fails to withhold from the premium
27 the amount of tax and the service fee herein levied, the
28 insured shall be liable for the amount thereof and shall pay
29 that amount the same to the Florida Surplus Lines Service
30 Office department within the time stated in subsection (3).

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1 (10) Each report and supporting information shall be
2 in a computer-readable format as determined by the Florida
3 Surplus Lines Service Office ~~department~~ or shall be submitted
4 on forms prescribed by the Florida Surplus Lines Service
5 Office ~~department~~.

6 Section 13. This act shall take effect upon becoming a
7 law.

8
9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 SB 658

12 Amends s. 626.916, F.S., to allow surplus lines agents to
13 charge up to a \$35 per-policy fee, rather than the "reasonable
14 fee" allowed by the bill and the \$25 fee allowed under current
15 law.

16 Amends s. 626.918, F.S., to provide that the Florida Surplus
17 Lines Service Office, rather than a surplus lines agent, must
18 request eligibility of a surplus lines insurer, as a condition
19 of Department of Insurance approval of an eligible surplus
20 lines insurer.

21 Amends s. 626.921, F.S., to delete the requirement that
22 insurers and adjusters notify the Florida Surplus Lines
23 Service of each claim that is filed.
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