

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; providing a limit on the tax; amending s.
11 626.9325, F.S.; revising payment dates for the service
12 fee; requiring the service fee on a surplus lines policy
13 to be computed on the gross premium under certain
14 circumstances; creating s. 626.9362, F.S.; authorizing the
15 Department of Financial Services and the Office of
16 Insurance Regulation to enter into a specified type of
17 agreement with other states pursuant to federal law for
18 the collection and allocation of certain nonadmitted
19 insurance taxes; providing terms that may be included in
20 the agreement; requiring the Florida Surplus Lines Service
21 Office to implement an agreement entered into by the
22 department and the Office of Insurance Regulation;
23 authorizing the department to adopt rules; providing for
24 application; requiring the Department of Financial
25 Services to submit an initial report to the Legislature by
26 a specified date if an agreement has been entered into
27 before that date; repealing this section effective on that
28 specified date, if no agreement has been entered into

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

43
44 WHEREAS, the 111th Congress passed the Nonadmitted and
45 Reinsurance Reform Act of 2010 (NRRA), and

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

51 WHEREAS, as a result of the NRRA, premium tax payments that
52 would otherwise be paid to Florida will be paid to other states,
53 and

54 WHEREAS, the NRRA allows states to enter into a compact or
55 otherwise establish procedures to allocate among the states the
56 premium taxes paid to an insured's home state, and

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

60

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

62

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

65 626.931 Agent affidavit and insurer reporting
 66 requirements.—

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

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

77 626.932 Surplus lines tax.—

78 (3) If a surplus lines policy covers risks or exposures
 79 only partially in this state and the state is the home state as
 80 defined in the federal Nonadmitted and Reinsurance Reform Act of
 81 2010 (NRRA), the tax payable shall be computed on the gross
 82 ~~portion of the premium which is properly allocable to the risks~~
 83 ~~or exposures located in this state.~~ The tax must not exceed the
 84 tax rate where the risk or exposure is located.

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

87 626.9325 Service fee.-

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

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

98 (3) If a surplus lines policy covers risks or exposures
 99 only partially in this state and the state is the home state as
 100 defined in the federal Nonadmitted and Reinsurance Reform Act of
 101 2010 (NRRA), the fee payable shall be computed on the gross
 102 ~~portion of the premium which is properly allocable to the risks~~
 103 ~~or exposures located in this state.~~

104 Section 4. Section 626.9362, Florida Statutes, is created
 105 to read:

106 626.9362 Cooperative reciprocal agreement authorized for
 107 collection and allocation of certain nonadmitted insurance
 108 taxes.-

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

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

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

120 (a) Creating a clearinghouse for the purpose of
121 facilitating the receipt and disbursement of nonadmitted
122 insurance taxes.

123 (b) Specifying requirements and time periods for
124 reporting.

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

127 (d) Specifying a premium tax allocation formula for
128 multistate risk nonadmitted insurance.

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

130 (f) Facilitating the administration of the cooperative
131 reciprocal agreement in a reasonable manner.

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

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

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

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

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

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

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

168 (b) A detailed description of the administrative structure

169 supporting any agreement, including any clearinghouse created by
 170 an agreement and the fees charged to support administration of
 171 the agreement;

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

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

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

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

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

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

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

216 626.938 Report and tax of independently procured
 217 coverages.—

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

225 Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax
 226 and service fee payable shall be computed on the gross premium.
 227 The tax must not exceed the tax rate where the risk or exposure
 228 is located. The insured shall withhold the amount of the tax and
 229 service fee from the amount of premium charged by and otherwise
 230 payable to the insurer for such insurance. On or before the 45th
 231 day following each calendar quarter ~~Within 30 days after the~~
 232 ~~insurance is procured, continued, or renewed, and simultaneously~~
 233 ~~with the filing of the report provided for in subsection (1)~~
 234 ~~with the Florida Surplus Lines Service Office,~~ the insured shall
 235 make payable to the department the amount of the tax and make
 236 payable to the Florida Surplus Lines Service Office the amount
 237 of the service fee. The insured shall remit the tax and the
 238 service fee to the Florida Surplus Lines Service Office. The
 239 Florida Surplus Lines Service Office shall forward to the
 240 department the taxes, and any interest collected pursuant to
 241 subsection (5), within 10 days after receipt.

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