

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 951 Domestic Surplus Lines Insurers

SPONSOR(S): Gregory

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N	Fortenberry	Luczynski
2) Ways & Means Committee	17 Y, 0 N	LaTorre	Aldridge
3) Commerce Committee			

SUMMARY ANALYSIS

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR). States also realize that there are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, they allow insurers that are not otherwise authorized to sell policies to sell surplus lines insurance if they meet certain requirements.

Historically, surplus lines insurers generally are not permitted to write surplus lines insurance in their states of domicile. However, some states have enacted laws authorizing domestic surplus lines insurers (DSLIs) in more recent years. These are surplus lines insurers that offer surplus lines policies in their states of domicile. Prior to the creation of laws allowing DSLI, a surplus lines insurer seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines policies in the original insurer's state of domicile. Over 20 states have authorized domestic surplus lines insurance.

The bill defines "domestic surplus lines insurer" as a nonadmitted insurer domiciled in this state that OIR has authorized to write surplus lines insurance. The bill creates a statutory framework to allow a DSLI to issue surplus lines policies in this state, by establishing certain requirements, which include:

- A nonadmitted insurer possessing a policyholder surplus of at least \$15 million may be authorized to transact insurance as a DSLI under a resolution by its board and with approval of OIR.
- Such nonadmitted insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and that this authorization is not contingent upon holding a certificate of authority.
- Eligible surplus lines insurers may write any kind of insurance that unauthorized insurers not domiciled in this state are eligible to write.
- A DSLI may only write surplus lines insurance in Florida and may only sell policies through a surplus lines agent.
- Unless specifically exempt, a DSLI is subject to all financial and solvency requirements imposed on admitted domestic insurers under state law. However, a DSLI is exempt from the surplus requirements applied to admitted insurers.
- A policy issued by a DSLI is exempt from all statutory requirements relating to insurance rating, policy forms, premiums, cancellations, nonrenewals, and renewals, and from any other statutory requirements that do not apply to surplus lines policies issued by surplus lines insurers domiciled in another state.

The Revenue Estimating Conference has not estimated the potential revenue impacts of the bill. Staff estimates that the bill may have a positive/negative indeterminate impact on General Revenue and state trust fund revenue. The potential revenue impacts may be indirect. The impact may be positive if the bill leads to additional policies being written in the state, resulting in increased surplus lines tax collections. The impact may be negative if additional competition leads to lower premium rates overall, resulting in decreased surplus lines tax collections.

The bill is effective on July 1, 2022.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0951c.WMC

DATE: 2/9/2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR).¹ The term “admitted market” is used to refer to insurers that have a certificate of authority issued by OIR.² Such insurers are also referred to as “authorized insurers.”

Authorized insurers in Florida are subject to the provisions of the Florida Insurance Code³ and regulation primarily by OIR.⁴ OIR’s regulatory authority over authorized insurers includes solvency and financial strength, insurance policy forms and rates, and market conduct of insurers.

Surplus Lines Insurance

States also realized that there are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, they allow insurers that are not otherwise authorized to sell policies to sell surplus lines insurance if they meet certain requirements. The three basic categories of risks typically written by surplus lines insurers:

- Specialty risks that admitted insurers do not desire to write;
- Risks for which admitted carriers do not have approved policy forms or rates; and
- Risks where a policyholder needs higher coverage limits than those available on the admitted market.

The Florida Surplus Lines Service Office (FSLSO) administers surplus lines business in this state.⁵ A certificate of authority is not required of an insurer with respect to lawfully written surplus lines policies.⁶ Surplus lines insurers are still considered “unauthorized” insurers⁷, and may write only surplus lines policies if they are made “eligible” by OIR. Except as specifically stated, surplus lines insurers are not subject to regulation by OIR under ch. 627, F.S., which includes statutory provisions regarding rating standards and insurance policy forms.⁸ Surplus lines insurers are subject to the Unfair Insurance Trade Practices Act.⁹

Surplus Lines Law

Florida’s Surplus Lines Law is designed to provide orderly access to unauthorized insurers who provide surplus lines policies. Four general requirements must be met for insurance to be exported to a surplus lines insurer:¹⁰

- The insurance must be eligible for export under s. 626.916, F.S. or 626.917, F.S.;
- The insurer must be an eligible surplus lines insurer under s. 626.917, F.S. or 626.918, F.S.;
- The insurance must be placed through a licensed Florida Surplus Lines Agent; and

¹ S. 624.401, F.S. In the Florida Insurance Code (FIC), a person also includes a business entity such as an insurer.

² S. 624.404, F.S.

³ Section 624.404, F.S., provides that an insurer must be in compliance with the FIC to qualify for and hold authority to transact insurance in the state. The FIC is chapters 624-632, 634, 635, 636,641, 642, 648, and 651, F.S. S. 624.01, F.S.

⁴ In general, OIR has regulatory authority over insurers and the Department of Financial Services (DFS) has regulatory authority over insurance agents and agencies.

⁵ S. 626.921, F.S.

⁶ S. 624.402, F.S.

⁷ S. 624.09(2), F.S.

⁸ S. 626.913(4), F.S.

⁹ Ss. 626.951– 626.99, F.S. Under s. 626.9521, F.S., no person may engage in this state in any unfair insurance trade practice. “Person” is defined by s. 626.9511(1), F.S., to mean any individual, corporation, association, partnership...or any entity involved in the business of insurance.

¹⁰ S. 626.915, F.S.

- All other applicable provisions of the Surplus Lines Law must be met.

Eligibility for Export to a Surplus Lines Insurer

Insurance coverage is eligible for export to a surplus lines insurer only if:

- The insurance cannot be obtained from an authorized insurer after the agent has made a diligent effort to place the insurance with an authorized insurer.¹¹ The surplus lines agent must verify that a diligent effort was made by requiring a properly documented statement of diligent effort from the agent.¹² A “diligent effort” means seeking coverage from, and having been rejected by, at least three authorized insurers currently writing the same type of coverage and documenting these rejections.¹³ However, if a residential structure has a dwelling replacement cost of \$700,000 or more, coverage need only be sought from one authorized insurer.¹⁴
- The premium rate for the surplus lines coverage may not be lower than the rate currently used by a majority of authorized insurers for the same coverage on a similar risk.¹⁵
- The surplus lines coverage may not be more favorable to the insured than under similar contracts currently used by the majority of authorized insurers writing similar coverage on similar risks.¹⁶
- The surplus lines policy must not provide a deductible that is generally unavailable from authorized insurers, except as applicable to extended coverage for fire or windstorm insurance.¹⁷

Requirements for Eligibility of Surplus Lines Insurers

An unauthorized insurer may only become an eligible surplus lines insurer if it meets the following requirements:¹⁸

- The insurer must currently be an authorized insurer in its state or country of domicile as to the kinds of insurance it would transact in Florida. In general, the insurer must have transacted such insurance for three years in its state of domicile.¹⁹ However, OIR may waive this requirement if the insurer has capital and surplus of at least \$25 million and either is offering a product not readily available in Florida or has operated successfully for at least the immediately preceding year.²⁰
- OIR receives an authenticated copy of its current annual financial statement.²¹
- The insurer must maintain surplus as to policyholders of not less than \$15 million²², with the exception of:
 - Insurance exchanges created by the laws of a state, if they meet the state’s capital and surplus requirements or maintain a capital and surplus of at least \$50 million;²³ and
 - A surplus lines insurer that is a member of an insurance holding company that includes a member which is a Florida domestic insurer, may instead meet the surplus and capital requirements applicable to authorized insurers under s. 624.408, F.S., and must comply with ch. 625, F.S., regarding accounting, investments, and deposits by insurers.²⁴

¹¹ S. 626.916(1)(a), F.S.

¹² *Id.*

¹³ S. 626.914(4), F.S.

¹⁴ *Id.*

¹⁵ S. 626.916(1)(b), F.S.

¹⁶ S. 626.916(1)(c), F.S.

¹⁷ S. 626.916(1)(d), F.S.

¹⁸ S. 626.918, F.S.

¹⁹ *Id.* Alternatively, the insurer may be a wholly owned subsidiary of such an insurer.

²⁰ *Id.*

²¹ S. 626.918(2)(b), F.S.

²² S. 626.918(2)(c), F.S. An alien insurer (insurer domiciled in a foreign country) must also have and maintain a trust fund in the United States under terms approved by OIR, in an account of at least \$5.4 million.

²³ S. 626.918(2)(c)1.c., F.S.

²⁴ S. 626.918(2)(c)1.d., F.S.

- The insurer must have a good reputation regarding service to its policyholders and payment of losses and claims.²⁵
- The management, officers, and directors of the insurer must meet the requirements of competence and trustworthiness required by s. 624.404(3), F.S.²⁶

The Surplus Lines Law specifies that OIR does not have any duty to determine the actual financial condition or claims practices of any unauthorized insurer.²⁷ OIR, when determining whether a surplus lines insurer is eligible bases that decision on the insurer appearing to be financially sound and having satisfactory claims practices, and not having any credible evidence to the contrary.²⁸

Requirement to Place Surplus Lines Insurance Through a Licensed Florida Surplus Lines Agent

A Florida-licensed surplus lines insurance agent must place surplus lines insurance policies.²⁹ A Florida-licensed general lines agent may obtain licensure as a surplus lines agent if such an agent has at least one year of experience working for a licensed surplus lines agent or successfully completes at least 60 class hours in surplus and excess lines and passes a licensure exam.³⁰ This licensure is solely for the purpose of placing property, marine, casualty, or surety coverages originated by general lines agents with surplus lines insurers.³¹

Nonresidents licensed in their home state as resident general lines and surplus lines agents may obtain licensure as nonresident surplus lines agents if their home states have similar licensure requirements as Florida and provide reciprocity regarding residents of Florida obtaining licensure as nonresident surplus lines agents in those states.³²

Mandatory Disclosures

Surplus lines agents must disclose in writing that surplus lines insurance carriers do not have the protection of the Florida Insurance Guaranty Act³³ and that surplus lines rates and policy forms are not subject to regulation by any Florida agency.³⁴ When a policy is exported to surplus lines, the insured must also sign or provide documented knowledge of the following disclosure:

You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.³⁵

The Florida Surplus Lines Service Office (FSLSO)

The FSLSO is a self-regulating, nonprofit association designed to act as a “self-regulating organization” to permit better access by consumers to approved surplus lines insurers.³⁶ The FSLSO’s responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida and of the eligible surplus lines insurers.³⁷ All Florida-licensed surplus lines agents are deemed members of the FSLSO and must register with it.³⁸

²⁵ S. 626.918(2)(d), F.S.

²⁶ S. 626.918(2)(e), F.S.

²⁷ S. 626.918(4), F.S.

²⁸ *Id.*

²⁹ See s. 926.927, F.S.

³⁰ *Id.*

³¹ *Id.*

³² S. 626.9272, F.S.

³³ Ss. 631.50– 631.70, F.S., are known as the Florida Insurance Guaranty Association Act, and establish the framework for the Florida Insurance Guaranty Association.

³⁴ S. 626.924, F.S.

³⁵ S. 626.916(1)(e), F.S.

³⁶ S. 626.921, F.S.

³⁷ See *id.*

³⁸ S. 626.921(2), F.S.

The FLSO must conduct the following activities:

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the FLSO and prepare reports as required by the Financial Services Commission;³⁹
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit surplus lines tax to the Department of Financial Services;
- Reconcile the policies provided by non-admitted insurers with the policies reports to the FLSO by agents; and
- Other activities specified by statute.⁴⁰

Domestic Surplus Lines Insurance

Historically, surplus lines insurers generally are not permitted to write surplus lines insurance in their states of domicile. However, some states have enacted laws authorizing domestic surplus lines insurers (DSL) in more recent years. These are surplus lines insurers that offer surplus lines policies in their states of domicile.

Prior to the creation of laws allowing DSL, a surplus lines insurer seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines policies in the original insurer's state of domicile. Over 20 states have authorized DSL.⁴¹ A review of the state laws authorizing DSL show that laws authorizing the formation of domestic surplus lines insurance often have certain requirements in common:

- The DSL must meet a policyholder surplus requirement, usually \$15 million or \$20 million;
- The DSL must be an eligible surplus lines insurer in at least one jurisdiction other than its state of domicile;
- The board of directors of the DSL must pass a resolution seeking to be a DSL; and
- The insurance commissioner of the DSL must make it eligible in its state of domicile.

Certain commonalities are also present regarding how state and federal insurance laws generally applicable to authorized insurers apply to DSL:

- DSL are subject to the state's solvency requirements for authorized domestic insurers, unless a DSL is specifically exempted;
- DSL are exempt from requirements relating to rates, forms, and policy cancellations;
- Policies written by DSL must be placed on the surplus lines market in accordance with the requirements of the state's surplus lines law; and
- Policies written by DSL are not covered by any of the state's guaranty associations.

The number of DSLs has increased from 15 in 2011, to over 70, with the majority domiciled in Illinois or Delaware.⁴²

Federal Nonadmitted and Reinsurance Reform Act of 2010 (NRA)

Pursuant to the NRA, the surplus lines insurance and surplus lines brokers are subject only to the statutory and regulatory requirements of the insured's home state.⁴³ The NRA provides that only the home state of an insured may require any premium tax payment for surplus lines insurance.⁴⁴ States

³⁹ The Financial Services Commission consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. S. 20.121, F.S.

⁴⁰ See generally s. 626.921(3), F.S.

⁴¹ See e.g., Arizona (s. 20-407.01, Az. S.), Texas (s. 981.071-981.074, Tex. Ins. Code), and Vermont (s. 8 V.S.A. s. 5023a).

⁴² John N. Emmanuel and Zachary N. Lerner, *Locke Lord Excess and Surplus Lines Laws Manual*, p. 1.6 (2021), <https://surplusmanual.lockelord.com/> (last visited Feb. 02, 2022).

⁴³ 15 U.S.C. § 8202.

⁴⁴ 15 U.S.C. § 8201(a).

are authorized to establish procedures to allocate tax revenues properly to other states for multi-state risks and an insured's home state may require surplus lines brokers and insureds to file annual tax allocation reports detailing the portion of the policy premium attributable to the exposure located each in state.

States must participate in the National Association of Insurance Commissioners' (NAIC) database or an equivalent uniform national database for the licensure of surplus lines brokers, and a state that does not participate is prohibited from collecting fees related to licensing surplus lines brokers.⁴⁵ Unless a state adopts requirements that comply with the NRRRA's requirements regarding allocation of nonadmitted premium taxes that include alternative nationwide uniform eligibility requirements, the eligibility requirements for a state's surplus lines insurers must conform to the NAIC's Non-Admitted Insurance Model Act.⁴⁶ The NRRRA also prohibits state laws from requiring a due diligence search to determine if the insurance can be obtained from an admitted insurer before placing a risk for an exempt commercial purchaser⁴⁷ on the surplus lines market if certain disclosures are made.⁴⁸

Florida Insurance Guaranty Association (FIGA)

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."⁴⁹ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance⁵⁰ with certain exceptions.⁵¹ FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are less than \$300,000.⁵² For policies providing homeowners insurance, FIGA provides for up to an additional \$200,000 for the portion of a covered claim, which relates to damage to structure and contents.⁵³

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

FLAHIGA exists to "protect policyholders, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against the future of an insurer issuing such policies or contracts to perform its contractual obligations due to its impairment or insolvency."⁵⁴ The maximum obligation of FLAHIGA to provide payment for any covered claim or policy is the following:

- For life insurance, \$100,000 in net cash surrender and net cash withdrawal values.
- For deferred annuity contracts, \$250,000 in net cash surrender and net cash withdrawal values.
- For basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies, but not including long-term care policies, \$500,000.
- For all other benefits, including in long-term care policies, \$300,000, including cash values.⁵⁵

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

FWCIGA "provides a mechanism for the payment of covered claims" under ch. 440, F.S., to avoid delay

⁴⁵ 15 U.S.C. § 8203.

⁴⁶ 15 U.S.C. § 8204.

⁴⁷ 15 U.S.C. § 8206(5) defines a commercial purchaser as a person purchasing commercial insurance if such person has a qualified risk manager to negotiate insurance coverage, has paid nationwide property and casualty insurance premiums in excess of \$100,000 in the preceding 12 months, and meets one of five specified requirements regarding net worth, annual revenues, number of employees, not-for-profit annual budgeted expenditures, or status as a municipality.

⁴⁸ 15 U.S.C. § 8205.

⁴⁹ S. 631.51, F.S.

⁵⁰ S. 631.57(3)(a), F.S. As established in s. 632.52, F.S., FIGA covers "all kinds of direct insurance" with certain exceptions, such as life, annuity, health, disability, workers' compensation, and surplus lines insurance.

⁵¹ *Id.*

⁵² S. 631.57(1), F.S.

⁵³ *Id.*

⁵⁴ S. 631.712, F.S.

⁵⁵ S. 631.717(12), F.S.

and financial loss to claimants due to the insolvency of a workers' compensation insurer.⁵⁶ FWCIGA services workers' compensation claims against insolvent workers' compensation insurers⁵⁷ and self-insurance funds.⁵⁸ For purposes of FWCIGA, "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of \$300,000 or the limits of the policy.⁵⁹

Effect of the Bill

The bill defines "domestic surplus lines insurer" as a nonadmitted insurer domiciled in this state that OIR has authorized to write surplus lines insurance. The bill creates a statutory framework to allow a DSLI to issue surplus lines policies in this state, in addition to issuing policies in other jurisdictions, by establishing the following:

- The term "nonadmitted insurer" has the same meaning as provided in the NRRA.
- A nonadmitted insurer possessing a policyholder surplus of at least \$15 million may be authorized to transact insurance as a DSLI under a resolution by its board and with approval of OIR.
- Such nonadmitted insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and that this authorization is not contingent upon holding a certificate of authority.
- A DSLI shall be deemed an eligible surplus lines insurer and be included in the list of eligible surplus lines insurers required under current statutes.
- Eligible surplus lines insurers may write any kind of insurance that unauthorized insurers not domiciled in this state are eligible to write.
- A DSLI is an unauthorized insurer for the purposes of writing surplus lines insurance under the Surplus Lines Law.
- A DSLI is a nonadmitted insurer for the purposes of the federal NRRA.
- A DSLI may only write surplus lines insurance in Florida and may only sell policies through a surplus lines agent.
- Unless specifically exempt, a DSLI is subject to all financial and solvency requirements imposed on admitted domestic insurers under state law. However, a DSLI is exempt from the surplus requirements applied to admitted insurers.⁶⁰
- A policy issued by a DSLI is exempt from all statutory requirements relating to insurance rating, policy forms, premiums, cancellations, nonrenewals, and renewals, and from any other statutory requirements that do not apply to surplus lines policies issued by surplus lines insurers domiciled in another state.
- A policy issued by a DSLI is subject to taxes assessed on surplus lines policies issued by nonadmitted insurers, including surplus lines premium taxes, but it not subject to other taxes levied upon domestic or foreign admitted insurers.
- A policy issued by a DSLI is not subject to the protections or requirements of FIGA, FLAHIGA, or FWCIGA.

The bill also contains technical amendments to several statutes to conform cross-references to this new statutory framework.

⁵⁶ S. 631.902, F.S.

⁵⁷ "Insurer means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For the purposes of this act, 'insurer' does not include a qualified local government self-insurance fund, as defined in s. 624.4622 or an individual self-insurer as defined in s. 440.385." S. 631.904(5), F.S.

⁵⁸ "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385." S. 631.904(6), F.S.

⁵⁹ S. 631.904(2), F.S.

⁶⁰ These requirements are set forth in s. 624.408, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.914, F.S., relating to definitions.

Section 2. Creates s. 626.91805, F.S., relating to domestic surplus lines insurers.

Section 3. Amends s. 458.320, F.S., relating to financial responsibility.

Section 4. Amends s. 459.0085, F.S., relating to financial responsibility.

Section 5. Amends s. 464.0123, F.S., relating to autonomous practice by an advanced practice registered nurse.

Section 6. Amends s. 629.401, F.S., relating to insurance exchange.

Section 7. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not estimated the potential revenue impacts of the bill. Staff estimates that the bill may have a positive/negative indeterminate impact on General Revenue and state trust fund revenue. The potential revenue impacts may be indirect. The impact may be positive if the bill leads to additional policies being written in the state, resulting in increased surplus lines tax collections. The impact may be negative if additional competition leads to lower premium rates overall, resulting in decreased surplus lines tax collections.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that consumers have additional options for coverage from surplus lines carriers which results in more competitive insurance rates, the bill may have an indeterminate impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES