

Bill No. SB 2330

Barcode 634284

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Alexander) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 8, between lines 27 and 28,

insert:

Section 7. Section 626.918, Florida Statutes, is amended to read:

626.918 Eligible surplus lines insurers.--

(1) A ~~No~~ surplus lines agent may not ~~shall~~ place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer, except as permitted under subsections ~~(6)(5)~~ and ~~(7)(6)~~.

(2) An ~~No~~ unauthorized insurer may not ~~shall~~ be or become an eligible surplus lines insurer unless made eligible by the office in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by the Florida Surplus Lines Service Office;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind

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1 or kinds of insurance proposed to be so placed and must have  
 2 been such an insurer for not less than the 3 years next  
 3 preceding or must be the wholly owned subsidiary of such  
 4 authorized insurer or must be the wholly owned subsidiary of  
 5 an already eligible surplus lines insurer as to the kind or  
 6 kinds of insurance proposed for a period of not less than the  
 7 3 years next preceding. However, the office may waive the  
 8 3-year requirement if the insurer provides a product or  
 9 service not readily available to the consumers of this state  
 10 or has operated successfully for a period of at least 1 year  
 11 next preceding and has capital and surplus of not less than  
 12 \$25 million;

13 (c) Before granting eligibility, the requesting  
 14 surplus lines agent or the insurer shall furnish the office  
 15 with a duly authenticated copy of its current annual financial  
 16 statement in the English language and with all monetary values  
 17 therein expressed in United States dollars, at an exchange  
 18 rate (in the case of statements originally made in the  
 19 currencies of other countries) then-current and shown in the  
 20 statement, and with such additional information relative to  
 21 the insurer as the office may request;

22 (d)1. The insurer must have and maintain surplus as to  
 23 policyholders of not less than \$15 million; in addition, an  
 24 alien insurer must also have and maintain in the United States  
 25 a trust fund for the protection of all its policyholders in  
 26 the United States under terms deemed by the office to be  
 27 reasonably adequate, in an amount not less than \$5.4 million.  
 28 Any such surplus as to policyholders or trust fund shall be  
 29 represented by investments consisting of eligible investments  
 30 for like funds of like domestic insurers under part II of  
 31 chapter 625 provided, however, that in the case of an alien

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1 insurance company, any such surplus as to policyholders may be  
 2 represented by investments permitted by the domestic regulator  
 3 of such alien insurance company if such investments are  
 4 substantially similar in terms of quality, liquidity, and  
 5 security to eligible investments for like funds of like  
 6 domestic insurers under part II of chapter 625. Clean,  
 7 irrevocable, unconditional, and evergreen letters of credit  
 8 issued or confirmed by a qualified United States financial  
 9 institution, as defined in subsection (3), may be used to fund  
 10 the trust;

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

14           a. On December 31, 1994, and until December 30, 1995,  
 15 \$2.5 million.

16           b. On December 31, 1995, and until December 30, 1996,  
 17 \$3.5 million.

18           c. On December 31, 1996, and until December 30, 1997,  
 19 \$4.5 million.

20           d. On December 31, 1997, and until December 30, 1998,  
 21 \$5.5 million.

22           e. On December 31, 1998, and until December 30, 1999,  
 23 \$6.5 million.

24           f. On December 31, 1999, and until December 30, 2000,  
 25 \$8 million.

26           g. On December 31, 2000, and until December 30, 2001,  
 27 \$9.5 million.

28           h. On December 31, 2001, and until December 30, 2002,  
 29 \$11 million.

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

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

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

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

26  
27 The election shall be submitted to the office and shall be  
28 effective upon the office's being satisfied that the  
29 requirements of subparagraph 4. have been met. The initial  
30 date of election shall be the date of office approval. The  
31 election approval application shall be on a form adopted by

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1 | commission rule. The office may approve an election form  
2 | submitted pursuant to subparagraph 4. only if it was on file  
3 | with the former Department of Insurance before February 28,  
4 | 1998;

5 |         (e) The insurer must be of good reputation as to the  
6 | providing of service to its policyholders and the payment of  
7 | losses and claims;

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

10 |         (g) This subsection does not apply as to unauthorized  
11 | insurers made eligible under s. 626.917 as to wet marine and  
12 | aviation risks.

13 |         (3) For purposes of subsection (2) regarding letters  
14 | of credit, "qualified United States financial institution"  
15 | means an institution that:

16 |             (a) Is organized or, in the case of a United States  
17 | office of a foreign banking organization, is licensed under  
18 | the laws of the United States or any state thereof;

19 |             (b) Is regulated, supervised, and examined by United  
20 | States or state authorities having regulatory authority over  
21 | banks and trust companies; and

22 |             (c) Has been determined by the office or the  
23 | Securities Valuation Office of the National Association of  
24 | Insurance Commissioners to meet such standards of financial  
25 | condition and standing as are considered necessary and  
26 | appropriate to regulate the quality of financial institutions  
27 | whose letters of credit are acceptable to the office.

28 |         ~~(4)~~(3) The office shall from time to time publish a  
29 | list of all currently eligible surplus lines insurers and  
30 | shall mail a copy thereof to each licensed surplus lines agent  
31 | at his or her office of record with the office.

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1           ~~(5)(4)~~ This section shall not be deemed to cast upon  
2 the office any duty or responsibility to determine the actual  
3 financial condition or claims practices of any unauthorized  
4 insurer; and the status of eligibility, if granted by the  
5 office, shall indicate only that the insurer appears to be  
6 sound financially and to have satisfactory claims practices  
7 and that the office has no credible evidence to the contrary.

8           ~~(6)(5)~~ When it appears that any particular insurance  
9 risk which is eligible for export, but on which insurance  
10 coverage, in whole or in part, is not procurable from the  
11 eligible surplus lines insurers, after a search of eligible  
12 surplus lines insurers, then the surplus lines agent may file  
13 a supplemental signed statement setting forth such facts and  
14 advising the office that such part of the risk as shall be  
15 unprocurable, as aforesaid, is being placed with named  
16 unauthorized insurers, in the amounts and percentages set  
17 forth in the statement. Such named unauthorized insurer  
18 shall, however, before accepting any risk in this state,  
19 deposit with the department cash or securities acceptable to  
20 the office and department of the market value of \$50,000 for  
21 each individual risk, contract, or certificate, which deposit  
22 shall be held by the department for the benefit of Florida  
23 policyholders only; and the surplus lines agent shall procure  
24 from such unauthorized insurer and file with the office a  
25 certified copy of its statement of condition as of the close  
26 of the last calendar year. If such statement reveals,  
27 including both capital and surplus, net assets of at least  
28 that amount required for licensure of a domestic insurer, then  
29 the surplus lines agent may proceed to consummate such  
30 contract of insurance. Whenever any insurance risk, or any  
31 part thereof, is placed with an unauthorized insurer, as

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1 provided herein, the policy, binder, or cover note shall  
 2 contain a statement signed by the insured and the agent with  
 3 the following notation: "The insured is aware that certain  
 4 insurers participating in this risk have not been approved to  
 5 transact business in Florida nor have they been declared  
 6 eligible as surplus lines insurers by the Office of Insurance  
 7 Regulation of Florida. The placing of such insurance by a duly  
 8 licensed surplus lines agent in Florida shall not be construed  
 9 as approval of such insurer by the Office of Insurance  
 10 Regulation of Florida. Consequently, the insured is aware that  
 11 the insured has severely limited the assistance available  
 12 under the insurance laws of Florida. The insured is further  
 13 aware that he or she may be charged a reasonable per policy  
 14 fee, as provided in s. 626.916(4), Florida Statutes, for each  
 15 policy certified for export." All other provisions of this  
 16 code shall apply to such placement the same as if such risks  
 17 were placed with an eligible surplus lines insurer.

18       ~~(7)(6)~~ When any particular insurance risk subject to  
 19 subsection~~(6)(5)~~ is eligible for placement with an  
 20 unauthorized insurer and not more than 12.5 percent of the  
 21 risk is so subject, the office may, at its discretion, permit  
 22 the agent to obtain from the insured a signed statement as  
 23 indicated in subsection~~(6)(5)~~. All other provisions of this  
 24 code apply to such placement the same as if such risks were  
 25 placed with an eligible surplus lines insurer.

26  
 27 (Redesignate subsequent sections.)  
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30 ===== T I T L E    A M E N D M E N T =====

31 And the title is amended as follows:

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On page 1, line 27, after the semicolon,  
insert:  
amending s. 626.918, F.S.; providing that  
certain letters of credit issued or confirmed  
by a qualified United States financial  
institution may be used to fund a trust  
established and maintained by an alien insurer  
for the protection of policyholders in the  
United States; defining the term "qualified  
United States financial institution";