

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 538

INTRODUCER: Senator Brandes

SUBJECT: Nonadmitted Insurance Market Reform

DATE: March 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 538 makes various changes to laws related to surplus lines insurance. Surplus lines insurance is insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance may cover exotic risks or it may cover day-to-day risks that fall outside the underwriting guidelines of the standard market.

The bill repeals the \$35 limit on the policy fee that surplus lines agents may charge when they sell a surplus lines policy. The bill requires the fee to be itemized separately for the customer before purchase of the policy and enumerated in the policy.

The bill repeals the requirement that a surplus lines agent file a quarterly affidavit with the Florida Surplus Lines Service Office.

If a surplus lines policy covers risks or exposures partially in Florida, which is the home state as defined in the federal Nonadmitted and Reinsurance Reform Act of 2010, the bill allows the insured to choose whether the policy will be taxed at Florida's 5 percent rate for the surplus lines premium tax or at the tax rate of the state where the risk is located.

The bill extends the exemption from the diligent effort requirement for surplus lines agents exporting flood coverage to an eligible surplus lines insurer from July 1, 2019, until July 1, 2025.

II. Present Situation:

Surplus Lines Insurance Agents

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to

transact insurance in Florida). Surplus lines insurance may cover exotic risks or it may cover day-to-day risks that fall outside the underwriting guidelines of the standard market.¹ Surplus lines insurance is sold by surplus lines insurance agents. Coverage cannot be placed in the surplus lines market unless, among other things “the full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state.”²

Surplus lines agents must verify that a diligent effort has been made by requiring a properly documented statement of diligent effort from the retail or producing agent.³ The surplus lines agent’s reliance must be reasonable under the particular circumstances surrounding the export of that particular risk.⁴ “Diligent effort” means seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.⁵

Surplus lines agents are required to report and file with the Florida Surplus Lines Service Office⁶ (FSLSO) specified information on each surplus lines insurance policy within 30 days of the effective date of the transaction, must transmit service fees to the FSLSO each month, and must transmit assessment and tax payments to the FSLSO quarterly.⁷ When requested by the Department of Financial Services or the FSLSO, surplus lines agents are also required to submit a copy of any policy and certain other information.⁸ Surplus lines agents are required to maintain each surplus lines contract, including applications and all certificates, and other detailed information about each surplus lines policy, in their agency office for a period of 5 years.⁹ Florida law requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter.¹⁰ The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.¹¹ To account for the administrative costs surplus lines agents incur to comply with reporting requirements, the agent may charge a reasonable per-policy fee, not to exceed \$35, for each policy exported.¹² This fee has not been adjusted since it was raised from \$25 to \$35 in 2001.¹³

¹ See <https://www.fslso.com/About> (last visited March 5, 2019).

² s. 626.916(1)(a), F.S.

³ A sample “Statement of Diligent Effort” can be found here: <https://www.fslso.com/BusinessForms/DiligentEffort> (last visited March 7, 2019).

⁴ See s. 626.961(1)(a), F.S.

⁵ See s. 626.914(4), F.S.

⁶ The Florida Surplus Lines Service Office was created by the Legislature as a surplus lines self-regulating organization to permit better access by consumers to approved unauthorized insurers. The FSLSO collects information from agents about surplus lines transactions in Florida and collects premium taxes for payment to the state.

⁷ See s. 626.921(2), F.S.

⁸ See s. 626.923, F.S.

⁹ See s. 626.930, F.S.

¹⁰ See s. 626.931, F.S.

¹¹ See s. 626.931, F.S.

¹² See s. 626.916(4), F.S.

¹³ See ch. 2001-213, L.O.F.

Surplus Lines Premium Tax

Surplus lines policies are taxed at 5 percent of all gross premiums.¹⁴ However, some surplus lines policies written in Florida cover risks that are only partially located in this state. This is because the insured's business, property, or other risks may cross state lines. Since not all states use gross premiums as the taxable base nor use the same tax rate, this can lead to disparities in cost associated with the applicable premium tax law of other states.

Florida law provides that, if Florida is the "home state," as defined by the federal Nonadmitted and Reinsurance Reform Act of 2010, the tax is computed on the gross premium to facilitate uniform application of the tax rate to the gross premiums paid on multi-state risks.¹⁵ The law also provides that the surplus lines premium tax is limited to the tax rate in the state where the risk is located. This can result in an effective tax rate on total taxable premiums that is lower than the statutory 5 percent. Under 15 U.S.C. 8206, "home state" means, with respect to an insured, the state the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence. If, however, 100 percent of the insured risk is not located in the home state as defined by the principal place of business or principal residence, then the home state is the state to which the greatest percentage of the insured's taxable premium for the insurance contract is located.

Flood Insurance

The National Flood Insurance Program (NFIP)

The NFIP was created by the passage of the National Flood Insurance Act of 1968.¹⁶ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government.

Private Market Flood Insurance in Florida

In 2014, the Legislature created s. 627.715, F.S., governing the sale of personal lines residential flood insurance.¹⁷ "Flood" is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.¹⁸

¹⁴ See s. 626.932(1), F.S.

¹⁵ See 15 U.S.C. s. 8201.

¹⁶ <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed January 29, 2019).

¹⁷ Ch. 2014-80, Laws of Fla.

¹⁸ s. 627.715(1)(b), F.S.

Flood insurance is a separate line of insurance from homeowner's property insurance and is not included in such a policy.¹⁹ In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner's property insurance policy does not cover the flood damage.²⁰ If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will be uninsured.

A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers. This exemption from the diligent effort requirement expires July 1, 2019, or on the date on which the Commissioner of Insurance Regulation determines that there is an adequate admitted market to provide flood coverage, whichever date occurs first.

The Office of Insurance Regulation reports there are 29 admitted insurance companies currently writing private flood insurance in the state.²¹

III. Effect of Proposed Changes:

Section 1 repeals the \$35 limit on the policy fee contained in s. 626.916, F.S., that surplus lines agents may charge when they sell a surplus lines policy. The bill requires the fee to be itemized separately for the customer before purchase of the policy and enumerated in the policy.

Section 2 repeals the requirement in s. 626.931, F.S., that a surplus lines agent file a quarterly affidavit with the FLSO stating that all surplus lines insurance transacted by the agent during the calendar quarter has been submitted to the FLSO. The affidavit requirement pre-dates the FLSO. Now, the FLSO requires agents to electronically file each policy transaction with the FLSO. The FLSO believes the affidavit is no longer necessary because FLSO staff audits agents to verify the accuracy of submitted information with original source documents.²² Agents will still be subject to discipline by the Department of Financial Services if they fail to file required information with the FLSO.

Sections 3, 5, and 6 make technical changes to conform to the repeal of the affidavit requirement.

Section 4 amends s. 626.932, F.S., to allow the insured to choose whether the policy will be taxed at Florida's 5 percent rate or at the tax rate of the state where the risk is located when a

¹⁹ Part X, ch. 627, F.S.

²⁰ Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

²¹ Presentation by OIR "Flood Facts & Florida's Flood Insurance Market" January 2019. (On file with the Banking and Insurance Committee).

²² Email from Gary Pullen, Executive Director of the FLSO dated March 2, 2015 (on file with the Committee on Banking and Insurance).

surplus lines policy covers risks or exposures partially in Florida, and Florida is the home state of the insured as defined in the federal Nonadmitted and Reinsurance Reform Act of 2010.²³

This section of the bill is effective January 1, 2020.

Section 7 amends s. 627.715, F.S., to extend the exemption from the diligent effort requirement for surplus lines agents exporting flood coverage to an eligible surplus lines insurer from July 1, 2019, until July 1, 2025.

Section 8 provides an effective date of July 1, 2019, for all sections of the bill except Section 4.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Impact Conference considered the bill on February 8, 2019, and estimated the tax provision will have no effect on state revenues.²⁴

B. Private Sector Impact:

Surplus lines agents will be able to charge a per-policy exceeding \$35, so long as the fee is reasonable..

²³ The Revenue Estimating Impact Conference estimated the tax provision will have no effect on state revenues. See http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0208.pdf (last visited March 7, 2019).

²⁴ See http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0208.pdf (last visited March 7, 2019).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.916, 626.931, 626.932, 626.935, 629.401, and 627.715.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.