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 Banking and Insurance Committee

BILL:	SB 1894
INTRODUCER:	Senator Bennett
SUBJECT:	Surplus Lines Insurance
DATE:	March 11, 2009
REVISED:	03/25/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Burgess	BI	**Fav/1 amendment**
2.			FT	
3.			GA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☐	Amendments were recommended
	☒	Significant amendments were recommended

I. Summary:

Surplus lines insurance is the market of last resort for difficult to place commercial and personal lines risks in Florida.[1] Typically, surplus lines insurers write policies for unusual, high-risk situations that include hazardous materials transporters, commercial trucking enterprises, day care centers, older homes located in coastal areas, professional athletes, hospitals, expensive boats and cars and medical malpractice. In order to place business with a surplus lines insurer, the surplus lines agent must make a "diligent effort" to place the policy with a Florida-authorized insurer, which is shown by having three written rejections of coverage from authorized insurers currently writing the type of insurance being sought.[2]

Historically, surplus lines insurers have not had to comply with the insurance regulatory requirements in ch. 627, F.S.,[3] as authorized insurers due to a specific exemption provision for

[1] 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 or authorized carriers. Surplus lines insurers are governed under the Surplus Lines Law (ss. 626.913-626.937, F.S.).

[2] Section 626.914(4), F.S.

[3] Chapter 627, F.S., provides the regulatory requirements for authorized carriers under the OIR as to rates, forms, contracts and other provisions. There are only a few provisions under ch. 627, F.S., that explicitly state that they are to be applied to

surplus lines under the chapter.[4] Furthermore, the Office of Insurance Regulation (OIR) has never regulated surplus lines insurers as to rate, form or other requirements under ch. 627, F.S.[5] However, two recent rulings by the Florida Supreme Court and a federal appellate court have altered the manner in which surplus lines insurers have historically been regulated.[6] Essentially, these rulings require that surplus lines policy forms must now be filed, reviewed, and approved by the OIR under Part II of ch. 627, F.S.,[7] which has never before been a requirement for these carriers.

Senate Bill 1894 seeks to respond to these court decisions by clarifying that the form filing and other provisions of ch. 627, F.S., except where specifically stated, do not apply to surplus lines insurance. The legislation provides that the provisions of the bill shall operate retroactively to October 1, 1988, the effective date of a law enacted in 1988 adding the surplus lines exemption to the statute.[8] Thus, the bill would exempt surplus lines insurance from the provisions of ch. 627, F.S., from October 1, 1988 to present.

This bill amends the following section of the Florida Statutes: 624.913.

II. Present Situation:

Surplus Lines Insurance Coverage - Background

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority, (COA) issued by the Office of Insurance Regulation (OIR) pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,[9] are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments and affiliate relationships.[10] Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.[11]

Surplus lines insurers are regulated by the state, but do not have to obtain a COA and have not been required to adhere to the other requirements mentioned above. Surplus lines insurance is an alternative type of insurance coverage for consumers to buy property-liability insurance from unauthorized (non-admitted) insurers when consumers are unable to purchase the coverage they need from admitted insurers. Surplus lines insurance is coverage provided by a company that is

surplus lines carriers, which include assessments, reporting requirements and activities related to risk retention and purchasing groups.

[4] Section 627.021(2), F.S.

[5] *See* Amicus Curiae Brief by the OIR in *CNL* case, filed September 12, 2008.

[6] *Essex Insurance Company v. Zota*, 985 So.2d 1036 (Fla. 2008) and *CNL Hotels & Resorts, Inc. v. Twin City Fire Insurance Company*, 291 F.Appx.220, 2008 WL 3823898 (CA 11, Aug. 18,2008).

[7] The court decisions affect the applicability of the entire chapter to surplus lines insurance.

[8] Chapter 88-166, L.O.F

[9] An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.

[10] The Insurance Code consists of chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

[11] For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association which handles the claims of insolvent insurers under Part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association which provides payment of covered claims for insurers that are declared insolvent under Part V of ch. 631, F.S.

not licensed in Florida, but is allowed to transact insurance in the state as an "eligible" insurer[12] under the Surplus Lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.[13] Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the authorized insurers writing similar coverages on similar risks in Florida.[14] Likewise, a surplus lines policy contract form must not be more favorable to the insured as to the coverage or rate offered by the majority of authorized carriers.[15]

The Surplus Lines law contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers and obtain approval by the OIR. For example, a surplus lines insurer must maintain a surplus as to policyholders of not less than $15 million and have been licensed in its state or country of domicile for at least three years.[16] These entities must also pay annual premium receipts tax of 5 percent which is more than double the percentage for admitted carriers.[17]

Historically, surplus lines insurers have never been held subject to Florida's regulation of rates, forms or other requirements under ch. 627, F.S., as are admitted insurers.[18] This is true of the regulatory treatment of surplus lines insures in other states across the country. The different regulatory treatment is due to the unique nature of surplus lines insurance because it covers consumer needs arising from emerging technologies, new business practices, or changing legal environments that require a quick response that is often difficult for admitted insurers to provide, according to representatives with the Florida Surplus Lines Office.

Florida ranks as the fourth largest state in terms of surplus lines business, behind only California, Texas, and New York. There are 165 surplus lines insurers writing insurance in Florida with over $4 billion in written premiums during 2008.[19] These insurers wrote over 700,000 Florida policies last year. The majority of surplus lines insurance written in Florida in 2008 was inland marine coverage (197,334 policies), commercial general liability (138,618 policies), and commercial property (104,343 policies). Surplus lines insurers wrote only a small fraction of homeowners policies (58,438) in 2008 as compared to the number of policies written by admitted carriers (6,034,918).[20] That same year, surplus lines carriers wrote 23,006 condominium unit owners' property policies, and 4,479 mobile homeowners policies.

Florida Surplus Lines Service Office and Surplus Lines Agents

In 1997, the Legislature created the Florida Surplus Lines Service Office (Office or

[12] An "eligible surplus lines insurer" as defined in s. 626.914(2), F.S., is an "unauthorized insurer" which has been made eligible by the OIR to issue insurance coverage under the Surplus Lines law.
[13] See s. 626.914(4), F.S., F.S. A "diligent effort" is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.
[14] Section 626.916(1)(b), F.S.
[15] Section 626.916(1)(c), F.S.
[16] Section 626.918, F.S.
[17] Section 626.932, F.S.
[18] *See* affidavits by Steve Parton, OIR General Counsel, and Belinda Miller, OIR Deputy Commissioner for Property and Casualty Insurance.
[19] Florida Surplus Lines Service Office.
[20] These are HO-3 policies.

FSLSO), a non-profit association designed to act as a "self-regulating organization" to permit better access by consumers to approved surplus lines insurers.[21] The Office is governed by a nine person board of governors and is required to perform its functions under a plan of operation approved by the OIR. The Office receives, records, and reviews all surplus lines insurance policies; maintains records of policies; prepares and delivers to each surplus lines agent quarterly reports of each agent's business; collects and remits the surplus lines tax and performs other activities as specified by statute.

There are 1059 licensed surplus lines agents in Florida which are authorized to handle the placement of insurance coverages with surplus lines insurers and are deemed to be members of the FSLSO. These agents are required to report and file with the FSLSO a copy of, or information on, each surplus lines insurance policy including the name of the insured and insurer, the policy number and its effective date, the policy's expiration date, the type of coverage, the premium, and other information.

Surplus Lines Litigation Relating to the Applicability of ch. 627, F.S.

The insurance regulatory requirements under ch. 627, F.S., cover a broad range of subjects which include: filing and approval of rates and forms by the OIR, insurance contract coverage provisions, reporting requirements, application of attorney's fees, licensure of rating and other organizations and specific requirements for different lines or types of insurance.[22] Specifically, Part I of the chapter governs the filing and approval of insurer rates by the OIR and Part II governs, in part, the filing and approval by the OIR of insurer policy forms.[23]

Authorized carriers must comply with the rate, form and other requirements outlined above in ch. 627, F.S. However, surplus lines insurers historically have never been required by the OIR to comply with rate, form or other provisions under chapter 627, F.S., because these insurers are governed by the Surplus Lines law (ss. 626.913-626.937, F.S.) and because the OIR considered the surplus lines insurers to be specifically exempt under ch. 627, F.S., as explained below. Representatives with the OIR assert that the specific rate and form filing requirements under Parts I and II of ch. 627, F.S., which apply to authorized insurers holding certificates of authority issued by the OIR, do not apply to surplus lines insurers.[24] These representatives state that one of the purposes of the Surplus Lines law (s. 626.913(2), F.S.), is:

> "to protect such authorized insurers, who under the laws of this state must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of *this* law, would not be subject to similar requirements…"

The OIR representatives state that the agency has not regulated surplus lines insurers to the same extent as the admitted market due to the exemption specified under Part I of ch. 627, F.S., (s. 627.021(2), F.S.) which states: "This chapter (meaning ch. 627, F.S.) does *not apply* to …(e)

[21] Chapter 97-196, L.O.F. Section 626.921, F.S.
[22] The lines or types of insurance include but are not limited to: life and health insurance, medicare supplement insurance, property and motor vehicle insurance and title insurance.
[23] Under s. 627.410, F.S., every insurance policy form must be filed 30 days in advance of use and after the expiration of the 30 days, the form is deemed approved unless, prior to that time, the form has been approved or disapproved by the OIR.
[24] *See* affidavits by Steve Parton, OIR General Counsel, and Belinda Miller, OIR Deputy Commissioner for Property and Casualty Insurance.

surplus lines insurance placed under the provisions of ss. 626.913-626.937."[25] The OIR's exclusion of surplus lines insurance from insurance regulatory laws that apply to authorized insurers is consistent with surplus lines laws throughout the country that have traditionally not subjected surplus lines insurers to the same regulations as authorized insurers.[26]

However, the historical regulatory status of surplus lines insurance has been brought into question by two recent court decisions interpreting the surplus lines exclusion provision (s. 627.021(2), F.S): the Florida Supreme Court in *Essex Insurance Co. v. Zota*[27] and the U.S. Court of Appeals for the Eleventh Circuit in *CNL Hotels & Resorts, Inc. v. Twin City Fire Insurance Co.*[28]

In *Essex* the court ruled that the surplus lines exclusion provision in s. 627.021(2), F.S., only exempted this type of insurance from the rate filing regulations under Part I of ch. 627, F.S., and not the remaining insurance regulations in ch. 627, F.S. In its opinion, the Court stated that the word "chapter" in s. 627.021(2), F.S., was intended by the Legislature to mean "part" as in part I of chapter 627, F.S., with the result that sections of ch. 627, F.S., that were argued as inapplicable to surplus lines carriers separately regulated by ch. 626, F.S., were found applicable to such carriers.[29] The *Essex* court basically altered the applicability of the surplus lines insurance exclusionary provision under s. 627.021, F.S., by making surplus lines insurance subject to parts II – XXI of chapter 627, F.S. The court based its reasoning on a prior Florida Supreme Court case, *National Corp. Veneqolana v. Manaure*,[30] which, in analyzing s. 627.021(2), F.S., held that the statutory exclusion applied exclusively to part I of ch. 627, F.S., rather than ch. 627, F.S., in whole, and therefore the rest of that chapter should apply to surplus lines insurers.

---

[25] This provision was enacted by the Legislature in 1988. Chapter 88-166, L.O.F., with an effective date of October 1, 1988.

[26] Edwards Angell Palmer & Dodge, LLP, *Excess and Surplus Lines Laws in the United States*, John P. Dearie, Jr. – Editor, January 2008.

[27] 985 So.2d 1036 (Fla. 2008). The *Essex* court ruled on a certified question from the U.S. 11th Circuit Court of Appeals. In *Essex*, the court found that two sections in Part II of ch. 627, F.S., were applicable to surplus lines insurers (ss. 627.421 and 627.428, F.S.) because neither of these sections appears in Part I of ch. 627, F.S. The primary issue in the case involved an interpretation of Florida insurance law requiring the delivery of a copy of a surplus lines insurance policy to the policyholder (s. 627.421, F.S.). The Court held that delivery of the policy to the policyholder's insurance broker was sufficient under Florida law and thus, the surplus lines insurance company did not have to deliver a copy of the insurance policy directly to the policyholder. The Court also found that s. 627.428, F.S., (award of attorney's fees statute) would apply to Essex Insurance Co. even though it was a surplus lines carrier, should its insureds prevail on coverage issues that were remanded for fact development to the lower court.

[28] 291 F.Appx. 2008 WL 3823898 (CA 11, (Fla.) Aug. 18, 2008).

[29] Chapter 627, F.S., is entitled "Insurance Rates and Contracts" and consists of twenty-one parts. Part I covers rates and rating organizations. The operative statutory language considered by the *Essex* court reads:

> 627.021 **Scope of this part.-**
> (1) This part of this chapter applies only to property, casualty, and surety insurances on subjects of insurance resident, located, or to be performed in this state.
> (2) This chapter does not apply to:
> …
> (e) Surplus lines insurance placed under the provisions of ss. 626.913-626.937.

[30] 511 So.2d 970 (Fla. 1987). In *Manaure*, the court addressed the question of whether s. 627.021(2)(c), F.S., excluded marine insurance from s. 627.7262, F.S., (Part XI of ch. 627, F.S.) and held that the exclusionary provisions of s. 627.021(2), F.S., apply exclusively to Part I of ch. 627, F.S.

In *CNL Hotels & Resorts, Inc. v. Twin City Fire Insurance Co.*, the U.S. Court of Appeals for the Eleventh Circuit was faced with an argument that the surplus lines insurance carrier (Twin City) was subject to the forms filing and approval provision of s. 627.410, F.S.,[31] since that provision was contained in that "part" of ch. 627, F.S., that *Essex* found applicable to surplus lines carriers. The court relied upon the *Essex* decision in ruling that s. 627.410, F.S., which is in part II of ch. 627, F.S., applies to surplus lines insurers.[32] The 11th Circuit held that "if a form is not filed with the Office, the form is void." Consequently, it remanded the case to the trial court to determine whether the policy endorsement was void because it was not filed and approved by the OIR in accordance with s. 627.410, F.S.

There have been a number of cases filed in state and federal courts relating to the surplus lines exemption provision in s. 627.021(2), F.S., in the aftermath of the *Essex* and *CNL* rulings.[33] At issue in some of the cases is the applicability of the form filing requirements of s. 627.410, F.S., to surplus lines insurance. In many of these cases, plaintiffs, who are policyholders of the surplus lines insurance company defendant, are attempting to obtain insurance coverage by voiding either a provision in the insurance contract or an endorsement to the contract arguing the provision or endorsement is void and unenforceable because the surplus lines insurer did not file the policy or endorsement form with or receive approval of the form from the OIR. If these arguments prevail, coverage will be afforded where it was otherwise excluded under the terms of the insurance contract and where it was not anticipated in the pricing. Some surplus lines insurers argue that they face the prospect of voidance of policy forms as these issues are litigated and there is therefore little chance they will continue to provide coverage to Florida insureds.

Representatives from the OIR and the Florida Surplus Lines Service Office have filed amicus papers and affidavits in some pending cases arguing that the OIR has never required surplus lines insurers to comply with the form filing requirements in Part II of ch. 627, F.S., as required of admitted insurers. Further, the OIR has asserted that the agency cannot handle the volume of filings if thousands of surplus lines policies had to be filed for pre-approval.

Some attorneys with the trial bar assert that the provisions in ch. 627, F.S., are designed to protect the public and that there should be ramifications to the surplus lines insurer for noncompliance with statutory requirements. They point out that the court decisions are correct in that surplus lines carriers are similar to admitted carriers and that consumers deserve the protections and agency scrutiny afforded under ch. 627, F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.913, F.S., the provision under the surplus lines law relating to the "legislative purpose" of the law. The bill states that, except as may be specifically stated to apply to surplus lines insurers, the provisions of chapter 627, F.S., do not apply to surplus lines insurance authorized under the Surplus Lines law (ss. 626.913-626.937, F.S.).

[31] s. 627.410, F.S., requires insurance companies to file insurance forms with the OIR and obtain approval of the forms from the OIR before the forms can be used by the insurer.

[32] The court held that the exemptions contained in s. 627.021, F.S., only apply to part I of ch. 627, F.S.

[33] The cases include: *Choice Hotels v. Howard*, Case No. CA06-680-55 filed in the 7th Circuit, St. Johns County, Florida; *GB, L.L.C.d/b/a Mamma Nunza v. Lloyds,*, Case No. 08-013299 CACE 13, filed in the 17th Circuit, Broward County, Florida (filed as a class action suit); *Summers v. Scottsdale Insurance Company*, Case No. 2007 CA 5232 WS/H filed in Pinellas County, Florida.

Section 2. This section provides for a severability clause. The provision states that if any provision of the act is held invalid, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision, and to this end the act's provisions are severable.

Section 3. Provides that the act shall take effect upon becoming a law and shall operate retroactively to October 1, 1988.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Severability Clause
Section 2 of the bill contains a severability clause. Generally, courts are under a duty to sever unconstitutional provisions from a law and allow the rest of the law to stand if that is possible. *They must do so regardless of the lack of a severability clause in law*. This duty springs from the doctrine of separation of powers.[34]

Retroactive Application
Section 3 of the bill provides that the act will operate retroactively to October 1, 1988. This is the effective date of Ch. 88-166, L.O.F. (as explained above under Present Situation) which amended s. 627.021(2), F.S., to provide that: This chapter (meaning ch. 627, F.S.) does not apply to "…(e) surplus lines insurance placed under the provisions of ss. 626.913-626.937."

In general, courts will refuse to apply a statute retroactively if it affects substantive rights, liabilities, and duties,[35] impairs vested rights, creates new obligations or imposes new penalties.[36] However, statutes which do not alter contractual or vested rights, but relate only to remedies or procedure can be applied retroactively.[37]

[34] *Boyd v. Green*, 355 So.2d 789 (Fla. 1978). The separation of powers doctrine is under Section 3 of Article II of the Florida Constitution.
[35] *Progressive Express Ins. Co. v. Menendez*, 979 So.2d 324 (Fla 3rd DCA 2008).
[36] *Romine v. Florida Birth Related Neurological Injury Compensation Ass'n,* 842 So.2d 148, 153 (Fla 5th DCA 2003).
[37] *Menendez*, 979 So.2d at 330.

The Florida Supreme Court has recognized that a statute may be retroactively applied if (1) there is clear evidence that the Legislature intended to apply the statute retroactively, and (2) retroactive application is constitutionally permissible.[38] The bill at issue, SB 1894, clearly meets the first prong in that section 3 of the bill states explicitly that it will operate retroactively to October 1, 1988.

In determining whether retroactive application is constitutional, the courts have generally held that due process considerations prevent the retroactive abolition of vested rights.[39] This is not an absolute rule, however, because the courts have identified factors that may be considered in whether to allow retroactivity. In one case, the Supreme Court weighed three factors in considering the validity of retroactivity: (1) the strength of the public interest served by the statute; (2) the extent to which the right affected is abrogated; and (3) the nature of the right affected.[40] As a further consideration, the Court has ruled that when "an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof." [41] There are numerous examples wherein the Court has rejected retroactivity[42] and has approved retroactivity.[43]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Within the past year, courts have held that surplus lines insurers are subject to all of the provisions of ch. 627, F.S., except for Part I, the rating law. Surplus lines insurers will benefit under the bill's provisions because they will not have to comply with the non-rating portions of ch. 627, F.S. (except where specifically stated), because the bill will restore the regulatory status of surplus lines insurance as had been applied before the court decisions. To that extent, the bill represents a positive fiscal impact for these insurers by relieving them from costs they would face in the aftermath of the judicial rulings.

---

[38] *Metropolitan Dade County v. Chase Fed. Hous. Corp.,* 737 So.2d 494 (Fla.1999), review denied, 848 So.2d 1153 (Fla.), and cert. denied, --- U.S. ----, 124 S.Ct. 821, 157 L.Ed.2d 698 (2003). *Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.*,864 So.2d 479 (Fla. 5 Dist. Ct. App. 2004).
[39] *State Dept. of Transportation v. Knowles,* 402 So.2d 1155 (Fla. 1981).
[40] *Ibid.*
[41] *Lowry v. Parole and Probation Comm.,* 473 So.2d 1248 (Fla. 1985).
[42] *State Dept. of Transportation v. Knowles,* 402 So.2d 1155 (Fla. 1981); *Rupp v. Bryant,* 417 So.2d 658 (Fla. 1982), *State Farm Mut. Auto. Ins. Co. v. Laforet,* 658 So2d 55 (Fla. 1995), *Kaiser v. Kolb,* 543 So.2d 732 (Fla. 1989).
[43] *Dept. of Agricultural Services v. Bonanno,* 568 So.2d 24 (Fla. 1990), *Metropolitan Dade Co. v. Chase Federal Housing Corp.* 737 So.2d 494 (Fla. 1999). *Orlando v. Desjardins,* 493 So.2d 1027 (Fla. 1986), *Lakeland v. Catinella,* 129 So.2d 133 (Fla. 1961).

C. Government Sector Impact:

The OIR will not have to review and approve form filings and adhere to the other regulatory requirements under ch. 627, F.S., for surplus lines insurers. The bill represents a positive fiscal impact for the OIR by relieving them from costs associated with surplus lines form filing reviews and other requirements the agency would face in the aftermath of the judicial rulings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 363098 by Banking and Insurance on March 25, 2009:
The amendment makes applicable to surplus lines insurers the following provisions under chapter 627, F.S.:

- Cash payment of premiums and claims (s. 627.4035, F.S.)
- Notice of cancellation, nonrenewal or renewal premium (s. 627.4133, F.S.)
- Disclosure of policy information under oath (s. 627.4137, F.S.)
- Binder or contract requirements (s. 627.420, F.S.)
- Claims administration (s. 627.426, F.S.)
- Attorney's fees (s. 627.428, F.S.)
- Requirements as to liability of insureds (s. 627.701(1), F.S.)
- Hurricane deductibles (s. 627.701(4), F.S.)
- Property insurance claim requirements (s. 627.70131(5), F.S.)
- Valued policy law (s. 627.702, F.S.)
- Cancellation of motor vehicle policies and return of premium (s. 627.7283, F.S.)

The amendment requires that current policy disclosure information which is provided to insureds by surplus lines agents specify that surplus lines insurance is exempt from certain Florida laws designed to protect individual and business insurance policyholders and that surplus lines policy rates and forms, including homeowner and commercial property policies, are not approved by any Florida regulatory agency. Such disclosure must be printed in contrasting color and not less than 14-point type.

The effect of this amendment places new responsibilities and duties on surplus lines insurers and agents and provides substantive rights to their insureds in Florida. These obligations range from insurers providing claims payments to insureds within certain time parameters, offering specified policy information under oath and paying attorney's fees, to surplus lines agents providing policy disclosure information to insureds. The rights afforded surplus lines policyholders range from being able to pay their premiums in cash, using debit or credit cards, or other payment plans to receiving timely written notice of policy nonrenewal or cancellation.

As noted above, statutes which affect substantive rights, liabilities and create new obligations and duties cannot apply retroactively. This amendment does affect the substantive duties and rights of surplus lines insurers, agents and their insureds as noted above. Therefore, courts would likely construe the amendment to have prospective, rather than retroactive, application. However, should courts interpret these provisions as having retroactive application, surplus lines insurers would likely be subject to lawsuits for failing to comply with the enumerated provisions contained in the amendment.

There would likely be a substantial fiscal impact on surplus lines insurers and agents to comply with the various requirements in the amendment. Surplus lines insurers state that some of these requirements make it impossible to provide coverage for certain types of risks. For example, the 90-day claims payment requirement (s. 627.70131, F.S.) would be impossible to comply with when the insured property is a commercial or government building.[44] These claims often involve extensive and time-consuming claims adjusting which include completing engineering, inspection and other reports. Some insurers state that they would discontinue offering coverage in Florida if they have to comply with these requirements which would likely mean that a portion of surplus lines insureds (primarily residential policyholders) would have to be placed in Citizens since the admitted market would not provide coverage. Further, surplus lines insurers continuing to offer coverage in Florida would very likely increase premiums to their policyholders.

There would likely be a substantial fiscal impact on the OIR for ensuring compliance by surplus lines insurers with the provisions enumerated in the amendment. The agency would have to conduct periodic market conduct examinations (s. 624.3161, F.S.) on the 165 surplus lines insurers by reviewing their company records, policies, claims-handling practices and procedures and financial records. Since surplus lines insurers are not required by statute to pay for these examinations, as are authorized insurers, the OIR would have to provide the professional staff and other resources to conduct the examinations.[45]

[44] Insurers have 90 days after notice of a property insurance claim from a policyholder to either pay or deny such claim.
[45] Under s. 624.3161, F.S., authorized insurers are responsible for paying the OIR for the reasonable cost of the examination.