

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1460

SPONSOR: Senator Holzendorf

SUBJECT: Surplus Lines Insurance

DATE: March 14, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Legislature created the Florida Surplus Lines Service Office (service office) in 1997 as a self-regulating organization to provide consumers with greater access to approved unauthorized insurers. While the Department of Insurance (DOI) maintains regulatory authority over surplus lines insurers and surplus lines agents, the service office is responsible for administrative duties, such as maintaining records reported from surplus lines agents regarding policies issued in the state and reconciling policies written in the nonadmitted market with the policies reported to the service office. All licensed surplus lines agents, as a condition of holding a license as a surplus lines agent in this state, are required to be members of the service office.

In addition to granting the service office the authority to request information regarding policies and to examine the records of surplus lines agents, the bill would transfer a number of functions to the service office. Additional responsibilities would include:

- ◆ Require surplus lines agents to file a quarterly affidavit with the service office regarding policies issued, rather than a quarterly report.
- ◆ Requires an insured that procures coverage directly from a surplus lines insurer, rather than through an agent, to report it to the service office, rather than to DOI.
- ◆ Subjects independently procured coverage to the same 0.3 percent service fee on premiums that is assessed on surplus lines policies procured through an agent. The service fee is used for the cost of operation of the service office.
- ◆ Require surplus lines agents to remit the surplus lines tax in a form payable to DOI.
- ◆ Subject surplus lines agents who fail to remit the service fee to administrative penalties or fines.

This bill substantially amends the following sections of the Florida Statutes: 626.923, 626.930, 626.931, 626.932, 626.933, 626.935, 626.936, 626.9361, and 626.938.

II. Present Situation:

Surplus lines insurance is insurance coverage provided by an insurer that is not licensed in Florida, but is allowed to do business in the state because the particular coverage offered is not available from Florida-licensed companies. Generally, businesses engaged in high-risk or unusual activities are covered by a surplus lines policy. According to the Florida Surplus Lines Service Office, as of November 1999, surplus lines insurers wrote 618,156 policies in the state, representing direct written premiums of \$766 million.

Insurance coverage may be procured from unauthorized (i.e., not holding a Florida certificate of authority) insurers if the coverage is eligible for placement with a surplus lines insurer (placement also known as export), the insurer is an eligible surplus lines insurer, the insurance is placed through a Florida-licensed surplus lines agent, and the other requirements of the surplus lines law, ss. 626.913-626.937, F.S., are met. In general, insurance is eligible for export to surplus lines insurers if the coverage cannot, after diligent effort by the agent, be procured from any admitted insurer; if the premium is no lower than the rate actually in use by a majority of admitted insurers for the same coverage on a similar risk; if the policy form is no more favorable to the insured, as to coverage or rate, than the forms currently in use by a majority of admitted insurers; and if the policy contains no deductible other than those currently in use by any admitted insurer.

In order for an insurer to be an eligible surplus lines insurer, the insurer must have been licensed in its state or country of domicile for at least 3 years, must have surplus of at least \$15 million (this requirement is being phased in between December 31, 1994 and December 31, 2003, with the 1999 surplus requirement equal to \$6.5 million for surplus lines insurers that were eligible on January 1, 1994), must have a good reputation, and must meet the trustworthiness and criminal history requirements that apply to admitted insurers under s. 624.404(3), F.S. The Department of Insurance may waive the three-year licensing requirement if the insurer provides a product that is not available in this state or if the insurer has operated for at least one year and has a surplus of at least \$25 million.

The Legislature created the Florida Surplus Lines Service Office in 1997 as a self-regulating organization. While the DOI maintains regulatory authority over surplus lines insurers and surplus lines agents, the service office maintains records and certain information reported from surplus lines agents regarding policies issued in the state. All licensed surplus lines agents, as a condition of holding a license as a surplus lines agent in this state, are required to be members of this nonprofit organization. The department approves the operating plan and the annual budget of the service office.

Surplus lines agents are required to file with the service office a copy of, or information on, each surplus lines policy (per policy report). Surplus lines agents are also required to report to the service office any claims filed under these policies (claims report). The service office receives, records, and reviews all surplus lines insurance policies or documents; provides monthly reports to DOI; and prepares quarterly reports of each surplus lines agent's business. The service office also collects and remits to the department the surplus lines tax, reconciles reports from non-

admitted insurers and surplus lines agents, and provides a report of the reconciliation to the department.

Surplus lines agents are required to maintain certain records on each policy written. These records are subject to examination by the DOI. Current law allows the DOI to charge an administrative penalty of up to \$50 per day upon those surplus lines agents not filing quarterly reports in a timely manner. In addition to the per-policy reports and the claims reports that the surplus lines agents are required to file with the service office, surplus lines agents are also required to file a quarterly report with the service office including the aggregate gross premiums charged, the aggregate net premiums, a listing of all policies, and any other information that may be required by the DOI.

Currently, independently procured coverage (insurance procured by the insured directly from an unauthorized foreign or alien insurer) is not subject to the service fee, but is subject to the 5 percent premium tax. Insureds that independently procure coverage from a surplus lines insurer are required to report certain information regarding the policy to the DOI.

Surplus lines policies are subject to a 5 percent premium tax known as the “surplus lines tax,” which is paid by the policyholder, collected by the surplus lines agent, and remitted to the service office on a quarterly basis. The service office then remits the tax to the DOI. Current law authorizes the department to charge an administrative penalty of up to \$500 a day for those surplus lines agents not remitting the premium tax in a timely manner.

Policies procured from a surplus lines agent are subject to a service fee of up to 0.3 percent service fee on the premium to be paid by the insured. This fee is remitted monthly to the service office by the agent and is used to pay for the operational costs of the service office. The service office charges the full 0.3 percent fee.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.923, F.S., to give the service office the authority to request certain information on policies from a surplus lines agent. The department is currently authorized to examine this information.

Section 2. Amends s. 626.930, F.S., to give the service office the authority to examine the records of a surplus lines agent. The department is currently authorized to request this information.

Section 3. Amends s. 626.931, F.S., regarding quarterly reports. Each surplus lines agent would be required to file with the service office an affidavit stating that all information regarding surplus lines insurance issued by that agent has been submitted as required. The quarterly report required to be filed by the agent is eliminated.

Section 4. Amends s. 626.932, F.S., to specify that each surplus lines agent shall remit the surplus lines tax, payable to the department, to the service office.

Section 5. Amends s. 626.933, F.S., to provide for the recovery of the service fee if it is not timely paid by the surplus lines agent.

Section 6. Amends s. 626.935, F.S., to authorize the department to deny an application or suspend, revoke, or refuse to renew the appointment of a surplus lines agent if that agent fails to pay the surplus lines service fee or fails to file the affidavit.

Section 7. Amends s. 626.936, F.S., relating to administrative fines for surplus lines agents who fail to file quarterly reports or pay the surplus lines tax. This section authorizes the department to assess administrative fines against surplus lines agents who fail to file the affidavit or pay the service fee.

Section 8. Amends s. 626.9361, F.S., to specify that reports shall be filed with the service office rather than to the DOI.

Section 9. Amends s. 626.938, F.S., to require insureds that independently procure insurance directly from an unauthorized foreign or alien insurer report information on each policy to the service office, rather than DOI. Independently procured coverage would also be subject to the same 0.3 percent service as surplus lines insurance procured from a surplus lines agent.

Section 10. Provides that this act will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Insureds that independently procure coverage from an unauthorized alien or foreign insurer would be required to pay a service fee of 0.3 percent of the premium. According to the service office based on information supplied by the DOI, there were \$19 million in premiums written on independently procured coverage through November 1999. This would generate \$57,557 in fees. The budget for the service office for the 1999 calendar year is \$2.2 million. The anticipated budget for calendar year 2000 is \$2.5 million, subject to DOI approval.

B. Private Sector Impact:

See above.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
