

1 A bill to be entitled
2 An act relating to surplus lines insurance; amending s.
3 626.931, F.S.; requiring a surplus lines agent to file
4 quarterly on or before a specified time an affidavit
5 stating that all surplus lines insurance transacted during
6 the preceding quarter has been submitted to the Florida
7 Surplus Lines Service Office; amending s. 626.932, F.S.;
8 requiring the premium tax due on a surplus lines policy to
9 be computed on the gross premium under certain
10 circumstances; amending s. 626.9325, F.S.; revising
11 payment dates for the service fee; requiring the service
12 fee on a surplus lines policy to be computed on the gross
13 premium under certain circumstances; creating s. 626.9362,
14 F.S.; authorizing the Department of Financial Services and
15 the Office of Insurance Regulation to enter into a
16 specified type of agreement with other states pursuant to
17 federal law for the collection and allocation of certain
18 nonadmitted insurance taxes; providing terms that may be
19 included in the agreement; requiring the Florida Surplus
20 Lines Service Office to implement an agreement entered
21 into by the department and the Office of Insurance
22 Regulation; authorizing the department to adopt rules;
23 providing for application; requiring the Department of
24 Financial Services to submit an initial report to the
25 Legislature by a specified date if an agreement has been
26 entered into before that date; repealing this section
27 effective on that specified date, if no agreement has been
28 entered into before that date; repealing this section

29 | effective on a specified date if the Legislature has not
30 | ratified any agreement before that date; requiring annual
31 | reports; providing requirements relating to the initial
32 | and each subsequent annual report; amending s. 626.938,
33 | F.S.; requiring certain insureds or self-insurers engaging
34 | in specified insurance transactions with a foreign or
35 | alien insurer to compute the premium tax and service fees
36 | based on the gross premium under certain circumstances;
37 | requiring such insureds or self-insurers to pay the
38 | applicable premium tax to the department and the service
39 | fee to the Florida Surplus Lines Service Office on or
40 | before a specified time; providing an effective date.

41 |
42 | WHEREAS, the 111th Congress passed the Nonadmitted and
43 | Reinsurance Reform Act of 2010 (NRRRA), and

44 | WHEREAS, the NRRRA provides that no state other than the
45 | home state of an insured may require any premium tax payment for
46 | nonadmitted insurance and defines "home state" as the state in
47 | which an insured maintains its principal place of business [15
48 | U.S.C. s. 8206], and

49 | WHEREAS, as a result of the NRRRA, premium tax payments that
50 | would otherwise be paid to Florida will be paid to other states,
51 | and

52 | WHEREAS, the NRRRA allows states to enter into a compact or
53 | otherwise establish procedures to allocate among the states the
54 | premium taxes paid to an insured's home state, and

55 WHEREAS, the National Association of Insurance
 56 Commissioners has adopted an agreement for states to use for
 57 that purpose, NOW, THEREFORE,

58

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

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61 Section 1. Subsection (1) of section 626.931, Florida
 62 Statutes, is amended to read:

63 626.931 Agent affidavit and insurer reporting
 64 requirements.—

65 (1) Each surplus lines agent shall on or before the 45th
 66 day ~~the end of the month next~~ following each calendar quarter
 67 file with the Florida Surplus Lines Service Office an affidavit,
 68 on forms as prescribed and furnished by the Florida Surplus
 69 Lines Service Office, stating that all surplus lines insurance
 70 transacted by him or her during such calendar quarter has been
 71 submitted to the Florida Surplus Lines Service Office as
 72 required.

73 Section 2. Subsection (3) of section 626.932, Florida
 74 Statutes, is amended to read:

75 626.932 Surplus lines tax.—

76 (3) If a surplus lines policy covers risks or exposures
 77 only partially in this state and the state is the home state as
 78 defined in the federal Nonadmitted and Reinsurance Reform Act of
 79 2010 (NRRA), the tax payable shall be computed on the gross
 80 ~~portion of the premium which is properly allocable to the risks~~
 81 ~~or exposures located in this state.~~

82 Section 3. Subsections (2) and (3) of section 626.9325,
 83 Florida Statutes, are amended to read:

84 626.9325 Service fee.-

85 (2) (a) The surplus lines agent shall pay on or before the
 86 45th day following each calendar quarter ~~monthly~~ to the Florida
 87 Surplus Lines Service Office the fees related to all policies
 88 reported during the previous calendar quarter ~~month~~ in
 89 accordance with the plan of operation of the Florida Surplus
 90 Lines Service Office.

91 (b) The agent shall pay interest on the amount of any
 92 delinquent fees due, at the rate of 9 percent per year,
 93 compounded annually, beginning the day the amount becomes
 94 delinquent.

95 (3) If a surplus lines policy covers risks or exposures
 96 only partially in this state and the state is the home state as
 97 defined in the federal Nonadmitted and Reinsurance Reform Act of
 98 2010 (NRRA), the fee payable shall be computed on the gross
 99 ~~portion of the premium which is properly allocable to the risks~~
 100 ~~or exposures located in this state.~~

101 Section 4. Section 626.9362, Florida Statutes, is created
 102 to read:

103 626.9362 Cooperative reciprocal agreement authorized for
 104 collection and allocation of certain nonadmitted insurance
 105 taxes.-

106 (1) AUTHORIZATION OF AGREEMENTS.-The Department of
 107 Financial Services and the Office of Insurance Regulation may
 108 enter into a cooperative reciprocal agreement with another state
 109 or group of states for the purpose of, but not limited to, the

110 collection and allocation of nonadmitted insurance taxes for
111 multistate risks pursuant to the federal Nonadmitted and
112 Reinsurance Reform Act of 2010 (NRRA) which was incorporated
113 into the Dodd-Frank Wall Street Reform and Consumer Protection
114 Act, Pub. L. No. 111-203, July 21, 2010.

115 (2) AGREEMENT TERMS.—The terms of the agreement may
116 include, but are not limited to, the following:

117 (a) Creating a clearinghouse for the purpose of
118 facilitating the receipt and disbursement of nonadmitted
119 insurance taxes.

120 (b) Specifying requirements and time periods for
121 reporting.

122 (c) Determining methods for the collection and forwarding
123 of nonadmitted insurance taxes to another state.

124 (d) Specifying a premium tax allocation formula for
125 multistate risk nonadmitted insurance.

126 (e) Providing for audits and the exchange of information.

127 (f) Facilitating the administration of the cooperative
128 reciprocal agreement in a reasonable manner.

129 (g) Providing for the collection of a service fee to fund
130 the operations and activities of the clearinghouse which shall
131 not exceed 0.3 percent of the gross premium on transactions
132 processed by the clearinghouse. The fee on gross premium
133 allocated to this state shall be taken from the premium taxes on
134 such premium and shall not be added to the premium taxes.

135 (h) Providing for withdrawal of a participating state from
136 the agreement, without penalty, if the withdrawing state first
137 provides 60 days' written notice to all participating states.

138 (3) AGREEMENT IMPLEMENTATION; TAX COLLECTION.—The Florida
139 Surplus Lines Service Office must implement any such agreement
140 entered into by the Department Of Financial Services and the
141 Office of Insurance Regulation under this section and has the
142 authority to collect the total tax imposed on a multistate risk
143 nonadmitted insurance premium under such agreement.

144 (4) RULES.—The department may adopt rules for the
145 administration and enforcement of such agreement entered into
146 with another state or group of states under this section.

147 (5) Notwithstanding any other provision of law to the
148 contrary, this section and any cooperative reciprocal agreement
149 entered into with another state or group of states under this
150 section control the collection and allocation of nonadmitted
151 insurance taxes for multistate risks.

152 (6) INITIAL REPORT.—Following the negotiation and
153 execution of any cooperative reciprocal agreement entered into
154 by the Department of Financial Services and the Office of
155 Insurance Regulation with another state or group of states, the
156 department is directed to prepare and submit a report to the
157 President of the Senate and the Speaker of the House of
158 Representatives by January 1, 2012. In addition to describing in
159 detail the terms of any agreement entered into with another
160 state or group of states pursuant to this section, the report
161 shall include, but is not limited to, the following:

162 (a) The actual and projected collections and allocation of
163 nonadmitted insurance premium taxes for multistate risk of each
164 state participating in the agreement;

165 (b) A detailed description of the administrative structure

166 supporting any agreement, including any clearinghouse created by
167 an agreement and the fees charged to support administration of
168 the agreement;

169 (c) The insurance tax rates of any state participating in
170 the agreement; and

171 (d) The status of any other cooperative reciprocal
172 agreements established throughout the country, including a
173 state-by-state listing of passed or pending legislation
174 responding to changes made by the federal Nonadmitted and
175 Reinsurance Reform Act of 2010.

176 (7) CONDITIONAL REPEAL.—This section is repealed effective
177 January 1, 2012, if before that date the Department of Financial
178 Services and the Office of Insurance Regulation have not entered
179 into any cooperative reciprocal agreement pursuant to this
180 section.

181 (8) RATIFICATION; CONDITIONAL REPEAL.—This section is
182 repealed effective June 30, 2012, if any cooperative reciprocal
183 agreement entered into by the Department of Financial Services
184 and the Office of Insurance Regulation pursuant to this section
185 before January 1, 2012, is not ratified before June 30, 2012, by
186 both houses of the Legislature by a majority vote in each house
187 of those members present and voting. If the Legislature does not
188 ratify the agreement, the Chief Financial Officer and the Office
189 of Insurance Regulation shall withdraw from the agreement,
190 pursuant to any notice provisions required by the agreement.

191 (9) ANNUAL REPORT.—Beginning in 2013, the Department of
192 Financial Services, in cooperation with the Office of Insurance
193 Regulation and the Florida Surplus Lines Office, shall by

194 January 1 of each year submit a report to the Governor, the
 195 President of the Senate, and the Speaker of the House of
 196 Representatives regarding any cooperative reciprocal agreement
 197 entered into with another state or group of states under this
 198 section. Each annual report shall include, but is not limited
 199 to, actual and projected collections and allocation of
 200 nonadmitted insurance premium taxes for multistate risk of each
 201 state participating in the agreement; administrative costs and
 202 fees of the agreement; the insurance tax rates of any state
 203 participating in the agreement; the status of any other
 204 cooperative reciprocal agreements established throughout the
 205 country, including a state-by-state listing of passed or pending
 206 legislation responding to changes made by the federal
 207 Nonadmitted and Reinsurance Reform Act of 2010; and a detailed
 208 discussion of any changes or proposed changes in the provisions
 209 of the agreement or the rules under which the agreement
 210 operates.

211 Section 5. Subsection (3) of section 626.938, Florida
 212 Statutes, is amended to read:

213 626.938 Report and tax of independently procured
 214 coverages.—

215 (3) For the general support of the government of this
 216 state, there is levied upon the obligation, chose in action, or
 217 right represented by the premium charged for such insurance a
 218 tax at the rate of 5 percent of the gross amount of such premium
 219 and a 0.3 percent service fee pursuant to s. 626.9325. If the
 220 policy covers risks or exposures only partially in this state
 221 and this state is the home state as defined by the federal

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222 Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax
223 and service fee payable shall be computed on the gross premium.
224 The insured shall withhold the amount of the tax and service fee
225 from the amount of premium charged by and otherwise payable to
226 the insurer for such insurance. On or before the 45th day
227 following each calendar quarter ~~Within 30 days~~ after the
228 insurance is procured, continued, or renewed, ~~and simultaneously~~
229 ~~with the filing of the report provided for in subsection (1)~~
230 ~~with the Florida Surplus Lines Service Office,~~ the insured shall
231 make payable to the department the amount of the tax and make
232 payable to the Florida Surplus Lines Service Office the amount
233 of the service fee. The insured shall remit the tax and the
234 service fee to the Florida Surplus Lines Service Office. The
235 Florida Surplus Lines Service Office shall forward to the
236 department the taxes, and any interest collected pursuant to
237 subsection (5), within 10 days after receipt.

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