

Council Substitute for House Bill No. 853

An act relating to surplus lines insurers; amending s. 626.913, F.S.; specifying nonapplication of certain provisions of law to surplus lines insurance; providing an exception; amending s. 626.924, F.S.; requiring surplus lines policies issued on or after a specified date to have a specified statement printed on the face of the policy; creating s. 626.9371, F.S.; providing methods of payment for premiums and claims regarding surplus lines contracts issued on or after a specified date; requiring a written authorization to complete payment under certain circumstances; providing for waiver of such requirement; providing that an insurer remains liable for payment of a claim if corresponding funds are misdirected; creating s. 626.9372, F.S.; requiring that certain insurers provide a disclosure statement to a claimant under certain circumstances; requiring that such statement include certain information; requiring that an insurer disclose certain additional information upon the request of a claimant; requiring the amendment of such statement under certain circumstances; creating s. 626.9373, F.S.; providing for the payment of attorney's fees in cases involving surplus lines insurers at the trial and appellate levels; amending s. 626.9374, F.S.; requiring that a surplus lines policy containing a separate hurricane or wind deductible issued on or after a specified date have a specified statement printed on the face of the policy; requiring that a surplus lines policy containing a coinsurance provision applicable to hurricane or wind losses issued on or after a specified date have a specified statement printed on the face of the policy; providing for the retroactive applicability of certain provisions; providing severability; providing an effective date.

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

Section 1. Subsection (4) is added to section 626.913, Florida Statutes, to read:

626.913 Surplus Lines Law; short title; purposes.—

(4) Except as may be specifically stated to apply to surplus lines insurers, the provisions of chapter 627 do not apply to surplus lines insurance authorized under ss. 626.913-626.937, the Surplus Lines Law.

Section 2. Section 626.924, Florida Statutes, is amended to read:

626.924 Information required on contract.—

(1) Each surplus lines agent through whom a surplus lines coverage is procured shall write or print on the outside of the policy and on any certificate, cover note, or other confirmation of the insurance his or her name, address, and identification number and the name and address of the producing agent through whom the business originated and shall have stamped or

written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words: THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER. (2) Surplus lines policies issued on or after October 1, 2009, shall have stamped or printed on the face of the policy in at least 14-point, boldface type, the following statement: SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

Section 3. Section 626.9371, Florida Statutes, is created to read:

626.9371 Payment of premiums and claims.—

(1) The premiums for surplus lines insurance contracts issued on or after October 1, 2009, in this state or covering risks located in this state shall be paid in cash consisting of coins, currency, checks, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.

(2) All payments of claims made in this state under any contract of surplus lines insurance issued on or after October 1, 2009, shall be made:

(a) In cash consisting of coins, currency, checks, drafts, or money orders and, if made by check or draft, shall be in such form as will comply with the standards for cash items adopted by the Federal Reserve System to facilitate the sorting, routing, and mechanized processing of such items; or

(b) By debit card or any other form of electronic transfer if authorized in writing by the recipient or the recipient's representative. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient's representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient's representative if the insurer verifies the identity of the insured or the insured's recipient and does not charge a fee for the transaction. If the funds are misdirected, the insurer remains liable for the payment of the claim.

Section 4. Section 626.9372, Florida Statutes, is created to read:

626.9372 Disclosure statement of certain information required-liability claims.—

(1) Each insurer that provides or may provide liability insurance coverage to pay all or a portion of any claim that might be made under surplus lines policies issued on or after October 1, 2009, shall provide, within 60 days after the written request of the claimant, a statement of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- (a) The name of the insurer.
- (b) The name of each insured.
- (c) The limits of the liability coverage.
- (d) A statement of any policy or coverage defense that such insurer reasonably believes is available to such insurer at the time of filing such statement.
- (e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and forward such request for information as required by this subsection to all affected insurers. The insurer shall supply the information required in this subsection to the claimant within 60 days after receipt of such request.

(2) The statement required by subsection (1) must be amended within 60 days after the date of discovery of facts necessitating an amendment to such statement.

Section 5. Section 626.9373, Florida Statutes, is created to read:

626.9373 Attorney's fees.—

(1) Upon the rendition of a judgment or decree by any court of this state against a surplus lines insurer in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer on or after the effective date of this act, the trial court or, if the insured or beneficiary prevails on appeal, the appellate court, shall adjudge or decree against the insurer in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the lawsuit for which recovery is awarded.

(2) If awarded, attorney's fees or compensation shall be included in the judgment or decree rendered in the case.

Section 6. Section 626.9374, Florida Statutes, is created to read:

626.9374 Liability of insureds; deductible and coinsurance.—

(1) Any surplus lines, personal lines residential property insurance policy issued on or after October 1, 2009, containing a separate hurricane or wind deductible must on its face include in at least 14-point, boldface type the following statement: THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

(2) A surplus lines, personal lines residential property insurance policy issued on or after October 1, 2009, containing a coinsurance provision applicable to hurricane or wind losses must on its face include in at least 14-point,

boldface type the following statement: THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

Section 7. The amendments to s. 626.913, Florida Statutes, in this act are remedial in nature and operate retroactively to the regulation of surplus lines insurers from October 1, 1988, except with respect to lawsuits that are filed on or before May 15, 2009.

Section 8. 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. This act shall take effect upon becoming a law.

Approved by the Governor June 11, 2009.

Filed in Office Secretary of State June 11, 2009.