

**By** the Committees on Budget; Budget Subcommittee on Finance and Tax; and Banking and Insurance; and Senators Fasano and Richter

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1                                   A bill to be entitled  
2           An act relating to surplus lines insurance; amending  
3           s. 626.931, F.S.; requiring a surplus lines agent to  
4           file quarterly on or before a specified time an  
5           affidavit stating that all surplus lines insurance  
6           transacted during the preceding quarter has been  
7           submitted to the Florida Surplus Lines Service Office;  
8           amending s. 626.932, F.S.; requiring the premium tax  
9           due on a surplus lines policy to be computed on the  
10          gross premium under certain circumstances; providing a  
11          limit on the tax; amending s. 626.9325, F.S.; revising  
12          payment dates for the service fee; requiring the  
13          service fee on a surplus lines policy to be computed  
14          on the gross premium under certain circumstances;  
15          creating s. 626.9362, F.S.; authorizing the Department  
16          of Financial Services and the Office of Insurance  
17          Regulation to enter into a specified type of agreement  
18          with other states pursuant to federal law for the  
19          collection and allocation of certain nonadmitted  
20          insurance taxes; providing terms that may be included  
21          in the agreement; requiring the Florida Surplus Lines  
22          Service Office to implement an agreement entered into  
23          by the department and the Office of Insurance  
24          Regulation; providing for application; providing for  
25          legislative review of any cooperative reciprocal  
26          agreement entered into by the Chief Financial Officer  
27          and the office with another state or group of states;  
28          authorizing the Legislature to instruct the Chief  
29          Financial Officer and the office to withdraw from the

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30 cooperative reciprocal agreement if it determines that  
31 the agreement is not in the best interest of the  
32 state; providing for notice; requiring that the  
33 department submit a report to the Legislature;  
34 amending s. 626.938, F.S.; requiring certain insureds  
35 or self insurers engaging in specified insurance  
36 transactions with a foreign or alien insurer to  
37 compute the premium tax and service fees based on the  
38 gross premium under certain circumstances; providing a  
39 limit on the tax; requiring such insureds or self  
40 insurers to pay the applicable premium tax to the  
41 department and the service fee to the Florida Surplus  
42 Lines Service Office on or before a specified time;  
43 providing an effective date.

44

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

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

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

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

58 WHEREAS, the National Association of Insurance

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59 Commissioners has adopted an agreement for states to use for  
60 that purpose, and

61 WHEREAS, state agreements must be entered into before the  
62 expiration of a 330-day period that began on July 21, 2010, to  
63 prevent the payment of taxes to such other states pursuant to  
64 the NRRA [15 U.S.C. s. 8201], NOW, THEREFORE,

65

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

67

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

70 626.931 Agent affidavit and insurer reporting  
71 requirements.-

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

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

82 626.932 Surplus lines tax.-

83 (3) If a surplus lines policy covers risks or exposures  
84 only partially in this state and the state is the home state as  
85 defined in the federal Nonadmitted and Reinsurance Reform Act of  
86 2010 (NRRA), the tax payable shall be computed on the gross  
87 ~~portion of the premium which is properly allocable to the risks~~

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88 ~~or exposures located in this state. The tax must not exceed the~~  
89 ~~tax rate where the risk or exposure is located.~~

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

92 626.9325 Service fee.—

93 (2) (a) The surplus lines agent shall pay on or before the  
94 45th day following each calendar quarter ~~monthly~~ to the Florida  
95 Surplus Lines Service Office the fees related to all policies  
96 reported during the previous calendar quarter ~~month~~ in  
97 accordance with the plan of operation of the Florida Surplus  
98 Lines Service Office.

99 (b) The agent shall pay interest on the amount of any  
100 delinquent fees due, at the rate of 9 percent per year,  
101 compounded annually, beginning the day the amount becomes  
102 delinquent.

103 (3) If a surplus lines policy covers risks or exposures  
104 only partially in this state and the state is the home state as  
105 defined in the federal Nonadmitted and Reinsurance Reform Act of  
106 2010 (NRRA), the fee payable shall be computed on the gross  
107 ~~portion of the premium which is properly allocable to the risks~~  
108 ~~or exposures located in this state.~~

109 Section 4. Section 626.9362, Florida Statutes, is created  
110 to read:

111 626.9362 Cooperative reciprocal agreement authorized for  
112 collection and allocation of certain nonadmitted insurance  
113 taxes.—

114 (1) The Department of Financial Services and the Office of  
115 Insurance Regulation may enter into a cooperative reciprocal  
116 agreement with another state or group of states for the purpose

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117 of, but not limited to, the collection and allocation of  
118 nonadmitted insurance taxes for multistate risks pursuant to the  
119 federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)  
120 which was incorporated into the Dodd-Frank Wall Street Reform  
121 and Consumer Protection Act, Pub. L. No. 111-203, July 21, 2010.

122 (2) The terms of the agreement may include, but are not  
123 limited to, the following:

124 (a) Creating a clearinghouse for the purpose of  
125 facilitating the receipt and disbursement of nonadmitted  
126 insurance taxes.

127 (b) Specifying requirements and time periods for reporting.

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

130 (d) Specifying a premium tax allocation formula for multi-  
131 state risk nonadmitted insurance.

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

133 (f) Facilitating the administration of the cooperative  
134 reciprocal agreement in a reasonable manner.

135 (g) Providing for the collection of a service fee to fund  
136 the operations and activities of the clearinghouse which shall  
137 not exceed 0.3 percent of the gross premium on transactions  
138 processed by the clearinghouse.

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

145 (4) The department and the Office of Insurance Regulation

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146 may adopt rules for the administration and enforcement of a  
147 cooperative reciprocal agreement entered into with another state  
148 or group of states under this section.

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

154 (6) The Legislature may, at its discretion, review any  
155 cooperative reciprocal agreement entered into by the Chief  
156 Financial Officer and the office with another state or group of  
157 states. If the Legislature determines that the cooperative  
158 reciprocal agreement is not in the best interest of the state,  
159 the Legislature shall instruct the Chief Financial Officer and  
160 the office to withdraw from the cooperative reciprocal  
161 agreement, pursuant to any notice provisions required by any  
162 such agreement.

163 (7) Following the negotiation and execution of any  
164 cooperative reciprocal agreement entered into by the Department  
165 of Financial Services and the Office of Insurance Regulation  
166 with another state or group of states, the department shall  
167 prepare and submit a report to the President of the Senate and  
168 the Speaker of the House of Representatives by January 1, 2012.  
169 In addition to describing in detail the terms of any agreement  
170 entered into with another state or group of states pursuant to  
171 this section, the report must include, but need not be limited  
172 to:

173 (a) The actual and projected collections and allocation of  
174 nonadmitted insurance premium taxes for multistate risk of each

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175 state participating in the agreement;

176 (b) A detailed description of the administrative structure  
177 supporting any agreement, including any clearinghouse created by  
178 an agreement and the fees charged to support administration of  
179 the agreement;

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

182 (d) The status of any other cooperative reciprocal  
183 agreements established throughout the country, including a  
184 state-by-state listing of passed or pending legislation  
185 responding to changes made by the federal Nonadmitted and  
186 Reinsurance Reform Act of 2010.

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

189 626.938 Report and tax of independently procured  
190 coverages.—

191 (3) For the general support of the government of this  
192 state, there is levied upon the obligation, chose in action, or  
193 right represented by the premium charged for such insurance a  
194 tax at the rate of 5 percent of the gross amount of such premium  
195 and a 0.3 percent service fee pursuant to s. 626.9325. If the  
196 policy covers risks or exposures only partially in this state  
197 and this state is the home state as defined by the federal  
198 Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax  
199 and service fee payable shall be computed on the gross premium.  
200 The tax must not exceed the tax rate where the risk or exposure  
201 is located. The insured shall withhold the amount of the tax and  
202 service fee from the amount of premium charged by and otherwise  
203 payable to the insurer for such insurance. On or before the 45th

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204 day following each calendar quarter ~~Within 30 days~~ after the  
205 insurance is procured, continued, or renewed, ~~and simultaneously~~  
206 ~~with the filing of the report provided for in subsection (1)~~  
207 ~~with the Florida Surplus Lines Service Office,~~ the insured shall  
208 make payable to the department the amount of the tax and make  
209 payable to the Florida Surplus Lines Service Office the amount  
210 of the service fee. The insured shall remit the tax and the  
211 service fee to the Florida Surplus Lines Service Office. The  
212 Florida Surplus Lines Service Office shall forward to the  
213 department the taxes, and any interest collected pursuant to  
214 subsection (5), within 10 days after receipt.

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