

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 Fiscal Policy

BILL: CS/SB 846

INTRODUCER: Banking and Insurance Committee and Senator DiCeglie

SUBJECT: Risk Retention Groups

DATE: February 13, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	Favorable
3.	<u>Thomas</u>	<u>Yeatman</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 846 amends s. 324.021, F.S., to provide that motor vehicle liability insurance coverage issued by a risk retention group operating in accordance with 15 U.S.C. ss. 3901 et seq., which conducts business in this state pursuant to ss. 627.943 or 627.944, F.S., satisfies the financial responsibility requirements of Florida's state motor vehicle law.

Risk retention groups 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. 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.

The bill does not impact state revenues or expenditures.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Risk Retention Groups

Risk retention groups (RRGs) are liability insurance companies owned by its members. Membership is comprised of businesses with similar insurance needs that pool their risks and

form an insurance company, using a combination of state and federal laws under the auspices of the Federal Liability Risk Retention Act,¹ are treated as multi-state insurance companies and are subject to National Association of Insurance Commissioners accreditation standards.² Federal law treats risk retention groups (RRGs) – which may sell insurance only to eligible members – differently than traditional insurance companies. Members of a RRG must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations.³

Authorized insurers must be licensed in every state in which they operate and the domicile state serves as the primary regulator. RRGs 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.⁴ State regulators may require RRGs 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 RRG is chartered.⁵

States may not require a RRG to participate in any insolvency guaranty association.⁶ However, states may require notice insurance provided by a RRG is not protected by an insolvency guaranty association.⁷ Unlike authorized insurers, RRGs do not submit rate and form filings with a state regulator. Instead, RRGs 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.⁸

RRGs may only provide liability insurance. Federal and state 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.⁹ Liability insurance does not include an employer's liability to its employees; thus, RRGs may not issue workers' compensation insurance policies to their members.¹⁰

RRGs 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 the Office of Insurance Regulation (OIR) and designate the Chief Financial Officer (CFO) as

¹ National Association of Insurance Commissioners (NAIC), *Risk Retention Groups*, [Risk Retention Groups \(naic.org\)](https://naic.org) (last visited January 23, 2024). 15 U.S.C. Ch. 65: Liability Risk Retention. available at: <https://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter65&edition=prelim> (last visited Jan. 23, 2024).

² NAIC, *Risk Retention Groups*, [Risk Retention Groups \(naic.org\)](https://naic.org) (last visited January 23, 2024).

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

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

⁵ 15 U.S.C. § 3902(a)(1).

⁶ 15 U.S.C. § 3902(a)(2).

⁷ 15 U.S.C. § 3902(a)(1).

⁸ National Association of Insurance Commissioners, *Risk Retention Groups*, [Risk Retention Groups \(naic.org\)](https://naic.org) (last visited January 23, 2024).

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

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

agent for service of process.¹¹ According to the OIR, 146 RRGs are licensed in a state other than Florida and are registered to do business in Florida.¹²

RRGs licensed in Florida pay the same premium taxes as Florida-licensed insurers.¹³ RRGs 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.¹⁴ All RRGs operating in Florida must use agents who are licensed and appointed in Florida.¹⁵

Confusion exists as to whether “a non-domiciliary or foreign RRG registered in the State is indeed deemed an ‘insurer authorized to do business in the state’ consistent with” federal law.¹⁶ This confusion has been an issue especially for Florida trucking companies seeking to prove financial responsibility under Florida’s motor vehicle law. However, in a memorandum written in 2012 by the General Counsel of the Department of Highway Safety and Motor Vehicles (DHSMV), a RRG:

...can be accepted as an insurer writing commercial vehicle coverage for vehicles owned or operated by their members, so long as the policy does not extend to coverage for members who own a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle, as set forth in s. 324.031 Fla. Stats.¹⁷

Presently, there are 40 RRGs authorized to sell commercial automobile liability insurance to its members.¹⁸

Florida’s Motor Vehicle Financial Responsibility Law

Chapter 324, F.S., sets forth the financial responsibility laws for owners or operators of motor vehicles in Florida, whether they be used for personal or commercial purposes. Generally, a motor vehicle owner or operator is required to insure against losses from liability for bodily injury, death, and property damage by either purchasing auto insurance from an insurance carrier

¹¹ Sections 627.943 and 627.944, F.S.

¹² Florida Office of Insurance Regulation, *Active Company Search*, <https://companysearch.myfloridacfo.gov/> (last visited January 23, 2024).

¹³ Section 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.

¹⁴ Section 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 available at: <https://www.fslso.com/>.

¹⁵ Sections 627.943(1) and 627.944(12), F.S.

¹⁶ Email to Staff Director, Senate Committee on Banking and Insurance, James Knudson, from Joseph E. Deems, Executive Director, National Risk Retention Association, November 1, 2023 (on file with the Senate Committee on Banking and Insurance).

¹⁷ Memorandum to Julie Gentry, Chief of Motorist Compliance, DHSMV, from Stephen D. Hurm, General Counsel, DHSMV, May 25, 2012 (on file with the Senate Committee on Banking and Insurance).

¹⁸ Florida Office of Insurance Regulation, *Active Company Search*, <https://companysearch.myfloridacfo.gov/> (last visited January 23, 2024).

authorized by the OIR to do business in Florida;¹⁹ or obtaining a certificate of self-insurance from the DHSMV after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.²⁰

The OIR licenses insurance carriers and reviews policy contracts and premium rates of its licensees.²¹ An insurance carrier may not issue an auto insurance policy in Florida unless the policy includes coverages for both personal injury and property damage.²²

The DHSMV administers the Financial Responsibility Law²³ by requiring all licensed insurance companies to provide electronic notification of all policies issued or cancelled.²⁴ Vehicle owners must show proof of personal injury protection and property damage liability coverage to register a vehicle,²⁵ and must provide proof of bodily injury liability coverage if they are involved in an accident and charged with a moving violation.²⁶ A vehicle owner who fails to maintain continuous coverage may have his or her driver's license and registration suspended.²⁷

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.²⁸ If a driver has been convicted of driving under the influence of alcohol, the motorist must maintain liability coverage of \$100,000 for bodily injury to, or death of, one person in any one crash and in the amount of \$300,000 due to bodily injury to, or death of, two or more persons in any one crash and in the amount of \$50,000 because of property damage in any one crash per accident, for three years after the license is reinstated.²⁹

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.³⁰ 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.³¹

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 which have a gross vehicle weight of 10,001 pounds or more, and engage in interstate commerce or haul hazardous materials, are subject to federal law, where required

¹⁹ Section 324.021(8), F.S.

²⁰ Sections 324.161 and 324.171, F.S. See Florida Department of Highway Safety and Motor Vehicles, Self-Insurance, <https://www.flhsmv.gov/insurance/self-insurance/firm/> (last visited January 24, 2024).

²¹ Sections 624.404, 627.062, 627.410, and 627.4102, F.S.

²² Section 627.7275, F.S.

²³ Ch. 324, F.S.

²⁴ Sections 324.0221, 324.252, F.S., and Rules 15A-3.007, and 15A-3.012, F.A.C.

²⁵ Sections 324.022, 324.023, F.S., and Rule 15A-3.006, F.A.C.

²⁶ Section 324.021, F.S. See Florida Highway Safety and Motor Vehicles, *Florida Insurance Requirements*, <https://www.flhsmv.gov/insurance/> (last visited January 24, 2024).

²⁷ Section 324.0221, F.S.

²⁸ Sections 324.021(7), 324.022, and 627.736, F.S.

²⁹ Section 324.023, F.S.

³⁰ Section 324.021(9), F.S.

³¹ Sections 324.032, F.S.

coverages range from \$750,000 to five million dollars.³² 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 \$300,000.³³

When the owner or operator of a motor vehicle purchases liability insurance to satisfy Florida's Financial Responsibility Law, the policy must be issued by an insurance company authorized to do business in Florida.³⁴ When an owner or operator self-insures a vehicle or fleet of vehicles, the owner or operator must obtain a certificate of self-insurance from the DHSMV.³⁵

III. Effect of Proposed Changes:

The bill amends s. 324.021, F.S., to provide motor vehicle liability insurance coverage issued by a risk retention group operating in accordance with 15 U.S.C. ss. 3901 et seq., which conducts business in this state pursuant to ss. 627.943 or 627.944, F.S., satisfies the financial responsibility requirements of state motor vehicle law. The change should eliminate any existing confusion as to whether these RRGs are permitted to sell commercial motor vehicle liability coverage to its members.

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.

³² 49 CFR § 387.9.

³³ Sections 207.002(1), 320.01(25), and 627.7415, F.S.

³⁴ Section 324.021(8), F.S.

³⁵ Section 324.171, F.S.

B. Private Sector Impact:

The bill may end the confusion regarding the ability of RRGs to offer commercial motor vehicle liability insurance to its members. The bill may benefit members of RRGs who are able to buy their motor vehicle policies through the group at a lower rate.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 324.021 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on January 16, 2024:

The committee substitute removes the entire substance of the bill and amends s. 324.021, F.S., to provide that motor vehicle insurance coverage issued by risk retention groups operating under federal law, and conducting business in the state, satisfies the financial responsibility requirements of Florida motor vehicle law.

B. Amendments:

None.