

CHAPTER 2011-46

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 1816

An act relating to surplus lines insurance; amending s. 626.931, F.S.; requiring a surplus lines agent to file quarterly on or before a specified time an affidavit stating that all surplus lines insurance transacted during the preceding quarter has been submitted to the Florida Surplus Lines Service Office; amending s. 626.932, F.S.; requiring the premium tax due on a surplus lines policy to be computed on the gross premium under certain circumstances; providing a limit on the tax; amending s. 626.9325, F.S.; revising payment dates for the service fee; requiring the service fee on a surplus lines policy to be computed on the gross premium under certain circumstances; creating s. 626.9362, F.S.; authorizing the Department of Financial Services and the Office of Insurance Regulation to enter into a specified type of agreement with other states pursuant to federal law for the collection and allocation of certain nonadmitted insurance taxes; providing terms that may be included in the agreement; requiring the Florida Surplus Lines Service Office to implement an agreement entered into by the department and the Office of Insurance Regulation; providing for application; providing for legislative review of any cooperative reciprocal agreement entered into by the Chief Financial Officer and the office with another state or group of states; authorizing the Legislature to instruct the Chief Financial Officer and the office to withdraw from the cooperative reciprocal agreement if it determines that the agreement is not in the best interest of the state; providing for notice; requiring that the department submit a report to the Legislature; amending s. 626.938, F.S.; requiring certain insureds or self insurers engaging in specified insurance transactions with a foreign or alien insurer to compute the premium tax and service fees based on the gross premium under certain circumstances; providing a limit on the tax; requiring such insureds or self insurers to pay the applicable premium tax to the department and the service fee to the Florida Surplus Lines Service Office on or before a specified time; providing an effective date.

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

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

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

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

WHEREAS, the National Association of Insurance Commissioners has adopted an agreement for states to use for that purpose, and

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

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

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

626.931 Agent affidavit and insurer reporting requirements.—

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

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

626.932 Surplus lines tax.—

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

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

626.9325 Service fee.—

(2)(a) The surplus lines agent shall pay on or before the 45th day following each calendar quarter ~~monthly~~ to the Florida Surplus Lines Service Office the fees related to all policies reported during the previous calendar quarter ~~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 ~~and the state is the home state as defined in the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)~~, the fee payable shall be computed on the gross portion of the premium which is properly allocable to the risks or exposures located in this state.

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

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

(1) The Department of Financial Services and the Office of Insurance Regulation may enter into a cooperative reciprocal agreement with another state or group of states for the purpose of, but not limited to, the collection and allocation of nonadmitted insurance taxes for multistate risks pursuant to the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) which was incorporated into the Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, July 21, 2010.

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

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

(b) Specifying requirements and time periods for reporting.

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

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

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

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

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

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

(4) The department and the Office of Insurance Regulation may adopt rules for the administration and enforcement of a cooperative reciprocal agreement entered into with another state or group of states under this section.

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

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

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

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

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

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

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

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

626.938 Report and tax of independently procured coverages.—

(3) For the general support of the government of this state, there is levied upon the obligation, chose in action, or right represented by the premium charged for such insurance a tax at the rate of 5 percent of the gross amount

of such premium and a 0.3 percent service fee pursuant to s. 626.9325. If the policy covers risks or exposures only partially in this state and this state is the home state as defined by the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax and service fee payable shall be computed on the gross premium. The tax must not exceed the tax rate where the risk or exposure is located. The insured shall withhold the amount of the tax and service fee from the amount of premium charged by and otherwise payable to the insurer for such insurance. On or before the 45th day following each calendar quarter ~~Within 30 days after the insurance is procured, continued, or renewed, and simultaneously with the filing of the report provided for in subsection (1) with the Florida Surplus Lines Service Office,~~ the insured shall make payable to the department the amount of the tax and make payable to the Florida Surplus Lines Service Office the amount of the service fee. The insured shall remit the tax and the service fee to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall forward to the department the taxes, and any interest collected pursuant to subsection (5), within 10 days after receipt.

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

Approved by the Governor May 26, 2011.

Filed in Office Secretary of State May 26, 2011.