

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1184

INTRODUCER: Banking and Insurance Committee and Senator DiCeglie

SUBJECT: Residual Market Insurers

DATE: March 19, 2025

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Thomas | Knudson | BI | Fav/CS |
| 2. | | | JU | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1184 deletes requirements in current law regarding the eligibility of insurance coverage to be exported to (written by) a surplus lines insurer. The deleted requirements include that:

- Surplus lines agents must verify that a diligent effort has been made by requiring a properly documented statement of diligent effort from the retail or producing agent and by seeking coverage from and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections;
- The full amount of the surplus lines insurance policy must not be procurable from an insurer authorized to transact and are actually writing that kind and class of insurance;
- The amount of insurance exported to a surplus lines policy must be only the excess over the amount procurable from authorized insurers; and
- Each surplus lines agent file with the Florida Surplus Lines Service Office an affidavit stating all the surplus lines insurance transacted by him or her during each calendar quarter has been submitted to the Office as required, including efforts made to place coverages with authorized insurers and the results thereof.

The bill further:

- Adds additional language to the required disclosure an agent must give to an insured when exporting coverage to a surplus lines insurer. The added language states "[a]dditionally, surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency."

- Provides requirements regarding the nonjoinder of insurers in suits arising under a surplus lines property insurance policy.
- Provides that a policyholder may not assign, in whole or in part, any post-loss insurance benefit under any surplus lines residential property insurance policy or under any surplus lines commercial property insurance policy;
- Provides that in order to meet the existing requirement that the Citizens Property Insurance Corporation (Citizens) only appoint agents who also hold an appointment by at least three insurers who are authorized to write and are actually writing or renewing certain types of property coverage, an agent may satisfy the requirement for any one or more of the three direct appointments by providing to Citizens a signed attestation confirming that he or she has access through a broker to an authorized insurer or eligible surplus lines insurer authorized to write and actually writing such property coverage; however, such signed attestations do not satisfy the requirements necessary to write personal lines residential property coverage for Citizens.
- Repeals rulemaking authority for the Financial Services Commission to declare eligible for export generally to surplus lines any class or classes of insurance coverage or risk for which it finds that there is no reasonable or adequate market among authorized insurers; and
- Consolidates statutory provisions related to surplus lines insurance into part VIII of ch. 626, F.S.

The bill is not expected to have a fiscal impact on state or local government.

The bill takes effect July 1, 2025.

II. Present Situation:

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.¹ As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.² The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.³ As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.⁴ The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.⁵

¹ Section 20.121(3)(a), F.S. The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the Financial Services Commission appoints the commissioner of the Office of Insurance Regulation.

² Section 624.418, F.S.

³ Section 624.316(1)(a), F.S.

⁴ Section 624.318(2), F.S.

⁵ Section 624.3161, F.S.

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 OIR pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,⁶ 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.⁷ 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.⁸

Surplus Lines Insurance

Surplus lines insurance is the market of last resort for difficult to place commercial and personal lines risks in Florida.⁹ 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. Surplus lines insurance is coverage provided by a company that is not licensed in Florida but is allowed to transact insurance in the state as an “eligible” insurer¹⁰ 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.¹¹

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.¹² 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.¹³ Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.¹⁴

The Florida Surplus Lines Service Office (FSLSO) is governed by a nine-person board of governors consisting of eight members appointed by the DFS with the insurance consumer advocate being the ninth member.¹⁵ The FSLSO is required to perform its functions under a plan

⁶ An “authorized” or “admitted” insurer is one duly authorized by a COA to transact insurance in this state.

⁷ The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

⁸ 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.

⁹ 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.).

¹⁰ 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 Office of Insurance Regulation to issue insurance coverage under the surplus lines law.

¹¹ See s. 626.914(4), 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.

¹² Section 626.916(1)(b), F.S.

¹³ Section 626.916(1)(c), F.S.

¹⁴ Section 626.913(4), F.S.

¹⁵ Section 626.921(4), F.S.

of operation¹⁶ that is subject to the approval of the OIR.¹⁷ The FLSO is required to conduct the following activities:

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the FLSO and perform reports as required by the Financial Services Commission;
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit to the DFS the surplus lines tax as provided for in s. 626.932, F.S.;
- Reconcile the policies provided by non-admitted insurers with the policies reported to the service office by agents;
- Collect monthly from each surplus lines agent a service fee of up to .03 percent; and
- Other activities as specified by statute.¹⁸

Diligent Effort

“To export” a policy means an insurance agent,¹⁹ with the consent of the insurance applicant, placing a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.²⁰ Unless an exception applies, in order to place business with a surplus lines insurer, the 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.²¹ However, if the cost to replace a residential dwelling is \$700,000 or more, then diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market currently writing that type of coverage.²²

Export requirements further specify that:

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- The policyholder must be advised in writing that coverage may be available and less expensive in the admitted market and 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.²³

¹⁶ Section 626.921(3), F.S.

¹⁷ Section 626.921(5), F.S.

¹⁸ Section 626.921(3), F.S.

¹⁹ Typically, the applicant’s usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent.

²⁰ Section 626.914(3), F.S.

²¹ Sections 626.914(4) and 626.916(1)(a), F.S.

²² Section 626.914(4), F.S.

²³ Section 626.916(1), F.S.

Only four states do not require that an agent make a diligent effort before exporting a policy to a surplus lines insurer.²⁴ Nineteen states require the agent obtain at least three declinations from authorized insurers before exporting a policy to a surplus lines insurer.²⁵

Assignments of Benefits

An assignment is the voluntary transfer of the rights of one party under a contract to another party; the transfer by a party to another party of some valuable interest.²⁶ In 2022,²⁷ the Legislature prohibited the assignment, in whole or in part, of any post-loss insurance benefit under any residential property insurance policy or under any commercial property insurance policy issued on or after January 1, 2023.²⁸ As written, the prohibition does not specifically apply to surplus lines property insurance policies.

Nonjoinder of Insurers

Section 627.4136, F.S., establishes provisions regarding the joinder and nonjoinder of an insurer in certain litigation. As written, these provisions do not specifically apply to surplus lines insurers. These provisions are:

- Before a cause of action accrues against a liability insurer by a person not an insured under the terms of the liability insurance policy, such person must first obtain a settlement or verdict against a person who is an insured under the policy for a cause of action that is covered by such policy.
- If an insurer pays any taxable costs or attorney's fees that would be recoverable by the insured but for the fact that such costs or fees were paid by the insurer, that insurer is considered a party for the purpose of recovering such fees or costs.
- A person who is not an insured under the terms of a liability insurance policy does not have any interest in such policy, either as a third-party beneficiary or otherwise, prior to first obtaining a settlement or verdict against a person who is an insured under the terms of such policy for a cause of action which is covered by such policy.
- An insurer has the substantive right to insert a provision in a liability insurance policy that precludes persons who are not designated as insureds in such policies from joining a liability insurer as a party defendant with its insured prior to the rendition of a verdict.
- At the time a judgment is entered or a settlement is reached during the pendency of litigation, a liability insurer may be joined as a party defendant for the purposes of entering final judgment or enforcing the settlement by the motion of any party, unless the insurer denied coverage under the provisions of s. 627.426(2), F.S., or defended under a reservation of rights pursuant to s. 627.426(2), F.S. A copy of the motion to join the insurer must be served on the insurer by certified mail. If a judgment is reversed or remanded on appeal, the insurer's presence may not be disclosed to the jury in a subsequent trial.

²⁴ These states are Louisiana, Mississippi, Virginia, and Wisconsin. See Wholesale & Specialty Insurance Association Diligent Effort Compliance Chart, <https://www.wsia.org/docs/Diligent%20effort%20chart%202-3-17.pdf> (last visited March 13, 2025).

²⁵ *Id.* Ohio requires five declinations and New Mexico requires four declinations. Idaho and South Carolina require only one declination.

²⁶ Black's Law Dictionary, 2nd Ed., <https://thelawdictionary.org/assignment/> (last visited March 13, 2025).

²⁷ Section 21, ch. 2022-271, L.O.F.

²⁸ Section 627.7152(13), F.S.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.²⁹ Citizens is not a private insurance company.³⁰ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).³¹

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.³² The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.³³ The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.³⁴ Citizens is subject to regulation by the Office of Insurance Regulation (OIR).

Citizens may only appoint as its licensed agents those agents who also hold an appointment by at least three insurers who are authorized to write and are actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.³⁵

III. Effect of Proposed Changes:

Section 1 amends s. 626.913, F.S., to provide that the provisions of ch. 627, F.S. (Insurance Rates and Contracts), do not apply to surplus lines insurance.

Section 2 amends s. 626.914, F.S., to remove the definition of "diligent effort."

Section 3 amends s. 626.916, F.S., to delete current law requiring that:

- The full amount of surplus lines insurance required must not be procurable from among the insurers authorized to transact and actually writing that kind and class of insurance;
- The amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers; and
- Surplus lines agents must verify that a diligent effort has been made by requiring a properly documented statement of diligent effort from the retail or producing agent.

The bill maintains the requirement that the policyholder acknowledge the following disclosure, but adds the additional underlined statement:

²⁹ The term "admitted market" means insurance companies licensed to transact insurance in Florida.

³⁰ Section 627.351(6)(a)1., F.S.

³¹ Section 2, ch. 2002-240, Laws of Fla.

³² Section 627.351(6)(a)2., F.S.

³³ Section 627.351(6)(c)4.a., F.S.

³⁴ Section 627.351(6)(c)4., F.S.

³⁵ Section 627.351(6)(c)13., F.S.

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. Additionally, surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency.

The bill provides that if the acknowledgment of the disclosure is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available. The bill deletes rulemaking authority for the Financial Services Commission to declare eligible for export generally any class or classes of insurance coverage or risk for which it finds that there is no reasonable or adequate market among authorized insurers.

Sections 6, 8, 10, and 12 create ss. 626.9261, 626.9262, 626.9263, and 626.9264, F.S., to duplicate in the surplus lines insurance law provisions that currently apply to surplus lines insurance but currently are in ch. 627, F.S. The provisions duplicated in the surplus lines law are those relating to:

- Insurers' issuance of a certificate of security after issuing the applicant a supplemental insurance policy that pays 100 percent of the deductible portion of insured construction or reconstruction after a hurricane loss [created in s. 626.9261, F.S.; currently in s. 627.701(6)(d), F.S.];
- Insurers' duty to acknowledge communications regarding residential property insurance claims and investigations [created in s. 626.9262, F.S.; currently in s. 627.70131, F.S.];
- Notice of a property insurance claim [created in s. 626.9263, F.S.; currently in s. 627.70132, F.S.]; and
- Suits arising under a property insurance policy [created in s. 626.9264, F.S.; currently in s. 627.70152, F.S.].

Sections 4, 5, 7, 9, and 11 amend ss. 627.4085, 627.701, 627.70131, 627.70132, and 627.70152, F.S., to remove language specifying the applicability and nonapplicability to surplus lines insurance of provisions relating to applications for insurance policies and annuity contracts; liability of insureds, coinsurance, and deductibles; insurers' duty to acknowledge communications regarding claims and investigations; notice of property insurance claim; suits arising under a property insurance policy; and risk retention and purchasing group agents, respectively.

Section 13 creates s. 626.9265, F.S., to provide that a surplus lines policyholder may not assign, in whole or in part, any post-loss insurance benefit under any residential property insurance policy or under any commercial property insurance policy.

Section 14 creates s. 626.9266, F.S., to provide requirements regarding the nonjoinder of insurers in suits arising under a surplus lines liability insurance policy. The bill applies to surplus lines liability insurance, the provisions of s. 627.4136, F.S., that apply to authorized liability insurers.

Section 15 repeals s. 627.752(1)(b), F.S., which currently requires licensure and appointment as a surplus lines agent in order to, on behalf of a purchasing group or risk retention group to any resident of Florida, place business through Florida eligible surplus lines carriers.

Section 16 amends s. 626.931, F.S., to remove the requirement that each surplus lines agent file quarterly with the Florida Surplus Lines Service Office an affidavit stating all the surplus lines insurance transacted by him or her during each calendar quarter has been submitted to the Office as required, including efforts made to place coverages with authorized insurers and the results thereof.

Section 17 amends s. 626.932, F.S., to remove reference to the quarterly affidavit filed by each surplus lines agent with the Florida Surplus Lines Service Office each quarter.

Section 18 amends s. 627.351, F.S., related to the existing requirement that the Citizens Property Insurance Corporation (Citizens) only appoint agents who also hold an appointment by at least three insurers who are authorized to write and are actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state. The bill provides that agents writing or renewing commercial residential property coverage or commercial nonresidential property coverage may satisfy the requirement for any one or more of the three direct appointments by providing to Citizens a signed attestation confirming that he or she has access through a broker to an authorized insurer or eligible surplus lines insurer authorized to write and actually writing or renewing commercial residential property coverage or commercial nonresidential property coverage. However, such signed attestations do not satisfy the requirements necessary to write personal lines residential property coverage for Citizens.

Sections 19, 20, and 21 amend ss. 626.918, 626.9325, and 926.9541, F.S., to conform cross-references necessitated due to changes made by the bill.

Section 22 amends s. 626.935, F.S., to remove reference to the report and affidavit filed by each surplus lines agent with the Florida Surplus Lines Service Office each quarter.

Section 23 amends s. 627.715, F.S., to remove reference to an exemption to the diligent effort requirement on surplus lines agents.

Section 24 provides that the bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurance agents exporting policies to surplus lines insurers will not have to meet the diligent effort requirements, including the requirement that each surplus lines agent file quarterly with the Florida Surplus Lines Service Office an affidavit stating all the surplus lines insurance transacted by him or her during each calendar quarter has been submitted to the Office as required, including efforts made to place coverages with authorized insurers and the results thereof.

Surplus lines insurers, and those doing business with such insurers, will now have a single source of statutory law when researching relevant statutory provisions.

C. Government Sector Impact:

The bill is not expected to have a fiscal impact on state or local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 13 of the bill creates s. 626.9265, F.S., to provide that a surplus lines policyholder may not assign, in whole or in part, any post-loss insurance benefit under any residential property insurance policy or under any commercial property insurance policy.

The current law relating to authorized insurers has similar language prohibiting a policyholder from assigning, in whole or in part, any post-loss insurance benefit under any residential or commercial property insurance policy, but includes an additional provision that provides that the prohibition on such assignment does not apply to:

- An assignment, transfer, or conveyance granted to a subsequent purchaser of the property with an insurable interest in the property following a loss;
- A power of attorney under ch. 709, F.S., that grants to a management company, family member, guardian, or similarly situated person of an insured the authority to act on behalf of an insured as it relates to a property insurance claim; or
- Liability coverage under a property insurance policy.

Without this additional language included in Section 13 of the bill, the types of assignments allowed under current law for residential property insurance policyholders of authorized insurers will not be allowed for such policyholders of surplus lines insurers.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.913, 626.914, 626.916, 627.4085, 627.701, 627.70131, 627.70132, 627.70152, 627.952, 626.931, 626.932, 627.351, 626.918, 626.9325, 626.9541, 626.935, and 627.715.

This bill creates the following sections of the Florida Statutes: 626.9261, 626.9262, 626.9263, 626.9264, 626.9265, and 626.9266.

IX. Additional Information:

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

CS by Banking and Insurance Committee on March 17, 2025:

The committee substitute differs from the filed bill as follows:

- Removes provisions that:
 - Repealed the requirement that the premium rate at which the surplus lines coverage is exported may not be lower than that rate applicable, if any, in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk;
 - Repealed the requirement that the surplus lines policy or contract form under which the insurance is exported must not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use by the majority of authorized insurers actually writing similar coverages on similar risks.
- Adds additional language to the required disclosure an agent must give to an insured when exporting coverage to a surplus lines insurer. The added language states “[a]dditionally, surplus lines insurers’ policy rates and forms are not approved by any Florida regulatory agency.”
- Adds language that was not included in the provisions of the bill that duplicate in the surplus lines insurance law provisions that currently apply to surplus lines insurance but are in ch. 627, F.S. Language was added to s. 626.9262(7)(b), F.S., expanding the definition of “claim”. Language was added to s. 626.9263(4), F.S., to include a separate time limit on claims for loss assessment coverage.

- Clarifies that the added provision authorizing agents to satisfy the requirement for any one or more of the three direct appointments required to be appointed as an agent for Citizens Property Insurance Corporation by attesting that he or she has access through a broker to an insurer authorized to write commercial property coverage does not satisfy the requirements necessary to write personal lines residential property coverage for Citizens.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
