

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 57 Motor Vehicle Liability Policies

SPONSOR(S): Commerce Committee, Truenow

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N	Herendeen	Lloyd
2) Commerce Committee	18 Y, 0 N, As CS	Fletcher	Hamon

SUMMARY ANALYSIS

Owners or operators of motor vehicles must insure against losses from liability for bodily injury, death, and property damage under Florida's Financial Responsibility Law. They may do so by purchasing auto insurance from an insurance carrier authorized to do business in Florida by the Office of Insurance Regulation (OIR), or by obtaining a certificate of self-insurance from the Florida Department of Highway Safety and Motor Vehicles (HSMV) after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle. HSMV does not recognize insurance issued by a risk retention group as a method of proving financial responsibility, unless the risk retention group holds a certificate of authority issued by OIR.

The bill amends the Financial Responsibility Law to permit risk retention groups, which are authorized by federal law, to provide the required motor vehicle coverage to group members. Unlike state-authorized insurers, risk retention groups only sell insurance to eligible members, do not submit rate and form filings to state regulators, and are not members of state guaranty associations that manage claims if an insurer becomes insolvent.

Specifically, the bill permits risk retention groups that have strong ratings from A.M. Best Company (an "A" or higher rating for financial strength and "VIII" or higher for financial size) to provide financial responsibility coverage for commercial motor vehicles to their members and shareholders. The bill also authorizes an eligible surplus lines insurer that is rated "A" or higher by A.M. Best Company to provide such coverage.

The bill has an unknown but likely insignificant negative fiscal impact on state government and no impact on local governments. The bill has positive and negative impacts on the private sector.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's Financial Responsibility Law

Chapter 324, F.S., sets forth the financial responsibility laws for owners or operators of motor vehicles, whether they be used for personal or commercial purposes.

In general, the owner or operator of a motor vehicle must insure against losses from liability for bodily injury, death, and property damage by 1) purchasing auto insurance from an insurance carrier authorized by OIR to do business in Florida;¹ or 2) obtaining a certificate of self-insurance from HSMV after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.²

OIR licenses insurance carriers and reviews policy contracts and premium rates of its licensees.³ An insurance carrier may not deliver an auto insurance policy in Florida unless the policy includes coverages for both personal injury and property damage.⁴

HSMV administers the Financial Responsibility Law by requiring all licensed insurance companies to provide electronic notification of all policies that are issued or cancelled.⁵ Vehicle owners must show proof of personal injury protection and property damage liability coverage to register a vehicle,⁶ and must provide proof of bodily injury liability coverage if they are involved in an accident and charged with a moving violation.⁷ A vehicle owner who fails to maintain continuous coverage may have his or her driver's license and registration suspended for up to three years.⁸

Required coverages vary based on the use of a motor vehicle.

For individual motorists, the law requires \$10,000 in personal injury protection and \$10,000 for property damage.⁹ However, if a driver of a private passenger vehicle has caused an accident involving bodily injury or death, the required minimum bodily injury liability coverage is \$10,000 per person and \$20,000 per accident.¹⁰ Additionally, if a driver has been convicted of driving under the influence of alcohol, the motorist must maintain minimum bodily injury liability coverage of \$10,000 per person and \$20,000 per accident for three years after the license is reinstated.¹¹

For leased motor vehicles, the lessor is not liable for the actions of a lessee so long as the lease requires \$100,000/\$300,000 bodily injury liability and \$50,000 property damage liability or not less than \$500,000 combined property damage and bodily injury liability.¹²

¹ S. 324.021(8), F.S.

² Ss. 324.161 and 324.171, F.S. *Also see* Florida Department of Highway Safety and Motor Vehicles, Self-Insurance, <https://www.flhsmv.gov/insurance/self-insurance/firm/> (last visited Feb. 10, 2023).

³ Ss. 624.404, 627.062, 627.410, and 627.4102.

⁴ S. 627.7275, F.S.

⁵ Ss. 324.0221, 324.252, and Rules 15A-3.007, and 15A-3.012, F.A.C.

⁶ Ss. 324.022, 324.023, and Rule 15A-3.006, F.A.C.

⁷ S. 324.021, F.S. *Also see*, Florida Highway Safety and Motor Vehicles, *Florida Insurance Requirements*, <https://www.flhsmv.gov/insurance/> (last visited Feb. 10, 2023).

⁸ S. 324.0221, F.S.

⁹ Ss. 324.021(7), § 324.022, and 627.736, F.S.

¹⁰ Ss. 324.051, 324.031, 324.061, F.S.

¹¹ S. 324.023, F.S.

¹² S. 324.021(9), F.S.

For-hire passenger vehicles like taxicabs and limousines must have bodily injury liability coverage of \$125,000 per person and \$250,000 per occurrence; and \$50,000 property damage coverage.¹³

Commercial motor vehicles operating on Florida's highways are subject to state and federal regulations related to size and weight limits, safety standards, and registration requirements. Commercial vehicles that weigh 10,001 pounds or more, and engage in interstate commerce or haul hazardous materials, are subject to federal law, where required coverages range from \$750,000 to \$5 million.¹⁴ Commercial vehicles that weigh 26,001 pounds or more, operate only within Florida, and do not transport hazardous materials are subject to Florida law, where required coverages range from \$50,000 to \$300,000.¹⁵

Voluntary coverages include collision (repairs the motor vehicle), comprehensive (losses from events other than collision, like fire or theft or wind or vandalism), uninsured motorist (losses that exceed no-fault coverage when an at-fault driver has no liability insurance or inadequate liability insurance), medical (for losses that exceed no-fault coverage), rental reimbursement, and accidental death or dismemberment.

When the owner or operator of a motor vehicle purchases liability insurance to satisfy the financial responsibility law, the policy must be issued by an insurance company authorized to do business in Florida.¹⁶

When an owner or operator self-insures a vehicle or fleet of vehicles, the owner or operator must provide audited financial statements to HSMV showing an unencumbered net worth that satisfies the Financial Responsibility Law.¹⁷

Risk Retention Groups

Federal law treats risk retention groups – which may sell insurance only to eligible members – differently than traditional insurance companies.

Authorized insurers must be licensed in every state in which they operate and the domicile state serves as the primary regulator. Risk retention groups need to be licensed as a liability insurer in only one state; further, those that were chartered prior to 1985 may operate under the laws of Bermuda or the Cayman Islands.¹⁸

State regulators may require risk retention groups to comply with state laws relating to claim settlement and false or fraudulent acts, pay premium taxes, register with the designated state agent for service of process, and submit to financial exams if such exam has not been completed by the state in which the risk retention group is chartered.¹⁹

States may not require a risk retention group to participate in any insolvency guaranty association.²⁰ However, states may require notice that insurance provided by a risk retention group is not protected by an insolvency guaranty association.²¹ Unlike authorized insurers, risk retention groups do not submit rate and form filings with a state regulator. Instead, risk retention groups apportion risk among their members; thus, rates are based on an actuarial analysis of the membership and policies can be tailored to suit the needs of the membership.²²

Members of a risk retention group must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations.²³

¹³ Ss. 322.032, 324.021(8), and 324.151, F.S.

¹⁴ 49 CFR § 387.9 (2022).

¹⁵ Ss. 207.002(1), 320.01(25), and 627.7415, F.S.

¹⁶ S. 324.021(8), F.S.

¹⁷ S. 324.171, F.S.

¹⁸ 15 U.S.C. § 3901(a)(4) and s. 627.942(9), F.S.

¹⁹ 15 U.S.C. § 3902(a)(1).

²⁰ 15 U.S.C. § 3902(a)(2).

²¹ 15 U.S.C. § 3902(a)(1).

²² National Association of Insurance Commissioners, *Risk Retention Groups*, [Risk Retention Groups \(naic.org\)](http://naic.org) (last visited Feb. 10, 2023).

²³ 15 U.S.C. §3901(a)(4)(F) and s. 627.942(9), F.S.

Risk retention groups may only provide liability insurance; the law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade, product, professional service, premise, operation, or activity of a state or local government.²⁴ Liability insurance does not include an employer's liability to its employees; thus, risk retention groups may not issue workers' compensation insurance policies to their members.²⁵

Risk retention groups may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to OIR and designate the Chief Financial Officer as agent for service of process.²⁶ According to OIR, 140 risk retention groups are licensed in a state other than Florida and registered to do business in Florida.²⁷

Risk retention groups licensed in Florida pay the same premium taxes as Florida-licensed insurers.²⁸ Risk retention groups registered to operate in Florida but licensed in another state pay the same premium taxes as surplus lines insurers that are allowed to sell lines of insurance that consumers cannot obtain from Florida-licensed insurers.²⁹ All risk retention groups operating in Florida must use agents who are licensed and appointed in Florida.³⁰

American Contractors Insurance Group

American Contractors Insurance Group Ltd. of Bermuda (ACIG) is a risk retention group that is owned by 41 construction companies and affiliated with American Contractors Insurance Company Risk Retention Group (ACIG RRG) of Texas which writes general liability and auto coverages for its members and is registered to do business in Florida. According to company representatives, ACIG provides auto liability insurance for 17 of its 41 member companies, including 7 member companies that have active operations in Florida.

ACIG is also affiliated with ACIG Insurance Company of Illinois, which writes workers' compensation coverages; ACIG Insurance Agency, Inc. of Texas, which coordinates customer service; and American Contractors Risk Purchasing Group, Inc., of Texas, which acts as a purchasing group for professional, pollution, and cyber liability coverages.³¹

The International Risk Management Institute describes "fronting" as the use of a licensed, admitted insurer to issue an insurance policy on behalf of a self-insured organization or captive insurer without transferring any risk. The risk of loss under the policy remains with the self-insured entity or captive insurer, but the authorized insurer (and, in the event of insolvency, the guaranty association the insurer belongs to) assumes a credit risk because it would be required to honor the policy if the insured fails to do so. This provides proof of coverage that is needed to satisfy financial responsibility laws.

The Florida Insurance Code³² describes a "fronting company" as "an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer which does not meet the requirements" to be an accredited or trusted reinsurer in Florida.³³

²⁴ 15 U.S.C. 3901(a)(2)(A) and s. 627.942(9)(g), F.S.

²⁵ 15 U.S.C. 3901(a)(2)(B) and s. 627.942(4), F.S.

²⁶ Ss. 627.943 and 627.944, F.S.

²⁷ Florida Office of Insurance Regulation, *Active Company Search*, <https://companysearch.myfloridacfo.gov/> (last visited Feb. 10, 2023).

²⁸ S. 627.943(4), F.S. Pursuant to s. 624.509, F.S., premium taxes (typically 1.75 percent of the premium) are collected by the licensed insurer and paid to the Department of Revenue on or before March 1 of each year.

²⁹ S. 627.944 (3), F.S. Pursuant to s. 626.932, F.S., premium taxes (4.94 percent of the premium) are collected by the licensed insurance agent and paid to the Department of Financial Services on a quarterly basis; premiums are also reported to the Florida Surplus Lines Service Office (FSLSO) which oversees the reporting requirements of eligible surplus lines insurers. The FSLSO website is <https://www.fslso.com/>.

³⁰ Ss. 627.943(5) and 627.944(12), F.S.

³¹ American Contractors Insurance Group, *Organization Chart – Construction Industry Shareholders*, https://www.acig.com/assets/docs/ACIG_Organization_Chart.pdf (last visited Feb. 10, 2023).

³² Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."

³³ S. 624.404(4)(b), F.S.

Further, s. 624.404(4)(a), F.S., states: “No authorized insurer shall act as a fronting company for any unauthorized insurer which is not an approved reinsurer.”

Florida law explicitly prohibits:

- An authorized insurer or licensed motor vehicle service agreement company from acting as a fronting company for any unauthorized insurer or unlicensed motor vehicle service agreement company.³⁴
- An authorized insurer or licensed home warranty association from acting as a fronting company for any unauthorized insurer or unlicensed home warranty association.³⁵
- An authorized insurer or licensed service warranty association from acting as a fronting company for any unauthorized insurer or unlicensed service warranty association.³⁶

The Insurance Code does not contemplate the situation presented by ACIG RRG, where an authorized insurer acts as a fronting company for a risk retention group.

Representatives of ACIG stated that ACIG RRG must use a fronting policy to write auto liability insurance for Florida members, so they can provide evidence of auto liability coverage. According to documentation provided by company representatives, ACIG retains the entirety of its \$5 million auto liability limit by reinsuring the fronting insurer at 100 percent.

Each of the 7 ACIG members with operations in Florida pays a fronting fee of \$25,000 annually. This creates a \$175,000 annual expense that would be avoided if ACIG RRG were permitted to directly issue auto liability policies to its Florida members. Collectively, the 7 companies insure about 975 vehicles and pay annual auto liability premiums of \$1,954,944.

ACIG has an “A” rating from A.M. Best, in category VIII, which applies to companies with a policyholder surplus of \$100 million-\$250 million.

Surplus Lines Insurers

Surplus lines insurance is coverage for specific risks that the standard or admitted market is either unable or unwilling to cover.³⁷ While the admitted market is where most consumers find coverage, the surplus lines market is a supplement for those individuals and businesses that cannot find coverage otherwise.³⁸ Florida law defines “eligible surplus lines insurer” as an unauthorized insurer which has been made eligible by the OIR to issue insurance coverage under the Surplus Lines Law.³⁹

Effect of the Bill

The bill permits the owner or operator of a motor vehicle to provide proof of financial responsibility by obtaining an insurance policy from a risk retention group that: 1) has an “A” or higher rating for financial

³⁴ S. 634.241, F.S.

³⁵ S. 634.326, F.S.

³⁶ S. 634.429, F.S.

³⁷ Florida Surplus Lines Service Office, *Surplus Lines Insurance*, <https://www.fslso.com/about/surplus-lines-insurance#:~:text=Surplus%20lines%20insurance%20is%20coverage,that%20cannot%20find%20coverage%20otherwise> (last visited Apr. 10, 2023).

³⁸ *Id.*

³⁹ S. 626.914(2), F.S.

strength, and “VIII” or higher for financial size by the A.M. Best Company, and 2) only provides commercial coverage to its members and shareholders.

The bill would permit ACIG RRG to directly provide commercial auto insurance to its Florida members, annually saving each of the 7 Florida members \$25,000 each. Additionally, according to OIR, 18 of the risk retention groups active in Florida meet the rating qualifications under the bill.⁴⁰

The bill also authorizes an eligible surplus lines insurer that is rated “A” or higher by A.M. Best Company to provide required financial responsibility coverage for commercial motor vehicles.

B. SECTION DIRECTORY:

Section 1. Amends s. 324.021, F.S.

Section 2. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

If adopted, HSMV will have to engage in structural testing to confirm successful file transfers with any risk retention group that directly insures its members in Florida. This is needed to ensure that HSMV receives timely insurance information about policies that are issued or cancelled. This administrative cost would be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive impact on some businesses by allowing members of risk retention groups to achieve savings by obtaining required financial responsibility coverage directly from their risk retention group, in certain circumstances. It will have a negative impact on those insurers that have acted as fronting companies for the placement of coverage by risk retention groups.

D. FISCAL COMMENTS:

None.

⁴⁰ Florida Office of Insurance Regulation, Agency Analysis of 2023 Senate Bill 516 (HB 57’s Senate counterpart), p. 2 (Mar. 12, 2023).

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:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 10, 2023, the Commerce Committee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment authorizes an eligible surplus lines insurer that meets applicable financial strength requirements to provide financial responsibility coverage for commercial motor vehicles.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.