

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/HB 643](#)

TITLE: Residual Market Insurers

SPONSOR(S): Snyder

COMPANION BILL: [CS/SB 1184](#) (DiCeglie)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Insurance & Banking](#)

17 Y, 1 N, As CS



[Civil Justice & Claims](#)

14 Y, 0 N



[Commerce](#)

SUMMARY

Effect of the Bill:

The bill amends provisions relating to surplus lines and Citizens Property Insurance Corporation dispute resolution procedures. Specifically, the bill:

- Removes the definition of “diligent effort” relating to surplus lines;
- Revises surplus lines eligibility by eliminating the requirement that agents seek coverage from authorized insurers before placing coverage in the surplus lines market, replacing it with a standard that allows export if the coverage is not generally available from authorized insurers; clarifies that the full amount of insurance may be exported without layering; and retains the required disclosure to insureds; and
- Authorizes Citizens Property Insurance Corporation to offer policyholders the option, at issuance or renewal, to resolve claim disputes through arbitration before the Division of Administrative Hearings, with specific notice and selection requirements.

Fiscal or Economic Impact:

None

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ANALYSIS

EFFECT OF THE BILL:

Surplus Lines

The bill removes the definition of “[diligent effort](#),” which previously required agents to seek and be rejected by three authorized insurers before being admitted to the surplus lines market. (Section [1](#)).

The bill revises eligibility standards for surplus lines insurance placements by removing the requirement that a producing agent conduct and document a diligent effort to procure coverage from authorized insurers. Instead, the bill provides that coverage may be exported to the surplus lines market if it is of a kind or class not generally available from authorized insurers transacting insurance in this state. The bill also clarifies that the full amount of insurance may be exported, even if partial coverage might otherwise be available from authorized insurers, thereby eliminating the expectation that the risk be layered before surplus lines placement is permitted. (Section [2](#)).

Citizens Arbitration Procedures

The bill authorizes Citizens Property Insurance Corporation (Citizens) to offer policyholders the option to resolve claim disputes through arbitration proceedings before the Division of Administrative Hearings (DOAH). While current law allows Citizens to use DOAH, the bill clarifies that this option can be offered directly to insureds in policy forms.

At issuance or renewal, Citizens may use forms that let insureds elect DOAH arbitration for disputes involving coverage, scope, or value of a claim. The insured must be given written notice of this option and indicate their

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choice by marking “ACCEPT” or “DECLINE” on a boldfaced 12-point disclosure immediately before the insured’s signing. The selection applies for the entire policy term. (Section [3](#)).

The bill provides an effective date of July 1, 2025. (Section [4](#)).

RELEVANT INFORMATION

SUBJECT OVERVIEW:

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

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

¹ S. [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 S. [624.418, F.S.](#)

³ S. [624.316\(1\)\(a\), F.S.](#)

⁴ S. [624.318\(2\), F.S.](#)

⁵ S. [624.3161, F.S.](#)

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 S. [626.916\(1\)\(b\), F.S.](#)

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

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the FSLSO 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 that an insurance agent,¹⁹ with the consent of the insurance applicant, places 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

¹³ S. 626.916(1)(c), F.S.

¹⁴ [S. 626.913\(4\), F.S.](#)

¹⁵ [S. 626.921\(4\), F.S.](#)

¹⁶ [S. 626.921\(3\), F.S.](#)

¹⁷ [S. 626.921\(5\), F.S.](#)

¹⁸ [S. 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 S. 626.914(3), F.S.

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

²² [S. 626.914\(4\), F.S.](#)

²³ [S. 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

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.²⁶ Citizens is not a private insurance company.²⁷ 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).²⁸

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.²⁹ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.³⁰ The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.³¹ 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.³²

The Division of Administrative Hearings (DOAH)

DOAH is a state agency that employs full-time Administrative Law Judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.³³ When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.³⁴ Requests for hearings are initially made to the appropriate state agency.³⁵ If the case does not involve disputed facts, the agency itself will conduct a proceeding and subsequently render a decision.³⁶ If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to DOAH for a hearing.³⁷

DOAH provides a hearing conducted by an independent and neutral Administrative Law Judge who thereafter enters a Recommendation or Final Order, which is provided to the state agency and the parties in the case. In the case of a Recommended Order, the agency reviews the Recommended Order and issues a Final Order which usually adopts the Judge's factual findings, but, under certain circumstances, the agency may reject or modify certain legal conclusions of the Judge or the recommended penalty, if any. If the Final Order is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.³⁸

Integration of DOAH in Citizens' Dispute Resolution Process

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 Apr. 3, 2025).

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

²⁶ The term "admitted market" means insurance companies licensed to transact insurance in Florida.

²⁷ S. 627.351(6)(a)1., F.S.

²⁸ S. 2, ch. 2002-240, Laws of Fla.

²⁹ S. 627.351(6)(a)2., F.S.

³⁰ S. 627.351(6)(c)4.a., F.S.

³¹ S. 627.351(6)(c)4., F.S.

³² S. 627.351(6)(c)13., F.S.

³³ Ch. 120, F.S.

³⁴ [S.120.68\(1\), F.S.](#)

³⁵ See Uniform Rule 28-106.201(2).

³⁶ [S.120.57\(2\), F.S.](#)

³⁷ [S.120.57\(1\), F.S.](#)

³⁸ [S.120.68\(2\)\(a\), F.S.](#)

Traditionally, disputes between Citizens and its policyholders that couldn't be resolved through informal negotiations or traditional [alternative dispute resolution](#) methods often resulted in civil suits filed in circuit court. In July 2022, Citizens' Board of Governors approved a policy endorsement allowing either the insurer or the insured to direct claims disputes to DOAH. This endorsement was subsequently approved by the OIR in August 2022 and became effective for new and renewing policies on February 1, 2023.³⁹

HB 799 (2023) codified Citizens' authority to include DOAH arbitration in its policy forms and to contract with DOAH to conduct claim-related dispute proceedings. Under current law, such proceedings are not governed by ch. 120, F.S., but are instead subject to ss. 57.105 and 768.79, F.S., allowing for attorney fee awards and settlement procedures similar to those in circuit court.⁴⁰

RECENT LEGISLATION:

| YEAR | BILL # | HOUSE SPONSOR(S) | SENATE SPONSOR | OTHER INFORMATION |
|-------------|---------------|-------------------------|-----------------------|--|
| 2023 | 799 | Griffitts and Barnaby | Martin | The bill was approved by the Governor on May 31, 2023. |

³⁹ See Insurance Journal, *Citizens Insurance to Begin Using DOAH for Dispute Resolution*, July 14, 2022, <https://www.insurancejournal.com/news/southeast/2022/07/14/675721.htm> (last visited Apr. 3, 2025); Insurance Journal, *Citizens Insurance Adds DOAH Arbitration Option to Policies*, Feb. 6, 2023, <https://www.insurancejournal.com/news/southeast/2023/02/06/706063.htm> last visited Apr. 3, 2025).

⁴⁰ Ch. 2023-172, § 5, Laws of Fla.; see also § 57.105, 768.79, Fla. Stat. (2023).

BILL HISTORY

| COMMITTEE REFERENCE | ACTION | DATE | STAFF DIRECTOR/ POLICY CHIEF | ANALYSIS PREPARED BY |
|--|------------------|-----------|------------------------------------|-------------------------|
| Insurance & Banking Subcommittee | 17 Y, 1 N, As CS | 3/27/2025 | Hamon | Herrera |
| <p>THE CHANGES ADOPTED BY THE COMMITTEE:</p> <ul style="list-style-type: none"> • Removed “diligent effort” and eliminated the requirement that agents seek coverage from authorized insurers before placing coverage in the surplus lines market, while retaining the required disclosure to insureds. • Added a change to the Citizens Property Insurance Corporation DOAH arbitration provision to require Citizens to offer policyholders the option, at issuance or renewal, to resolve claim disputes through arbitration before the Division of Administrative Hearings, with specific notice and selection requirements. • Removed other provisions related to surplus lines insurance, including codification of certain requirements in the Surplus Lines Law, post-loss benefit assignments, insurer nonjoinder, surplus lines agent licensing, and quarterly affidavit submissions. | | | | |
| Civil Justice & Claims Subcommittee Commerce Committee | 14 Y, 0 N | 4/3/2025 | Jones | Mawn |

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.
