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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 342 - 345

and insert:

Section 9. Subsection (4) of section 626.914, Florida Statutes, is amended to read:

626.914 Definitions.—As used in this Surplus Lines Law, the term:

(4) "Diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers



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11 currently writing this type of coverage and documenting these
12 rejections. However, if the residential structure has a dwelling
13 replacement cost of \$700,000 ~~\$1 million~~ or more, the term means
14 seeking coverage from and having been rejected by at least one
15 authorized insurer currently writing this type of coverage and
16 documenting this rejection.

17 Section 10. Paragraph (d) of subsection (3) of section
18 627.062, Florida Statutes, is amended to read:

19 627.062 Rate standards.—

20 (3)

21 (d)1. Personal lines residential property insurance with a
22 dwelling replacement limit of \$700,000 or more which is written
23 or renewed pursuant to s. 627.1711 and the following categories
24 or kinds of insurance and types of commercial lines risks are
25 not subject to paragraph (2) (a) or paragraph (2) (f):

26 a. Excess or umbrella.

27 b. Surety and fidelity.

28 c. Boiler and machinery and leakage and fire extinguishing
29 equipment.

30 d. Errors and omissions.

31 e. Directors and officers, employment practices, fiduciary
32 liability, and management liability.

33 f. Intellectual property and patent infringement liability.

34 g. Advertising injury and Internet liability insurance.

35 h. Property risks rated under a highly protected risks
36 rating plan.

37 i. General liability.

38 j. Nonresidential property, except for collateral
39 protection insurance as defined in s. 624.6085.



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- 40 k. Nonresidential multiperil.
- 41 l. Excess property.
- 42 m. Burglary and theft.
- 43 n. Travel insurance, if issued as a master group policy
44 with a situs in another state where each certificateholder pays
45 less than \$30 in premium for each covered trip and where the
46 insurer has written less than \$1 million in annual written
47 premiums in the travel insurance product in this state during
48 the most recent calendar year.
- 49 o. Medical malpractice for a facility that is not a
50 hospital licensed under chapter 395, a nursing home licensed
51 under part II of chapter 400, or an assisted living facility
52 licensed under part I of chapter 429.
- 53 p. Medical malpractice for a health care practitioner who
54 is not a dentist licensed under chapter 466, a physician
55 licensed under chapter 458, an osteopathic physician licensed
56 under chapter 459, a chiropractic physician licensed under
57 chapter 460, a podiatric physician licensed under chapter 461, a
58 pharmacist licensed under chapter 465, or a pharmacy technician
59 registered under chapter 465.
- 60 q. Any other commercial lines categories or kinds of
61 insurance or types of commercial lines risks that the office
62 determines should not be subject to paragraph (2) (a) or
63 paragraph (2) (f) because of the existence of a competitive
64 market for such insurance or similarity of such insurance to
65 other categories or kinds of insurance not subject to paragraph
66 (2) (a) or paragraph (2) (f), or to improve the general
67 operational efficiency of the office.
- 68 2. Insurers or rating organizations shall establish and use



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69 rates, rating schedules, or rating manuals to allow the insurer
70 a reasonable rate of return on insurance and risks described in
71 subparagraph 1. which are written in this state.

72 3. An insurer shall notify the office of any changes to
73 rates for insurance and risks described in subparagraph 1.
74 within 30 days after the effective date of the change. The
75 notice must include the name of the insurer, the type or kind of
76 insurance subject to rate change, and the average statewide
77 percentage change in rates. Actuarial data with regard to rates
78 for such risks must be maintained by the insurer for 2 years
79 after the effective date of changes to those rates and are
80 subject to examination by the office. The office may require the
81 insurer to incur the costs associated with an examination. Upon
82 examination, the office, in accordance with generally accepted
83 and reasonable actuarial techniques, shall consider the rate
84 factors in paragraphs (2) (b), (c), and (d) and the standards in
85 paragraph (2) (e) to determine if the rate is excessive,
86 inadequate, or unfairly discriminatory.

87 4. A rating organization shall notify the office of any
88 changes to loss cost for insurance and risks described in
89 subparagraph 1. within 30 days after the effective date of the
90 change. The notice must include the name of the rating
91 organization, the type or kind of insurance subject to a loss
92 cost change, loss costs during the immediately preceding year
93 for the type or kind of insurance subject to the loss cost
94 change, and the average statewide percentage change in loss
95 cost. Actuarial data with regard to changes to loss cost for
96 risks not subject to paragraph (2) (a) or paragraph (2) (f) must
97 be maintained by the rating organization for 2 years after the



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98 effective date of the change and are subject to examination by
99 the office. The office may require the rating organization to
100 incur the costs associated with an examination. Upon
101 examination, the office, in accordance with generally accepted
102 and reasonable actuarial techniques, shall consider the rate
103 factors in paragraphs (2) (b)-(d) and the standards in paragraph
104 (2) (e) to determine if the rate is excessive, inadequate, or
105 unfairly discriminatory.

106 Section 11. Section 627.1711, Florida Statutes, is created
107 to read:

108 627.1711 Alternative personal lines residential property
109 insurance rates.—In each calendar year, the sum of personal
110 lines residential property insurance policies issued or renewed
111 by an insurer using rates established under s. 627.062(3) (d)
112 plus personal lines residential property insurance policies
113 issued or renewed using rates established under s. 627.171 may
114 not exceed 5 percent of all personal lines residential insurance
115 policies written or renewed by the insurer.

116 Section 12. Subsection (1) of section 627.4102, Florida
117 Statutes, is amended to read:

118 627.4102 Informational filing of forms.—

119 (1) Property and casualty forms, excluding ~~except~~ workers'
120 compensation and personal lines forms, but including residential
121 property insurance with rates established pursuant to s.
122 627.062(3) (d), are exempt from the approval process required
123 under s. 627.410 if:

124 (a) The form has been electronically submitted to the
125 office in an informational filing made through I-File 30 days
126 before the delivery or issuance for delivery of the form within



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127 this state; and

128 (b) At the time the informational filing is made, a
129 notarized certification is attached to the filing that certifies
130 that each form within the filing is in compliance with all
131 applicable state laws and rules. The certification must be on
132 the insurer's letterhead and signed and dated by the insurer's
133 president, chief executive officer, general counsel, or an
134 employee of the insurer responsible for the filing on behalf of
135 the insurer. The certification must contain the following
136 statement, and no other language: "I, ...(name)..., as
137 ...(title)... of ...(insurer name)..., do hereby certify that
138 this form filing has been thoroughly and diligently reviewed by
139 me and by all appropriate company personnel, as well as company
140 consultants, if applicable, and certify that each form contained
141 within the filing is in compliance with all applicable Florida
142 laws and rules. Should a form be found not to be in compliance
143 with Florida laws and rules, I acknowledge that the Office of
144 Insurance Regulation shall disapprove the form."

145 Section 13. Paragraph (b) of subsection (3) and subsection
146 (4) of section 626.916, Florida Statutes, are amended,
147 subsection (5) is added to that section, and paragraph (a) of
148 subsection (1) of that section is republished, to read:

149 626.916 Eligibility for export.—

150 (1) No insurance coverage shall be eligible for export
151 unless it meets all of the following conditions:

152 (a) The full amount of insurance required must not be
153 procurable, after a diligent effort has been made by the
154 producing agent to do so, from among the insurers authorized to
155 transact and actually writing that kind and class of insurance



156 in this state, and the amount of insurance exported shall be
157 only the excess over the amount so procurable from authorized
158 insurers. Surplus lines agents must verify that a diligent
159 effort has been made by requiring a properly documented
160 statement of diligent effort from the retail or producing agent.
161 However, to be in compliance with the diligent effort
162 requirement, the surplus lines agent's reliance must be
163 reasonable under the particular circumstances surrounding the
164 export of that particular risk. Reasonableness shall be assessed
165 by taking into account factors which include, but are not
166 limited to, a regularly conducted program of verification of the
167 information provided by the retail or producing agent.
168 Declinations must be documented on a risk-by-risk basis. If it
169 is not possible to obtain the full amount of insurance required
170 by layering the risk, it is permissible to export the full
171 amount.

172 (3)

173 (b) Paragraphs (1)(a)-(d) do not apply to classes of
174 insurance which are subject to s. 627.062(3)(d)1., except that
175 paragraph (1)(a) applies to residential property insurance with
176 rates established pursuant to s. 627.062(3)(d). These classes
177 may be exportable under the following conditions:

- 178 1. The insurance must be placed only by or through a
179 surplus lines agent licensed in this state;
- 180 2. The insurer must be made eligible under s. 626.918; and
- 181 3. The insured must sign a disclosure that substantially
182 provides the following: "You are agreeing to place coverage in
183 the surplus lines market. Superior coverage may be available in
184 the admitted market and at a lesser cost. Persons insured by



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185 surplus lines carriers are not protected under the Florida
186 Insurance Guaranty Act with respect to any right of recovery for
187 the obligation of an insolvent unlicensed insurer." If the
188 notice is signed by the insured, the insured is presumed to have
189 been informed and to know that other coverage may be available,
190 and, with respect to the diligent-effort requirement under
191 subsection (1), there is no liability on the part of, and no
192 cause of action arises against, the retail agent presenting the
193 form.

194

195 ===== T I T L E A M E N D M E N T =====

196 And the title is amended as follows:

197 Delete line 42

198 and insert:

199 service organizations; amending s. 626.914, F.S.;

200 revising the definition of the term "diligent effort"

201 as used in the Surplus Lines Law; amending s. 627.062,

202 F.S.; specifying applicable rate standards and

203 requirements for certain personal lines residential

204 property insurance; creating s. 627.1711, F.S.;

205 providing a limitation on certain personal lines

206 residential property insurance policies that may be

207 written or renewed by an insurer each calendar year;

208 amending s. 627.4102, F.S.; providing an exemption, if

209 certain conditions are met, from a form approval

210 process for certain personal lines residential

211 property insurance forms; amending s. 626.916, F.S.;

212 specifying applicable requirements before certain

213 personal lines residential property insurance may be



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214

exported;