

By Senator Diaz de la Portilla

36-1173-04

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 624.425, F.S.; deleting a resident agent
4 requirement for certain property, casualty, and
5 surety insurers; amending s. 624.426, F.S.;
6 conforming provisions; amending s. 626.025,
7 F.S.; requiring surplus lines agents to comply
8 with consumer protection laws; deleting
9 provisions prohibiting certain actions by
10 nonresident agents, to conform; amending s.
11 626.741, F.S.; deleting a prohibition against
12 nonresident general lines agents having offices
13 in this state; conforming provisions; amending
14 s. 626.752, F.S.; conforming provisions;
15 amending s. 626.753, F.S.; conforming
16 provisions; repealing s. 626.792(3), F.S.;
17 deleting a prohibition against nonresident life
18 insurance agents having offices in this state;
19 repealing s. 626.835(3), F.S.; deleting a
20 prohibition against nonresident health
21 insurance agents having offices in this state;
22 creating s. 626.9272, F.S.; providing
23 requirements for the licensure of nonresident
24 surplus lines agents; amending s. 626.929,
25 F.S.; conforming provisions; amending s.
26 626.930, F.S.; conforming provisions; amending
27 s. 626.935, F.S.; providing additional grounds
28 for discipline of licensees; providing an
29 effective date.

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

1 Section 1. Section 624.425, F.S., is amended to read:

2 624.425 ~~Resident~~ Agent ~~and~~ countersignature required,
3 property, casualty, surety insurance.--

4 (1) Except as stated in s. 624.426, no authorized
5 property, casualty, or surety insurer shall assume direct
6 liability as to a subject of insurance resident, located, or
7 to be performed in this state unless the policy or contract of
8 insurance is issued by or through, and is countersigned by, an
9 ~~a local producing agent who is a resident of this state,~~
10 regularly commissioned and licensed currently as an agent and
11 appointed as an agent for the insurer under this code. If two
12 or more authorized insurers issue a single policy of insurance
13 against legal liability for loss or damage to person or
14 property caused by the nuclear energy hazard, or a single
15 policy insuring against loss or damage to property by
16 radioactive contamination, whether or not also insuring
17 against one or more other perils proper to insure against in
18 this state, such policy if otherwise lawful may be
19 countersigned on behalf of all of the insurers by a licensed
20 and appointed ~~resident~~ agent of any insurer appearing thereon.
21 The producing ~~Such~~ agent shall receive on each policy or
22 contract the full and usual commission allowed and paid by the
23 insurer to its agents on business written or transacted by
24 them for the insurer.

25 (2) If any subject of insurance referred to in
26 subsection (1) is insured under a policy, or contract, or
27 certificate of renewal or continuation thereof, issued in
28 another state and covering also property and risks outside
29 this state, a certificate evidencing such insurance as to
30 subjects located, resident, or to be performed in this state,
31 shall be issued by or through and shall be countersigned by

1 the insurer's commissioned and appointed ~~local~~ producing agent
2 ~~resident in this state in the same manner and subject to the~~
3 ~~same conditions as is provided in subsection (1) as to~~
4 ~~policies and contracts; except that the compensation to be~~
5 ~~paid to the agent may relate only to the Florida portion of~~
6 ~~the insurance risks represented by such policy or contract.~~

7 (3) An agent shall not sign or countersign in blank
8 any policy to be issued outside her or his office, or
9 countersign in blank any countersignature endorsement
10 therefor, or certificate issued thereunder. An agent may give
11 a written power of attorney to the issuing insurance company
12 to countersign such documents by imprinting her or his name,
13 or the name of the agency or other entity with which the agent
14 may be sharing commission pursuant to s. 626.753(1)(a) and
15 (2), thereon in lieu of manually countersigning such
16 documents; but an agent shall not give a power of attorney to
17 any other person to countersign any such document in her or
18 his name unless the person so authorized is directly employed
19 by the agent and by no other person, and is so employed in the
20 office of the agent.

21 (4) This section shall not be deemed to prohibit
22 insurers from using salaried licensed and appointed agents for
23 the production and servicing of business in this state and the
24 issuance and countersignature by such agents of insurance
25 policies or contracts, when required under subsection (1), and
26 without payment of commission therefor.

27 (5) This section shall not be deemed to prohibit an
28 insurer from authorizing an agent who is not regularly
29 commissioned and appointed currently as an agent of the
30 insurer from countersigning a policy or contract of insurance
31 issued pursuant to the provisions of ss. 627.311 and 627.351.

1 This section does not apply to reissuance of insurance
2 policies or endorsements thereto which are part of a mass
3 reissuance of such policies or endorsements and do not involve
4 a change of premium or payment of agent's commissions.

5 Section 2. Section 624.426, Florida Statutes, is
6 amended to read:

7 624.426 Exceptions to ~~resident agent and~~
8 countersignature law.--Section 624.425 does not apply to:

9 (1) Contracts of reinsurance.

10 (2) Policies of insurance on the rolling stock of
11 railroad companies doing a general freight and passenger
12 business.

13 (3) United States Customs surety bonds that are issued
14 by a corporate surety approved by the United States Department
15 of Treasury and that name the United States as the
16 beneficiary.

17 (4) Policies of insurance issued by insurers whose
18 agents represent only one company or group of companies under
19 common ownership if a company within one group is transferring
20 policies to another company within the same group and the
21 agent of record remains the same.

22 (5) Policies of insurance issued by insurers whose
23 agents represent, as to property, casualty, and surety
24 insurance, only one company or group of companies under common
25 ownership ~~and for which a Florida resident agent is the agent~~
26 ~~of record~~ and the application has been lawfully submitted to
27 the insurer.

28 Section 3. Subsections (8) and (9) of section 626.025,
29 Florida Statutes, are amended and present subsections (10)
30 through (16) of that section are redesignated as subsections
31 (9) through (15), respectively, to read:

1 626.025 Consumer protections.--To transact insurance,
2 agents shall comply with consumer protection laws, including
3 the following, as applicable:

4 (8) Requirements for licensure of resident and
5 nonresident agents in s. 626.112, s. 626.321, s. 626.731, s.
6 626.741, s. 626.785, s. 626.792, s. 626.831, or s. 626.835, or
7 s. 626.927.

8 ~~(9) The prohibition against nonresident agents having~~
9 ~~a place of business in the state, a pecuniary interest in an~~
10 ~~insurance business in the state, or a financial interest in an~~
11 ~~insurance agency in the state, under s. 626.741, s. 626.792,~~
12 ~~or s. 626.835.~~

13 Section 4. Section 626.741, Florida Statutes, is
14 amended to read:

15 626.741 Nonresident agents; licensing and
16 restrictions.--

17 (1) The department may, upon written application and
18 the payment of the fees as specified in s. 624.501, issue a
19 license as:

20 (a) A nonresident general lines agent to an individual
21 licensed in his or her home state as a resident agent for the
22 same line of authority as a Florida resident general lines
23 agent and otherwise qualified therefor under the laws of this
24 state, but who is not a resident of this state, if by the laws
25 of the individual's home state, residents of this state may be
26 licensed in a similar manner as a nonresident agent of his or
27 her home state.

28 (b) A customer representative to an individual
29 otherwise qualified therefor, who is not a resident of this
30 state, but is a resident of a state sharing a common boundary
31 with this state.

1 (2) The department may enter into reciprocal
2 agreements with the appropriate official of any other state
3 waiving the written examination of any applicant resident in
4 that other state if:

5 (a) In the applicant's home state, a resident of this
6 state is privileged to procure a general lines agent's license
7 upon compliance with the conditions specified in subsection
8 (1) and without discrimination as to fees or otherwise in
9 favor of the residents of the individual's home state.

10 (b) The appropriate official of the individual's home
11 state certifies that the applicant holds a currently valid
12 license as a resident agent in his or her home state for the
13 same line of authority as a general lines agent in this state.

14 (c) The applicant satisfies the examination
15 requirement under s. 626.221, or qualifies for an exemption
16 thereunder.

17 (3) The department shall not, however, issue any
18 license and appointment to any ~~nonresident who has an office~~
19 ~~or place of business in this state, or who has any direct or~~
20 ~~indirect pecuniary interest in any insurance agent or~~
21 ~~insurance agency licensed as a resident of this state; nor to~~
22 ~~any~~ individual who does not, at the time of issuance and
23 throughout the existence of the Florida license, hold a
24 license as agent or broker issued by his or her home state;
25 nor to any individual who is employed by any insurer as a
26 service representative or who is a managing general agent in
27 any state, whether or not also licensed in another state as an
28 agent or broker. The foregoing requirement to hold a similar
29 license in the applicant's home state does not apply to
30 customer representatives unless the home state licenses
31 residents of that state in a similar manner. ~~The prohibition~~

1 ~~against having an office or place of business in this state~~
2 ~~does not apply to customer representatives who are required to~~
3 ~~conduct business solely within the confines of the office of a~~
4 ~~licensed and appointed Florida resident general lines agent in~~
5 ~~this state.~~The authority of such nonresident license is
6 limited to the specific lines of authority granted in the
7 license issued by the agent's home state and further limited
8 to the specific lines authorized under the nonresident license
9 issued by this state. The department shall have discretion to
10 refuse to issue any license or appointment to a nonresident
11 when it has reason to believe that ~~the applicant by ruse or~~
12 ~~subterfuge is attempting to avoid the intent and prohibitions~~
13 ~~contained in this subsection or to believe that any of the~~
14 grounds exist as for suspension, denial, or revocation of
15 license as set forth in ss. 626.611 and 626.621.

16 ~~(4) Such a nonresident shall not directly or~~
17 ~~indirectly solicit, negotiate, or effect insurance contracts~~
18 ~~in this state unless accompanied by a countersigning agent,~~
19 ~~resident in this state, on such risk.~~

20 ~~(5)(a) All insurance policies as defined in s.~~
21 ~~627.402, written under the nonresident agent's license,~~
22 ~~including those written or issued pursuant to the Surplus~~
23 ~~Lines Law, part VIII, on risks or property located in this~~
24 ~~state must be countersigned by a local agent resident of this~~
25 ~~state; and it shall be the duty and responsibility of the~~
26 ~~nonresident agent, and, if called upon to do so by the~~
27 ~~countersigning agent, of the insurer likewise, to assure that~~
28 ~~such resident local agent receives the same commission as~~
29 ~~allowed by the home state of the nonresident agent, but in no~~
30 ~~event shall the resident local agent receive, accept, or~~
31 ~~retain less than 50 percent of the usual Florida local agent's~~

1 ~~commission or 50 percent of the nonresident agent's~~
2 ~~commission, whichever is less, on policies of insurance~~
3 ~~covering property as defined in s. 624.604 and insurance~~
4 ~~covering in whole or in part real property and tangible~~
5 ~~personal property, including property floater policies. On~~
6 ~~all other policies of insurance, including insurance covering~~
7 ~~motor vehicles, plate glass, burglary, robbery, theft,~~
8 ~~larceny, boiler and machinery, workers' compensation, fidelity~~
9 ~~and surety, bodily injury liability, and property damage~~
10 ~~liability, in no event shall he or she receive, accept, or~~
11 ~~retain less than 25 percent of the usual Florida local agent's~~
12 ~~commission or 25 percent of the nonresident agent's~~
13 ~~commission, whichever is less.~~

14 ~~(b) The provisions of this subsection, with respect to~~
15 ~~resident agent countersignature commission, shall not be~~
16 ~~applicable to any contracts of insurance purchased by a person~~
17 ~~whose premiums for insurance in the preceding year of such~~
18 ~~purchase exceeded \$250,000 in the aggregate. Nothing herein~~
19 ~~is intended to preclude the negotiation and payment of a~~
20 ~~commission to the countersigning agent to compensate him or~~
21 ~~her for services performed or to be performed.~~

22 ~~(4)(6)~~ Any individual who holds a Florida nonresident
23 agent's license, upon becoming a resident of this state may,
24 for a period not to exceed 90 days, continue to transact
25 insurance in this state under the nonresident license and
26 appointment. Such individual must make application for
27 resident licensure and must become licensed as a resident
28 agent within 90 days of becoming a resident of this state.

29 ~~(5)(7)~~ Upon becoming a resident of this state, an
30 individual who holds a Florida nonresident agent's license is
31 no longer eligible for licensure as a nonresident agent if

1 such individual fails to make application for a resident
2 license and become licensed as a resident agent within 90
3 days. His or her license and any appointments shall be
4 canceled immediately. He or she may apply for a resident
5 license pursuant to s. 626.731.

6 (6)~~(8)~~ Except as provided in this section and ss.
7 626.742 and 626.743, nonresident agents shall be subject to
8 the same requirements as apply to agents resident in this
9 state. However, nonresident agents are not required to
10 maintain an insurance agency in this state. If a nonresident
11 agent does maintain or have a financial interest in an
12 insurance agency in this state, the agency is subject to the
13 same requirements that apply to agencies of resident agents in
14 this state.

15 (7)~~(9)~~ If available, the department shall verify the
16 nonresident applicant's licensing status through the Producer
17 Database maintained by the National Association of Insurance
18 Commissioners, its affiliates, or subsidiaries.

19 Section 5. Paragraph (a) of subsection (3) of section
20 626.752, Florida Statutes, is amended to read:

21 626.752 Exchange of business.--

22 (3)(a) An insurer may furnish to ~~resident Florida~~
23 general lines agents who are not appointed by the insurer its
24 forms, coverage documents, binders, applications, and other
25 incidental supplies only for the purposes set forth in this
26 section and only to the extent necessary to facilitate the
27 writing of exchange of business pursuant to this section. The
28 insurer shall assign a unique brokering agent's register
29 number to each agent not appointed with the insurer but
30 furnished with the insurer's forms, coverage documents,
31 binders, applications, and other incidental supplies.

1 Section 6. Subsections (1) and (3) of section 626.753,
2 Florida Statutes, are amended to read:

3 626.753 Sharing commissions; penalty.--

4 (1)(a) An agent may divide or share in commissions
5 only with other agents appointed and licensed to write the
6 same kind or kinds of insurance.

7 ~~(b) A resident agent and a nonresident agent, subject~~
8 ~~to the provisions of s. 626.741, may divide among themselves~~
9 ~~commissions as to kinds of insurance for which both are~~
10 ~~appointed and licensed.~~

11 (b)(c) This section shall not be construed to prevent
12 the payment or receipt of renewal commissions or other
13 deferred commissions or pensions to or by any person solely
14 because such person has ceased to hold a license to act as an
15 insurance agent, and shall not prevent the payment of renewal
16 commissions or other deferred commissions to any incorporated
17 insurance agency solely because any of its stockholders has
18 ceased to hold a license to act as an insurance agent.

19 (3) A ~~resident~~ general lines agent may share
20 commissions derived from the sale of crop hail or
21 multiple-peril crop insurance with a production credit
22 association organized under 12 U.S.C.A. ss. 2071-2077 or a
23 federal land bank association organized under U.S.C.A. ss.
24 2091-2098 if the association has specifically approved the
25 insurance activity by its employees. The amount of commission
26 to be shared shall be determined by the general lines agent
27 and the company paying the commission.

28 Section 7. Subsection (3) of section 626.792, Florida
29 Statutes, is repealed.

30 Section 8. Subsection (3) of section 626.835, Florida
31 Statutes, is repealed.

1 Section 9. Section 626.9272, Florida Statutes, is
2 created to read:

3 626.9272 Licensing of nonresident surplus lines
4 agents.--

5 (1) The department may, upon written application and
6 the payment of the fees specified in s. 624.501, issue a
7 nonresident surplus lines agent license to a nonresident
8 individual licensed in his or her home state as a resident
9 general lines and a resident surplus lines agent and otherwise
10 qualified under the laws of this state if, under the laws of
11 the individual's home state, residents of this state may be
12 licensed in a similar manner as a nonresident surplus lines
13 agent in that state.

14 (2) The department may not issue a license unless the
15 applicant satisfies the examination requirement under s.
16 626.927 or qualifies for a waiver pursuant to subsection (3).
17 The department may refuse to issue such license or appointment
18 when it has reason to believe that any of the grounds exist
19 for denial, suspension, or revocation of a license as set
20 forth in ss. 626.611 and 626.621.

21 (3) The department may enter into reciprocal
22 agreements with other states waiving the written examination
23 of an applicant resident in those states if:

24 (a) In the applicant's home state, a resident of this
25 state may obtain a surplus lines agent's license upon
26 compliance with the conditions specified in subsection (1)
27 without discrimination as to fees or other requirements in
28 favor of the residents of the individual's home state;

29 (b) The appropriate official in the individual's home
30 state certifies that the applicant holds a valid license as a
31 resident general lines and resident surplus lines agent in

1 that state for the same line of authority as a general lines
2 agent in this state; and

3 (c) The applicant has successfully passed a written
4 examination in that state or another state in which the
5 applicant holds a nonresident surplus lines agent license.

6 (4) The authority of a nonresident license is limited
7 to the specific lines of authority granted in the license
8 issued by the agent's home state and the lines authorized
9 under the nonresident license by this state.

10 (5) Any individual who holds a nonresident agent's
11 license, upon becoming a resident of this state may, for a
12 period not to exceed 90 days, operate under the nonresident
13 license and appointment, but must become licensed as a
14 resident agent within that time to continue transacting
15 business in this state after the 90-day period.

16 (6) Except as provided in this section, nonresident
17 surplus lines agents are subject to the requirements that
18 apply to resident surplus lines agents in this state,
19 including s. 626.928.

20 (7) If available, the department shall verify a
21 nonresident applicant's licensing status through the producer
22 database maintained by the National Association of Insurance
23 Commissioners, its affiliates, or subsidiaries.

24 Section 10. Subsection (1) of section 626.929, Florida
25 Statutes, is amended to read:

26 626.929 Origination, acceptance, placement of surplus
27 lines business.--

28 (1) A ~~resident~~ general lines agent while licensed and
29 appointed as a surplus lines agent under this part may
30 originate surplus lines business and may accept surplus lines
31 business from any other originating Florida-licensed general

1 lines agent appointed and licensed as to the kinds of
2 insurance involved and may compensate such agent therefor.

3 Section 11. Subsection (1) of section 626.930, Florida
4 Statutes, is amended to read:

5 626.930 Records of surplus lines agent.--

6 (1) Each surplus lines agent shall keep in his or her
7 office in this state, or in the agent's state of residence for
8 a nonresident who does not have an office in this state,a
9 full and true record for a period of 5 years of each surplus
10 lines contract, including applications and all certificates,
11 cover notes, and other forms of confirmation of insurance
12 coverage and any substitutions thereof or endorsements thereto
13 relative to said contract procured by the agent and showing
14 such of the following items as may be applicable:

15 (a) Amount of the insurance and perils insured
16 against;

17 (b) Brief general description of property insured and
18 where located;

19 (c) Gross premium charged;

20 (d) Return premium paid, if any;

21 (e) Rate of premium charged upon the several items of
22 property;

23 (f) Effective date of the contract, and the terms
24 thereof;

25 (g) Name and post office address of the insured;

26 (h) Name and home-office address of the insurer;

27 (i) Amount collected from the insured; and

28 (j) Other information as may be required by the
29 department.

30 Section 12. Subsection (1) of section 626.935, Florida
31 Statutes, is amended to read:

1 626.935 Suspension, revocation, or refusal of surplus
2 lines agent's license.--

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

8 (a) Removal of the licensee's office from the
9 licensee's state of residence.

10 (b) Removal of the accounts and records of his or her
11 surplus lines business from this state or the licensee's state
12 of residence during the period when such accounts and records
13 are required to be maintained under s. 626.930.

14 (c) Closure of the licensee's office for a period of
15 more than 30 consecutive days.

16 (d) Failure to make and file his or her affidavit or
17 reports when due as required by s. 626.931.

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

20 (f) Failure to maintain the bond as required by s.
21 626.928.

22 (g) Suspension, revocation, or refusal to renew or
23 continue the license or appointment as a general lines agent,
24 service representative, or managing general agent.

25 (h) Lack of qualifications as for an original surplus
26 lines agent's license.

27 (i) Violation of this Surplus Lines Law.

28 (j) For any other applicable cause for which the
29 license of a general lines agent could be suspended, revoked,
30 or refused under s. 626.611 or s. 616.621.

31 Section 13. This act shall take effect July 1, 2004.

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SENATE SUMMARY

Revises provisions relating to property and casualty insurers. Deletes a requirement that certain property, casualty and surety insurers have a resident agent in this state. Requires surplus lines agents to comply with consumer protection laws. Deletes provisions that prohibit nonresident general lines agents, nonresident life insurance agents, or nonresident health insurance agents from maintaining offices in this state. Establishes licensing provisions for nonresident surplus lines agents and provides additional grounds for the discipline of certain licensed agents. (See bill for details.)