

## CHAPTER 97-196

### Committee Substitute for House Bill No. 269

An act relating to surplus lines insurance; providing a short title; amending s. 626.918, F.S.; revising language with respect to eligible surplus lines insurers; amending s. 626.921, F.S.; creating a non-profit association named the "Florida Surplus Lines Service Office"; providing findings; requiring surplus lines agents to be members of the association; providing duties; requiring the office to collect a service fee from surplus lines agents; providing for a board of governors; providing for appointment of board members; requiring a plan of operation to be submitted to the Department of Insurance; requiring the department to conduct examinations of the association; providing for limitations of liability for the association under certain circumstances; providing for confidentiality of certain information; amending s. 626.931, F.S.; requiring surplus lines agents, foreign insurers, and alien insurers to file a quarterly report with the Florida Surplus Lines Service Office; amending s. 626.932, F.S.; requiring surplus lines agents to pay a surplus lines tax to the office; requiring the service office to remit the taxes and interest to the department within 10 days; excluding from the term "premium" a service fee; creating s. 626.9325, F.S.; imposing a service fee on premiums charged for surplus lines insurance; requiring surplus lines agents to collect the fee and pay the fee to the office; requiring interest under certain circumstances; providing for application; specifying use of such fees; providing definitions; amending s. 626.918, F.S.; providing surplus and other requirements regarding certain surplus lines insurers; providing effective dates.

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

Section 1. This act may be cited as the "Dana Roehrig Act."

Section 2. Paragraph (d) of subsection (2) of section 626.918, Florida Statutes, is amended to read:

626.918 Eligible surplus lines insurers.—

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the department in accordance with the following conditions:

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

alien insurance company, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625;

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

- a. On December 31, 1994, and until December 30, 1995, \$2.5 million.
- b. On December 31, 1995, and until December 30, 1996, \$3.5 million.
- c. On December 31, 1996, and until December 30, 1997, \$4.5 million.
- d. On December 31, 1997, and until December 30, 1998, \$5.5 million.
- e. On December 31, 1998, and until December 30, 1999, \$6.5 million.
- f. On December 31, 1999, and until December 30, 2000, \$8 million.
- g. On December 31, 2000, and until December 30, 2001, \$9.5 million.
- h. On December 31, 2001, and until December 30, 2002, \$11 million.
- i. On December 31, 2002, and until December 30, 2003, \$13 million.
- j. On December 31, 2003, and thereafter, \$15 million.

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

Section 3. Section 626.921, Florida Statutes, 1996 Supplement, is amended to read:

(Substantial rewording of section. See s. 626.921, F.S., 1996 Supp., for present text.)

626.921 Florida Surplus Lines Service Office.—

(1) There is hereby created a nonprofit association to be known as the Florida Surplus Lines Service Office. The Legislature hereby finds and declares that the establishment of a surplus lines self-regulating organization

is necessary to establish a system that will permit better access by consumers to approved unauthorized insurers. Accordingly, the Legislature declares that this section shall be liberally construed and applied to promote its underlying purposes, which will protect consumers seeking insurance in this state, permit surplus lines insurance to be placed with approved surplus lines insurers, establish a self-regulating organization which will promote and permit orderly access to surplus lines insurance in this state, enhance the number and types of insurance products available to consumers in this state, provide a source of advice and counsel for the benefit of consumers, surplus lines agents, insurers, and government agencies concerning the operation of the surplus lines insurance market, and protect the revenues of this state.

(2) All surplus lines agents shall, as a condition of holding a license as a surplus lines agent in this state, be deemed to be members of this association and shall report to and file with the service office a copy of or information on each surplus lines insurance policy or document as provided in the plan of operation adopted under subsection (5). Upon receipt of any claim notice reported under a surplus lines policy which is subject to the filing requirements of this section, the insurer, or an adjuster representing the insurer, must advise the service office of such claim, identifying the policy under which coverage is claimed, and the service office shall determine whether the policy has been filed as required by this section. The service office shall immediately report the particulars of any unfiled policy to the department for enforcement of compliance with the Florida Surplus Lines Law.

(3) The association shall perform its functions under a plan of operation adopted under subsection (5). It shall exercise its powers through a board of governors established under subsection (4). The association shall be regulated by the department and is subject to the applicable provisions of this code and the rules of the department. The service office shall conduct the following activities provided in the plan of operation adopted under subsection (5):

(a) Receive, record, and review all surplus lines insurance policies or documents.

(b) Maintain records of the surplus lines policies reported to the service office and prepare monthly reports for the department in such form as the department may prescribe.

(c) Prepare and deliver to each surplus lines agent quarterly reports of each surplus lines agent's business in such form as the department may prescribe, and collect and remit to the department the surplus lines tax as provided for in s. 626.932.

(d) Perform a reconciliation of the policies written in the nonadmitted market, as provided by nonadmitted insurers, with the policies reported to the service office by the surplus lines agents, and prepare and deliver to the department a report on the results of the reconciliation in such form as the department may prescribe.

(e) Submit to the department for review and approval an annual budget for the operation of the service office.

(f) Collect from each surplus lines agent a service fee of up to 0.3 percent, as determined by the department, of the total gross premium of each surplus lines policy or document reported under this section, for the cost of operation of the service office. The service fee shall be paid by the insured.

(g) Employ and retain such personnel as are necessary to carry out the duties of the service office.

(h) Borrow money, as necessary, to effect the purposes of the service office.

(i) Enter into contracts, as necessary, to effect the purposes of the service office.

(j) Perform such other acts as will facilitate and encourage compliance with the surplus lines law of this state and rules adopted thereunder.

(k) Provide such other services as are incidental or related to the purposes of the service office.

(4) The association shall operate under the supervision of a board of governors consisting of:

(a) Five individuals appointed by the department from the regular membership of the Florida Surplus Lines Association.

(b) Two individuals appointed by the department, one from each of the two largest domestic agents' associations, each of whom shall be licensed surplus lines agents.

(c) The Insurance Consumer Advocate.

(d) One individual appointed by the department, who shall be a risk manager for a large domestic commercial enterprise.

Each board member shall be appointed to serve beginning on the date designated by the plan of operation and shall serve at the pleasure of the department for a 3-year term, such term initially to be staggered by the plan of operation so that three appointments expire in 1 year, three appointments expire in 2 years, and three appointments expire in 3 years. Members may be reappointed for subsequent terms. The board of governors shall elect such officers as may be provided in the plan of operation.

(5)(a) The association shall submit to the department a plan of operation, and any amendments thereto, to provide operating procedures for the administration of the service office. The plan of operation and any amendments thereto shall become effective upon approval by order of the department.

(b) If the association fails to submit a suitable plan of operation within 180 days following the effective date of this act, or if at any time thereafter

the association fails to submit suitable amendments to the plan of operation, the department shall, after notice and hearing, adopt a plan of operation, or amendments to a plan of operation, and adopt such rules as are necessary or advisable to effectuate the provisions of this section. Such rules shall continue in force until modified by the department or superseded by a plan of operation submitted by the association and approved by the department.

(c) All surplus lines agents licensed in this state must comply with the plan of operation.

(6) The department shall, at such times deemed necessary, make or cause to be made an examination of the association. The costs of any such examination shall be paid by the association. During the course of such examination, the governors, officers, agents, employees, and members of the association may be examined under oath regarding the operation of the service office and shall make available all books, records, accounts, documents, and agreements pertaining thereto.

(7) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member or its agents or employees, agents or employees of the association, members of the board of governors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(8) Information furnished to the department under s. 626.923 or contained in the records subject to examination by the department under s. 626.930 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of the information would reveal a trade secret as defined in s. 688.002. This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment by the Legislature. The exemption does not apply to any proceeding instituted by the department against an agent or insurer.

Section 4. Effective January 1, 1998, subsections (1), (4), and (5) of section 626.931, Florida Statutes, are amended to read:

626.931 Quarterly report.—

(1) Each surplus lines agent shall on or before the end of the month next following each calendar quarter file with the Florida Surplus Lines Service Office ~~department~~ a verified report of all surplus lines insurance transacted by him during such calendar quarter.

(4) Each foreign insurer accepting premiums which are subject to taxes and which are described in this section shall, on or before the end of the month following each calendar quarter, file with the Florida Surplus Lines Service Office ~~department~~ a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during such calendar quarter.

(5) Each alien insurer accepting premiums which are subject to taxes and which are described in this section shall, on or before June 30 of each year, file with the Florida Surplus Lines Service Office ~~department~~ a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the preceding calendar year, provided the first such report shall be with respect to calendar year 1994.

Section 5. Effective January 1, 1998, subsections (2) and (6) of section 626.932, Florida Statutes, are amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall pay to the Florida Surplus Lines Service Office ~~department~~ the tax related to each calendar quarter's business as reported, and at the same time as provided for the filing of the quarterly report, under s. 626.931. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b), within 10 days of receipt, along with a copy of the quarterly reports received.

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

(6) For the purposes of this section, the term "premium" means the consideration for insurance by whatever name called and includes any assessment, or any membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract, which items are deemed to be a part of the premium. The per-policy fee authorized by s. 626.916(4) is specifically included within the meaning of the term "premium." However, the service fee imposed pursuant to s. 626.9325 is excluded from the meaning of the term "premium."

Section 6. Section 626.9325, Florida Statutes, is created to read:

626.9325 Service fee.—

(1) The premiums charged for surplus lines insurance are subject to a service fee as provided in s. 626.921(3)(f). The surplus lines agent shall collect from the insured the amount of the fee at the time of the delivery of the policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The surplus lines agent is prohibited from absorbing such fee or, as an inducement for insurance or for any other reason, rebating all or any part of such fee or of his commission.

(2)(a) The surplus lines agent shall pay monthly to the Florida Surplus Lines Service Office the fees related to all policies reported during the previous calendar month in accordance with the plan of operation of the Florida Surplus Lines Service Office.

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

(3) If a surplus lines policy covers risks or exposures only partially in this state, the fee payable shall be computed on the portion of the premium which is properly allocable to the risks or exposures located in this state.

(4) This section does not apply as to insurance of risks of the state government or its agencies, or of any county or municipality or of any agency thereof.

(5) The association shall use the fees to fund the cost of operations of the Florida Surplus Lines Service Office.

(6) For the purposes of this section, the term "premium" means the consideration for insurance by whatever name called and includes any assessment, or any membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract, which items are deemed to be a part of the premium. The per-policy fee authorized by s. 626.916(4) is specifically included within the meaning of the term "premium."

Section 7. Paragraph (d) of subsection (2) of section 626.918, Florida Statutes, is amended to read:

626.918 Eligible surplus lines insurers.—

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the department in accordance with the following conditions:

(d)1. The insurer must have and maintain surplus as to policyholders of not less than \$15 million; or, if an alien insurer, must have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the department to be reasonably adequate, in an amount not less than \$15 million. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625;

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

- a. On December 31, 1994, and until December 30, 1995, \$2.5 million.
- b. On December 31, 1995, and until December 30, 1996, \$3.5 million.
- c. On December 31, 1996, and until December 30, 1997, \$4.5 million.
- d. On December 31, 1997, and until December 30, 1998, \$5.5 million.
- e. On December 31, 1998, and until December 30, 1999, \$6.5 million.
- f. On December 31, 1999, and until December 30, 2000, \$8 million.
- g. On December 31, 2000, and until December 30, 2001, \$9.5 million.

- h. On December 31, 2001, and until December 30, 2002, \$11 million.
- i. On December 31, 2002, and until December 30, 2003, \$13 million.
- j. On December 31, 2003, and thereafter, \$15 million.

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

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

The election shall be submitted to the department and shall be effective upon being satisfied that the requirements of this sub-subparagraph have been met. The initial date of election shall be the date of department approval. The election approval application shall be on a form adopted by department rule.

Section 8. Severability.—If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. Except as otherwise provided herein, this act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.