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CS/HB 853, Engrossed 1

2009 Legislature

1 A bill to be entitled
2 An act relating to surplus lines insurers; amending s.
3 626.913, F.S.; specifying nonapplication of certain
4 provisions of law to surplus lines insurance; providing an
5 exception; amending s. 626.924, F.S.; requiring surplus
6 lines policies issued on or after a specified date to have
7 a specified statement printed on the face of the policy;
8 creating s. 626.9371, F.S.; providing methods of payment
9 for premiums and claims regarding surplus lines contracts
10 issued on or after a specified date; requiring a written
11 authorization to complete payment under certain
12 circumstances; providing for waiver of such requirement;
13 providing that an insurer remains liable for payment of a
14 claim if corresponding funds are misdirected; creating s.
15 626.9372, F.S.; requiring that certain insurers provide a
16 disclosure statement to a claimant under certain
17 circumstances; requiring that such statement include
18 certain information; requiring that an insurer disclose
19 certain additional information upon the request of a
20 claimant; requiring the amendment of such statement under
21 certain circumstances; creating s. 626.9373, F.S.;
22 providing for the payment of attorney's fees in cases
23 involving surplus lines insurers at the trial and
24 appellate levels; amending s. 626.9374, F.S.; requiring
25 that a surplus lines policy containing a separate
26 hurricane or wind deductible issued on or after a
27 specified date have a specified statement printed on the
28 face of the policy; requiring that a surplus lines policy

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29 containing a coinsurance provision applicable to hurricane
 30 or wind losses issued on or after a specified date have a
 31 specified statement printed on the face of the policy;
 32 providing for the retroactive applicability of certain
 33 provisions; providing severability; providing an effective
 34 date.

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

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

40 626.913 Surplus Lines Law; short title; purposes.--

41 (4) Except as may be specifically stated to apply to
 42 surplus lines insurers, the provisions of chapter 627 do not
 43 apply to surplus lines insurance authorized under ss. 626.913-
 44 626.937, the Surplus Lines Law.

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

47 626.924 Information required on contract.--

48 (1) Each surplus lines agent through whom a surplus lines
 49 coverage is procured shall write or print on the outside of the
 50 policy and on any certificate, cover note, or other confirmation
 51 of the insurance his or her name, address, and identification
 52 number and the name and address of the producing agent through
 53 whom the business originated and shall have stamped or written
 54 upon the first page of the policy or the certificate, cover
 55 note, or confirmation of insurance the words: THIS INSURANCE IS
 56 ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS

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57 INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF
 58 THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF
 59 RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

60 (2) Surplus lines policies issued on or after October 1,
 61 2009, shall have stamped or printed on the face of the policy in
 62 at least 14-point, boldface type, the following statement:
 63 SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED
 64 BY ANY FLORIDA REGULATORY AGENCY.

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

67 626.9371 Payment of premiums and claims.--

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

74 (2) All payments of claims made in this state under any
 75 contract of surplus lines insurance issued on or after October
 76 1, 2009, shall be made:

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

82 (b) By debit card or any other form of electronic transfer
 83 if authorized in writing by the recipient or the recipient's
 84 representative. Any fees or costs to be charged against the

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85 recipient must be disclosed in writing to the recipient or the
 86 recipient's representative at the time of written authorization.
 87 However, the written authorization requirement may be waived by
 88 the recipient or the recipient's representative if the insurer
 89 verifies the identity of the insured or the insured's recipient
 90 and does not charge a fee for the transaction. If the funds are
 91 misdirected, the insurer remains liable for the payment of the
 92 claim.

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

95 626.9372 Disclosure statement of certain information
 96 required-liability claims.--

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

105 (a) The name of the insurer.

106 (b) The name of each insured.

107 (c) The limits of the liability coverage.

108 (d) A statement of any policy or coverage defense that
 109 such insurer reasonably believes is available to such insurer at
 110 the time of filing such statement.

111 (e) A copy of the policy.

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

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

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

125 626.9373 Attorney's fees.--

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

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

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

140 626.9374 Liability of insureds; deductible and

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141 coinsurance.--

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

148 (2) A surplus lines, personal lines residential property
 149 insurance policy issued on or after October 1, 2009, containing
 150 a coinsurance provision applicable to hurricane or wind losses
 151 must on its face include in at least 14-point, boldface type the
 152 following statement: THIS POLICY CONTAINS A CO-PAY PROVISION
 153 THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.

154 Section 7. The amendments to s. 626.913, Florida Statutes,
 155 in this act are remedial in nature and operate retroactively to
 156 the regulation of surplus lines insurers from October 1, 1988,
 157 except with respect to lawsuits that are filed on or before May
 158 15, 2009.

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

165 Section 9. This act shall take effect upon becoming a law.