

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 Property Insurance
SPONSOR(S): Trumbull
TIED BILLS: **IDEN./SIM. BILLS:** SB 1760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Fortenberry	Cooper
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Residential and commercial property insurance policies issued in Florida may be issued on either the admitted or surplus lines insurance markets. When insurance is not available to Florida consumers from admitted insurers, it generally becomes necessary and legally permissible to obtain policies on the surplus lines market. However, much of the Florida Insurance Code that places requirements on insurers does not apply to surplus lines insurers. Neither the Florida Insurance Code, which is generally inapplicable to surplus lines insurers, nor the Surplus Lines Law, presently contain requirements or restrictions on the venue or jurisdiction provisions contained within property insurance policies issued in Florida on property located within Florida.

The bill changes the surplus lines law to prohibit a surplus lines agent from delivering or issuing, in Florida, a property insurance policy requiring dispute resolution outside Florida or applying the laws of another state. Additionally, it amends the Insurance Code to address venue and jurisdiction for all property insurers, regardless of whether they write residential or commercial policies on the admitted or surplus lines markets. It provides that any action or dispute resolution involving a property insurance policy issued by a Florida insurer or a claim against an insurer issuing property insurance policies in Florida must be conducted in Florida and governed by Florida law.

The bill amends the statute governing the payment of residential property insurance claims so that its requirements apply to commercial insurance policies written on the admitted market and to residential and commercial property insurance policies issued on the surplus lines market. The bill provides that any property insurer's failure to comply with the prompt payment requirements of the Florida Insurance Code provides a basis for a private cause of action.

The bill further amends Florida's Valued Policy Law, which is a law designed to protect property insurance policyholders whose property has incurred a total loss by ensuring that the policyholders receive the face amount of the policy. The changes include its application to surplus lines insurers, a codified definition of total loss, and a requirement that that an insurer's liability under the applicable property insurance policy includes liability for ordinance, rule, and law coverage.

The bill has no impact on state or local government revenues or expenditures. The bill may have a positive economic benefit to consumers.

The bill provides an effective date of July 1, 2020, except as otherwise provided therein.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Background Regarding Admitted and Surplus Lines Property Insurers

Residential and commercial property insurance policies issued in Florida may be issued on either the admitted¹ or surplus lines insurance markets. When insurance is not available to Florida consumers from admitted insurers, it generally becomes necessary and legally permissible to obtain policies on the surplus lines market.² The export of insurance policies, including property insurance policies, to the surplus lines market is regulated by the Florida Office of Insurance Regulation (OIR) under the Florida Surplus Lines Law.³ Section 626.913, F.S., of the Surplus Lines Law establishes that, unless otherwise specifically stated, the provisions of ch. 627, F.S., do not apply to surplus lines policies issued pursuant to the Surplus Lines Law. Because ch. 627, F.S., contains many of the requirements placed upon Florida property insurers, including duties regarding claims handling, many of the requirements currently placed on admitted insurers do not apply to surplus lines insurers.

Because coastal and other properties in Florida often fall into categories of risk that admitted insurers are unable or unwilling to write, property owners in those geographic areas often find themselves obtaining policies issued by surplus lines market.⁴ These policyholders may not understand exactly what benefits and rights their policies provide. Following significant hurricanes in Florida, policyholders with policies from admitted and surplus lines insurers have also complained about claims handling by their insurers.

Venue and Jurisdiction for Insurance Disputes

Venue is defined as the proper, or possible, geographic location for the handling of a case because the location has some connection to the events giving rise to the case.⁵ Jurisdiction is a court's power to decide a case or issue a decree.⁶ Neither the Florida Insurance Code, which is generally inapplicable to surplus lines insurers, nor the Surplus Lines Law, presently contain requirements or restrictions on the venue or jurisdiction provisions contained within property insurance policies issued in Florida on property located within Florida. As such, property insurers can require that Florida policyholders engage in dispute resolution or litigation outside Florida even when the dispute concerns property located in Florida. Additionally, such insurers could restrict, or attempt to restrict, courts from exercising applicable jurisdiction over those insurers by placing restrictive language within property insurance policies issued to Florida policyholders.

Effect of the Bill on Venue and Jurisdiction

Changes Applicable to Surplus Lines Insurers Only

The bill establishes that the Surplus Lines law does not authorize litigation or alternative dispute resolution for any residential or commercial property insurance claim involving real property located in Florida to occur outside Florida or to apply the laws of another state. The bill also creates a new statutory section in the Surplus Lines Law that prohibits a surplus lines agent from delivering or issuing, in Florida, a property insurance policy containing a provision requiring dispute resolution outside Florida or a provision applying the laws of another state.

¹ Admitted or authorized insurers are those who have received a certificate of authority from the OIR to transact insurance business within the state.

² See s. 626.913, F.S.

³ Ss. 626.913–626.937, F.S., constitute the Florida Surplus Lines Law.

⁴ Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, <https://www.fslso.com/AboutGroup/about/surplus-lines-insurance> (last visited February 1, 2020).

⁵ Black's Law Dictionary 745 (2nd Pocket Edition 2001).

⁶ *Id.* at 383.

Changes Applicable to Admitted Insurers and Surplus Lines Insurers

The bill creates a new statutory section within the Insurance Code to address venue and jurisdiction for all property insurers. This section defines insurer in this section to include both admitted and eligible surplus lines carriers. It states that the section applies only to residential and commercial property insurance policies covering real property located in Florida. The section provides that any action or dispute resolution involving a property insurance policy issued by a Florida insurer or a claim against an insurer issuing property insurance policies in Florida must be conducted in Florida and governed by Florida law. This section mandates that no property insurance policy covering real property located in Florida may contain terms depriving Florida courts of jurisdiction for actions against the insurer issuing the policy. It also specifies that any provision of a property insurance policy, including a surplus lines policy that violates any provision of the created statutory section is void, but that such voiding does not affect the validity of other provisions of the insurance policy.

Insurers' Duty to Acknowledge Communications Regarding Claims, Including Claims Payment Requirements

Section 627.70131, F.S., contains various requirements for insurers' handling of property insurance claims in Florida. As currently written, however, this statute does not apply to commercial property insurance claims⁷ written by admitted insurers or to residential or commercial policies written by surplus lines insurers. One of the most significant requirements of this statute is the 90-day payment framework set out in s. 627.70131(5)(a), F.S.,⁸ which generally requires a residential property insurer to pay or deny a claim or portion of a claim within 90 days after receiving notice an initial, reopened, or supplemental claim, unless the failure to pay is cause by factors beyond the control of the insurer. However, this subsection specifically states that an insurers' failure to comply with the subsection cannot be the sole reason for a private cause of action.⁹

Effect of the Bill on Insurers' Duty

The bill changes the definition of insurer used in s. 627.70131, F.S., so that it includes all residential and commercial property insurers, regardless of whether they issue policies on the admitted or surplus lines markets. This amendment to the existing law makes all of the provisions of this statutory section applicable to admitted insurers writing commercial property insurance policies and to surplus lines insurers writing residential and commercial property insurance policies, in addition to admitted insurers writing residential property insurance policies. The bill provides that any property insurer's failure to comply with the prompt payment requirements of s. 627.70131(5)(a) provides a basis for a private cause of action.

⁷ S. 627.70131(1)(b), F.S., creates exceptions to make certain portions of the statute applicable to claims under commercial lines residential coverage (designed to cover commercial properties used as residences), to claims for structural or contents coverage under commercial insurance policies if the insured structures are 10,000 square feet or less, and to claims for contents coverage under commercial tenant policies if the insured premises are 10,000 square feet or less.

⁸ This requirement is sometimes colloquially referred to as the "prompt pay" requirement for residential property insurers.

⁹ A private cause of action is a factual situation that entitles a private party to sue another private party. *See* Black's Law Dictionary 89 (2nd pocket edition 2001).

Valued Policy Law; Law and Ordinance Coverage

Valued Policy Law

Approximately 20 states, including Florida, have a Valued Policy Law.¹⁰ The goal of valued policy laws is to protect property insurance policyholders whose property has incurred a total loss by ensuring that the policyholders receive the face amount of the policy.¹¹ These laws prevent policyholders from having to prove their property's actual cash value or replacement cost at the time of a loss.¹² They also prevent property insurers from collecting premiums to insure buildings at their full value but then paying less than that amount after a loss has taken place.¹³

Florida's Valued Policy Law currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril.¹⁴ Under this law, if a total loss is caused by a covered peril, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid. While Florida's Valued Policy Law does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

Law and Ordinance Coverage

Prior to issuing a homeowner's insurance policy, an insurer must offer a policy or an endorsement providing that any loss repaired or replaced will be adjusted on the basis of replacement costs to the dwelling, and also including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property, or requiring the tearing down of any property, including the costs of removing debris.¹⁵ Additionally, this statute requires insurers who issue homeowners' insurance policies to provide the following statement with policy documents at initial issuance and at every renewal: "Law and Ordinance: Law and ordinance is an important coverage that you may wish to purchase. Please discuss with your insurance agent."

Effect of the Bill on Valued Policy Law, and Law and Ordinance Coverage

The bill defines insurer in the Valued Policy Law so that it includes both admitted insurers and surplus lines insurers. It also codifies the definition of total loss as a loss in which damaged property is damage to the extent that applicable ordinances, rules or laws prevent repairing the property or for which the cost to repair the property exceeds the applicable coverage limit of the insurance policy covering the property. The bill adds a provision to the Valued Policy Law requiring that an insurer's liability under the applicable property insurance policy includes liability for ordinance, rule, and law coverage.¹⁶

Effective Date Provisions of the Bill

The bill provides that the amendments it makes relating to the Surplus Lines Law, claims handling, and the Valued Policy Law, and the new statutory sections of law that it creates, apply only to property insurance policies issued or renewed on or after January 1, 2021, and do not apply to any claim, ongoing dispute resolution, or legal action pending as of July 1, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.913, F.S., relating to surplus lines law; short title; purposes.

¹⁰ The Balance Small Business, *What are Valued Policy Laws?*, <https://www.thebalancesmb.com/what-are-valued-policy-laws-4584774> (last visited February 1, 2020).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ S. 627.702, F.S. A covered peril is a risk or cause of loss.

¹⁵ S. 627.7011, F.S. Homeowner's insurance policy is an industry term often used to describe a residential property insurance policy issued to an individual homeowner.

¹⁶ See drafting comments for discussion of possible concerns between the effect of the bill and existing law and ordinance coverage requirements under s. 627.7011, F.S.

Section 2. Creates s. 626.9285, F.S., relating to contracts with alternative dispute resolutions or application of laws of another state prohibited.

Section 3. Amends s. 627.70131, F.S., relating to insurer's duty to acknowledge communications regarding claims; investigation.

Section 4. Amends s. 627.702, F.S., relating to valued policy law.

Section 5. Creates s. 627.7035, F.S., relating to proceeding venues and jurisdiction of courts for real property coverage.

Section 6. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have positive economic impacts for consumers, particularly those who have residential insurance policies written by surplus lines insurers. This bill provides that no property insurance policyholders whose real property is located within Florida will have to engage in dispute resolutions or legal actions outside Florida or applying law other than Florida law. This will eliminate the inconvenience and cost associated with attending mediation or arbitration or going to court outside Florida. It will also bring more certainty to policyholders about the law that will be applied to their claims and the resolution of those claims. Because it applies existing claims payment deadlines to surplus lines insurers, the bill will also streamline the claims payment process for policyholders who have surplus lines policies. It further assists consumers by strengthening the Valued Policy Law to ensure that policyholders are paid for a total loss where appropriate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 31–51 and 177–207: Lines 31–51 create a new statutory subsection within the Surplus Lines Law (s. 626.9285, F.S.) and Lines 177–207 create a new statutory section within the Insurance Code (s. 627.7035, F.S.), which provides that it applies to surplus lines insurers. There is subject matter overlap between these two sections that may not be consistent and may result in confusion or conflict. It is recommended that the potentially conflicting part of the statute be removed from s. 626.9285, F.S., and, if necessary, a cross-reference to s. 627.7035, F.S., can be placed in s. 626.9285, F.S., instead.

Lines 33–34, 49–50, 183–187, and 203–213: All of these lines of the bill have some reference to forms of dispute resolution and judicial proceedings. However, the references are inconsistent and some use phrases not commonly used to describe alternative dispute resolution methods (e.g. “dispute resolution proceedings”). It is recommended that concise and consistent phrasing be used throughout the bill to describe the methods by which property insurance claim disputes may be resolved.

Lines 36–37 and 45: Because surplus lines policies are often issued by alien insurers, who are located in another country as opposed to another state, the phrase “another state” in these lines may be too narrow to cover all possible laws that might be applied to claims arising in Florida. Therefore, it may be advisable to rewrite these portions of the bill such that they prohibit the applicability of all laws other than the law of Florida.

Lines 47–51 and 203–213: OIR has pointed out that it is unclear why the effective dates in the bill apply the changes to policies issued January 1, 2021, or later, but specifically do not apply to claims pending on July 1, 2020.¹⁷ The bill contains no language addressing claims arising or policies issued in the intervening six months. Additionally, the newly created statutory requirements regarding claims handling could not apply to policies first issued on or after January 1, 2021, because it is impossible for claims to exist on such policies as of July 1, 2020.

Lines 128–175: OIR has also pointed out that the language in these lines appears to require that ordinance or law coverage be included and be considered when determining whether a total loss has occurred.¹⁸ If this is not the intent of the bill, then the language may need to be clarified as to whether Lines 154–160 is intended to require that an insurer provide ordinance, rule, or law coverage as supplemental coverage above policy limits or how it is to be calculated within policy limits.¹⁹ Furthermore, if these lines are meant to be read in conjunction with law and ordinance coverage as set forth in s. 627.7011, F.S., the phrasing “ordinance, rule, or law” should be changed to “law and ordinance” to be consistent with that statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁷ Florida Office of Insurance Regulation, Agency Analysis of 2020 House Bill 1357, p. 6 (Jan. 10, 2020).

¹⁸ *Id.* at p. 5.

¹⁹ *Id.*