

By the Committee on Banking and Insurance; and Senator Diaz de la Portilla

311-2312-04

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. 624.428,
7 F.S.; providing that a life insurer must
8 deliver policies through a resident or
9 nonresident agent; amending s. 626.025, F.S.;
10 requiring surplus lines agents to comply with
11 consumer protection laws; deleting provisions
12 prohibiting certain actions by nonresident
13 agents, to conform; amending s. 626.741, F.S.;
14 deleting a prohibition against nonresident
15 general lines agents having offices in this
16 state; conforming provisions; amending s.
17 626.752, F.S.; conforming provisions; amending
18 s. 626.753, F.S.; conforming provisions;
19 repealing s. 626.792(3), F.S.; deleting a
20 prohibition against nonresident life insurance
21 agents having offices in this state; repealing
22 s. 626.835(3), F.S.; deleting a prohibition
23 against nonresident health insurance agents
24 having offices in this state; creating s.
25 626.9272, F.S.; providing requirements for the
26 licensure of nonresident surplus lines agents;
27 amending s. 626.929, F.S.; conforming
28 provisions; amending s. 626.933, F.S.; allowing
29 the department to authorize the Florida Surplus
30 Lines Service Office to file suit on its
31 behalf; amending s. 626.930, F.S.; conforming

1 provisions; amending s. 626.935, F.S.;

2 providing additional grounds for discipline of

3 licensees; providing an effective date.

4

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

6

7 Section 1. Section 624.425, Florida Statutes, is

8 amended to read:

9 624.425 ~~Resident~~ Agent ~~and~~ countersignature required,

10 property, casualty, surety insurance.--

11 (1) Except as stated in s. 624.426, no authorized

12 property, casualty, or surety insurer shall assume direct

13 liability as to a subject of insurance resident, located, or

14 to be performed in this state unless the policy or contract of

15 insurance is issued by or through, and is countersigned by, an

16 ~~a local producing agent who is a resident of this state,~~

17 regularly commissioned and licensed currently as an agent and

18 appointed as an agent for the insurer under this code. If two

19 or more authorized insurers issue a single policy of insurance

20 against legal liability for loss or damage to person or

21 property caused by the nuclear energy hazard, or a single

22 policy insuring against loss or damage to property by

23 radioactive contamination, whether or not also insuring

24 against one or more other perils proper to insure against in

25 this state, such policy if otherwise lawful may be

26 countersigned on behalf of all of the insurers by a licensed

27 and appointed ~~resident~~ agent of any insurer appearing thereon.

28 The producing ~~Such~~ agent shall receive on each policy or

29 contract the full and usual commission allowed and paid by the

30 insurer to its agents on business written or transacted by

31 them for the insurer.

1 (2) If any subject of insurance referred to in
2 subsection (1) is insured under a policy, or contract, or
3 certificate of renewal or continuation thereof, issued in
4 another state and covering also property and risks outside
5 this state, a certificate evidencing such insurance as to
6 subjects located, resident, or to be performed in this state,
7 shall be issued by or through and shall be countersigned by
8 the insurer's commissioned and appointed ~~local~~ producing agent
9 ~~resident in this state in the same manner and subject to the~~
10 ~~same conditions as is provided in subsection (1) as to~~
11 ~~policies and contracts; except that the compensation to be~~
12 ~~paid to the agent may relate only to the Florida portion of~~
13 ~~the insurance risks represented by such policy or contract.~~

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

28 (4) This section shall not be deemed to prohibit
29 insurers from using salaried licensed and appointed agents for
30 the production and servicing of business in this state and the
31 issuance and countersignature by such agents of insurance

1 policies or contracts, when required under subsection (1), and
2 without payment of commission therefor.

3 (5) This section shall not be deemed to prohibit an
4 insurer from authorizing an agent who is not regularly
5 commissioned and appointed currently as an agent of the
6 insurer from countersigning a policy or contract of insurance
7 issued pursuant to the provisions of ss. 627.311 and 627.351.
8 This section does not apply to reissuance of insurance
9 policies or endorsements thereto which are part of a mass
10 reissuance of such policies or endorsements and do not involve
11 a change of premium or payment of agent's commissions.

12 Section 2. Section 624.426, Florida Statutes, is
13 amended to read:

14 624.426 Exceptions to ~~resident agent and~~
15 countersignature law.--Section 624.425 does not apply to:

16 (1) Contracts of reinsurance.

17 (2) Policies of insurance on the rolling stock of
18 railroad companies doing a general freight and passenger
19 business.

20 (3) United States Customs surety bonds that are issued
21 by a corporate surety approved by the United States Department
22 of Treasury and that name the United States as the
23 beneficiary.

24 (4) Policies of insurance issued by insurers whose
25 agents represent only one company or group of companies under
26 common ownership if a company within one group is transferring
27 policies to another company within the same group and the
28 agent of record remains the same.

29 (5) Policies of insurance issued by insurers whose
30 agents represent, as to property, casualty, and surety
31 insurance, only one company or group of companies under common

1 ownership ~~and for which a Florida resident agent is the agent~~
2 ~~of record~~ and the application has been lawfully submitted to
3 the insurer.

4 Section 3. Section 624.428, Florida Statutes, is
5 amended to read:

6 624.428 Licensed agent law, life and health
7 insurances.--

8 (1) No life insurer shall deliver or issue for
9 delivery in this state any policy of life insurance, master
10 group life insurance contract, master credit life policy or
11 agreement, annuity contract, or contract or policy of health
12 insurance, unless the application for such policy or contract
13 is taken by, and the delivery of such policy or contract is
14 made through, a resident or nonresident ~~an~~ insurance agent of
15 the insurer duly licensed and appointed under the law of this
16 state, who shall receive the usual commission due to an agent
17 from such insurer.

18 (2) Each such insurer shall maintain a licensed and
19 appointed resident or nonresident agent at all times for the
20 purpose of and through whom policies or contracts issued or
21 delivered in this state shall be serviced.

22 (3) This section does not apply to policies of
23 insurance or annuity contracts on nonresidents which are
24 applied for outside, and delivered in, the state or to
25 reissuance of insurance policies or endorsements thereto which
26 are part of a mass reissuance of such policies or endorsements
27 and do not involve a change of premium or payment of agent's
28 commissions.

29 Section 4. Subsections (8) and (9) of section 626.025,
30 Florida Statutes, are amended and present subsections (10)

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1 through (16) of that section are redesignated as subsections
2 (9) through (15), respectively, to read:

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

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

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

15 Section 5. Section 626.741, Florida Statutes, is
16 amended to read:

17 626.741 Nonresident agents; licensing and
18 restrictions.--

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

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

30 (b) A customer representative to an individual
31 otherwise qualified therefor, who is not a resident of this

1 state, but is a resident of a state sharing a common boundary
2 with this state.

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

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

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

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

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

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

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

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

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

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

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

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1 ~~(5)(7)~~ Upon becoming a resident of this state, an
2 individual who holds a Florida nonresident agent's license is
3 no longer eligible for licensure as a nonresident agent if
4 such individual fails to make application for a resident
5 license and become licensed as a resident agent within 90
6 days. His or her license and any appointments shall be
7 canceled immediately. He or she may apply for a resident
8 license pursuant to s. 626.731.

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

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

22 Section 6. Paragraph (a) of subsection (3) of section
23 626.752, Florida Statutes, is amended to read:

24 626.752 Exchange of business.--

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

1 number to each agent not appointed with the insurer but
2 furnished with the insurer's forms, coverage documents,
3 binders, applications, and other incidental supplies.

4 Section 7. Subsections (1) and (3) of section 626.753,
5 Florida Statutes, are amended to read:

6 626.753 Sharing commissions; penalty.--

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

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

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

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

31

1 Section 8. Subsection (3) of section 626.792, Florida
2 Statutes, is repealed.

3 Section 9. Subsection (3) of section 626.835, Florida
4 Statutes, is repealed.

5 Section 10. Section 626.9272, Florida Statutes, is
6 created to read:

7 626.9272 Licensing of nonresident surplus lines
8 agents.--

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

18 (2) The department may not issue a license unless the
19 applicant satisfies the same licensing requirements under s.
20 626.927 as required of a resident surplus lines agent. The
21 department may refuse to issue such license or appointment
22 when it has reason to believe that any of the grounds exist
23 for denial, suspension, or revocation of a license as set
24 forth in ss. 626.611 and 626.621.

25 (3) The authority of a nonresident license is limited
26 to the specific lines of authority granted in the license
27 issued by the agent's home state and the lines authorized
28 under the nonresident license by this state.

29 (4) Any individual who holds a nonresident agent's
30 license, upon becoming a resident of this state may, for a
31 period not to exceed 90 days, operate under the nonresident

1 license and appointment, but must become licensed as a
2 resident agent within that time to continue transacting
3 business in this state after the 90-day period.

4 (5) Except as provided in this section, nonresident
5 surplus lines agents are subject to the requirements that
6 apply to resident surplus lines agents in this state,
7 including ss. 626.913-626.937.

8 (6) If available, the department shall verify a
9 nonresident applicant's licensing status through the producer
10 database maintained by the National Association of Insurance
11 Commissioners, its affiliates, or subsidiaries.

12 Section 11. Subsection (1) of section 626.929, Florida
13 Statutes, is amended to read:

14 626.929 Origination, acceptance, placement of surplus
15 lines business.--

16 (1) A ~~resident~~ general lines agent while licensed and
17 appointed as a surplus lines agent under this part may
18 originate surplus lines business and may accept surplus lines
19 business from any other originating Florida-licensed general
20 lines agent appointed and licensed as to the kinds of
21 insurance involved and may compensate such agent therefor.

22 Section 12. Subsection (1) of section 626.930, Florida
23 Statutes, is amended to read:

24 626.930 Records of surplus lines agent.--

25 (1) Each surplus lines agent shall keep in his or her
26 office in this state, or in the agent's state of residence for
27 a nonresident who does not have an office in this state, a
28 full and true record for a period of 5 years of each surplus
29 lines contract, including applications and all certificates,
30 cover notes, and other forms of confirmation of insurance
31 coverage and any substitutions thereof or endorsements thereto

- 1 relative to said contract procured by the agent and showing
2 such of the following items as may be applicable:
3 (a) Amount of the insurance and perils insured
4 against;
5 (b) Brief general description of property insured and
6 where located;
7 (c) Gross premium charged;
8 (d) Return premium paid, if any;
9 (e) Rate of premium charged upon the several items of
10 property;
11 (f) Effective date of the contract, and the terms
12 thereof;
13 (g) Name and post office address of the insured;
14 (h) Name and home-office address of the insurer;
15 (i) Amount collected from the insured; and
16 (j) Other information as may be required by the
17 department.

18 Section 13. Section 626.933, Florida Statutes, is
19 amended to read:

20 626.933 Collection of tax and service fee.--If the tax
21 or service fee payable by a surplus lines agent under this
22 Surplus Lines Law is not so paid within the time prescribed,
23 the same shall be recoverable in a suit brought by the
24 department against the surplus lines agent and the surety or
25 sureties on the bond filed by the surplus lines agent under s.
26 626.928. The department may authorize the Florida Surplus
27 Lines Service Office to file suit on its behalf. All costs and
28 expenses incurred in a suit brought by the office which are
29 not recoverable from the agent or surety shall be borne by the
30 office.
31

1 Section 14. Subsection (1) of section 626.935, Florida
2 Statutes, is amended to read:

3 626.935 Suspension, revocation, or refusal of surplus
4 lines agent's license.--

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

10 (a) Removal of the licensee's office from the
11 licensee's state of residence.

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

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

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

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

22 (f) Failure to maintain the bond as required by s.
23 626.928.

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

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

29 (i) Violation of this Surplus Lines Law.
30
31

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

4 Section 15. This act shall take effect July 1, 2004.

5
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 2588

9 Requires applicants for a nonresident surplus lines agent
10 license to meet all of the requirements that apply to resident
surplus lines agents.

11 Allows the Department of Financial Services to authorize the
12 Florida Surplus Lines Service Office to file suit on its
13 behalf against a surplus lines agent or the surety insurer
14 that issued the surety bond to the agent, if the agent has not
15 timely paid the surplus lines tax or service fee to the
16 Service Office.