

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: SB 1402

INTRODUCER: Senator Burgess

SUBJECT: Domestic Surplus Lines Insurance

DATE: January 25, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1402 allows a domestic insurer possessing surplus as to policyholders of at least \$15 million to be made eligible to transact surplus lines insurance as a domestic surplus lines insurer if approved by the Office of Insurance Regulation.

Eligible domestic surplus lines insurers may:

- Issue surplus lines insurance coverage in any jurisdiction, including this state;
- Issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue; and
- Issue coverage only if placed with the domestic surplus lines insurer by a surplus lines agent pursuant to the Surplus Lines Law.

Domestic surplus lines insurers are subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted, but are exempt from all requirements relating to insurance rating and rating plans, policy forms, premiums charged to insureds, policy cancellation, nonrenewal, and renewal, and other requirements in the same manner and to the same extent as surplus lines policies issued by an insurer domiciled in another state.

Policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in section 626.932, Florida Statutes. Such policies are exempt from other taxes levied upon domestic and foreign admitted insurers.

Policies issued by a domestic surplus lines insurer are not eligible to participate in the:

- Florida Insurance Guaranty Association;
- Florida Life and Health Insurance Guaranty Association; and

- Florida Workers' Compensation Guaranty Association.

The bill does not impact state funds or expenditures.

The bill has an effective date of July 1, 2022.

## II. Present Situation:

The general public policy of each state is to require insurers to obtain licensure with, and submit to the regulatory jurisdiction of, that particular state, though the insurer's state of domicile serves as the primary regulator for an insurer. In Florida, this public policy can be observed in s. 624.401, F.S., which requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR). The admitted market refers to insurers that have a certificate of authority to transact insurance in this state issued by the OIR.<sup>1</sup> Thus, such insurers are referred to as "authorized insurers."

Authorized insurers in Florida are subject to the provisions of the Florida Insurance Code<sup>2</sup> and the authority of the OIR and the Department of Financial Services (DFS). The Florida Insurance Code establishes various requirements for authorized admitted market insurers. Under the Florida Insurance Code, the OIR generally has authority over authorized insurers regarding insurer solvency and financial strength, insurance policy forms and rates, and the market conduct of insurers. The DFS licenses insurance agents and agencies, conducts the rehabilitation and liquidation of insurers, and provides consumer services.

### Surplus Lines Insurance

However, the states also recognize there are risks for which insurance in the admitted market cannot be procured. Thus, each state allows insurers that do not have a certificate of authority in that state to sell "surplus lines insurance" for such risks on a limited basis if certain requirements are met. Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.<sup>3</sup> In Florida, s. 624.402, F.S., specifies that a certificate of authority is not required of an insurer with respect to lawfully written surplus lines coverage transactions.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,<sup>4</sup> which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.<sup>5</sup> Rather, surplus lines insurers are "unauthorized insurers,"<sup>6</sup> but may transact surplus lines insurance if they are made "eligible" by the OIR. Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida

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<sup>1</sup> See s. 624.404, F.S.

<sup>2</sup> Section 624.404, F.S., provides that to qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with the Florida Insurance Code.

<sup>3</sup> The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S.

<sup>4</sup> Section 624.01, F.S., provides that the Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

<sup>5</sup> Section 624.09(1), F.S.

<sup>6</sup> Section 624.09(2), F.S.

Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.<sup>7</sup> Surplus lines insurers are, however, subject to the requirements of the Unfair Insurance Trade Practices Act.<sup>8</sup>

There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

### **Surplus Lines Law**

Florida's Surplus Lines Law is designed to provide within the state orderly access to insurers unauthorized in Florida, specifically for insurance coverage not procurable from authorized insurers. Section 626.915, F.S., provides four general requirements that must be met for insurance to be exported to a surplus lines insurer:

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

### ***Eligibility for Export to a Surplus Lines Insurer***

Insurance coverage is eligible to be exported to a surplus lines insurer only if:

- The insurance is not procurable from an authorized insurer after the producing agent has made a diligent effort to place the insurance with an authorized insurer.
  - The surplus lines agent must verify a diligent effort was made by requiring a properly documented statement of diligent effort from the retail or producing agent. 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. However, if a residential structure has a dwelling replacement cost of \$700,000 or more, coverage need only be sought with one such authorized insurer.<sup>9</sup>
- The premium rate for the surplus lines coverage may not be lower than the rate in actual and current use by a majority of authorized insurers for the same coverage on a similar risk.<sup>10</sup>
- The surplus lines coverage may not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverage on similar risks.<sup>11</sup>

<sup>7</sup> Section 626.913(4), F.S.

<sup>8</sup> Sections 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.

<sup>9</sup> Section 626.914(4), F.S.

<sup>10</sup> Section 626.916(1)(b), F.S.

<sup>11</sup> Section 626.916(1)(c), F.S., the statute contains an exception for a unique policy form designed for use with respect to a particular subject of insurance if certain requirements are met.

- The policy of surplus lines insurance may not provide a deductible that is generally unavailable from authorized insurers; this does not apply to extended coverage for fire insurance or windstorm insurance.<sup>12</sup>

The foregoing do not apply to the following lines of insurance:

- Wet marine and transportation or aviation risks, which are instead subject to s. 626.917, F.S.;
- Classes of insurance which are related to indemnity of deductibles for property insurance or are kinds of insurance and types of commercial lines risks that are subject to s. 627.062(3)(d)1., F.S.;<sup>13</sup> and
- Any class of insurance the Financial Services Commission by rule declares eligible after making a finding that there is not reasonable or adequate market among authorized insurers.<sup>14</sup>

### ***Requirements for Eligibility of Surplus Lines Insurers***

An unauthorized insurer may only be made an eligible surplus lines insurer if the following requirements are met:<sup>15</sup>

- The insurer must currently be an authorized insurer in the state or country of its domicile as to the kinds of insurance it would transact in Florida. Generally, the insurer must transact such insurance for three years in its state of domicile.<sup>16</sup> However, the 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;
- The OIR must receive a duly authenticated copy of its current annual financial statement;
- The insurer must have and maintain surplus as to policyholders of not less than \$15 million.<sup>17</sup> The \$15 million surplus requirement does not apply to:
  - Insurance exchanges created by the laws of a state if such exchange meets that state's capital and surplus requirements or maintains capital and surplus of at least \$50 million; 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;

<sup>12</sup> Section 626.916(1)(d), F.S.

<sup>13</sup> Section 626.915(3), F.S. The kinds of insurance and types of commercial lines subject to s. 627.062(3)(d)1., F.S., are excess or umbrella insurance; surety and fidelity insurance; boiler and machinery and leakage and fire extinguishing equipment; errors and omissions; directors and officers, employment practices, fiduciary liability, and management liability; intellectual property and patent infringement liability; advertising injury and Internet liability insurance; property risks rated under a highly protected risks rating plan; general liability; nonresidential property, except for collateral protection insurance; nonresidential multiperil; excess property; burglary and theft; travel insurance if issued as a master group policy with a situs in another state if certain requirements as to premiums are met; medical malpractice for certain facilities; medical malpractice for a health care practitioners that is not a Florida-licensed physician, dentist, chiropractor, podiatrist, pharmacist, or pharmacy technician; and other types of commercial insurance or commercial risks designated by the OIR if the office makes certain determinations.

<sup>14</sup> Section 626.915(2), F.S.

<sup>15</sup> Section 626.918, F.S.

<sup>16</sup> Or be a wholly owned subsidiary of such an insurer.

<sup>17</sup> An alien insurer (domiciled in a foreign country) must also have and maintain a trust fund in the United States under terms approved by the Office of Insurance Regulation (OIR), in an account of at least \$5.4 million.

- The insurer must be of good reputation as to providing service to its policyholders and the payment of losses and claims; and
- The management, officers, and directors of the insurer must meet the requirements of competence and trustworthiness required by s. 624.404(3), F.S.

The foregoing do not apply to an insurer writing wet marine and transportation risks that are not used solely for personal pleasure, family use, or used by the insurer for transportation. Instead the only requirements for eligibility is that the insurer furnishes information indicating the insurer is well able to meet its financial obligation and the coverage is placed by a licensed Florida surplus lines agent.<sup>18</sup>

Notwithstanding these requirements, the Surplus Lines Law specifies that the OIR does not have any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer. The OIR, when determining a surplus lines insurer eligibility, bases such eligibility only on the insurer appearing to be sound financially and have satisfactory claims practices, and that the OIR has no credible evidence to the contrary.<sup>19</sup>

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

Surplus lines insurance must be placed with an eligible surplus lines insurer by a licensed Florida surplus lines agent. Licensure as a surplus lines agent may be obtained by a Florida-licensed general lines agent if such agent has at least one year of experience working for a licensed surplus lines agent or successfully completes at least 60 class hours<sup>20</sup> in surplus and excess lines and passes a licensure exam. Such licensure is solely for the purpose of placing with surplus lines insurers property, marine, casualty, or surety coverages originated by general lines agents. Licensure as a nonresident surplus lines agent may be obtained by nonresidents licensed in their home state as a resident general lines agent and a surplus lines agent, if the home state has similar licensure requirements as Florida and provides reciprocity regarding residents of Florida obtaining licensure as a nonresident surplus lines agent.<sup>21</sup>

### ***Mandatory Disclosures***

Surplus lines agents must disclose in writing that surplus lines insurance carriers do not have the protection of the Florida Insurance Guaranty Act and that surplus lines policy rates and forms are not subject to any Florida regulatory agency.<sup>22</sup> Specifically, the first page of an insurance policy, certificate, cover note, or confirmation of insurance must state:

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA  
SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES  
CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA  
INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT

<sup>18</sup> Section 626.917, F.S.

<sup>19</sup> Section 626.918(4), F.S.

<sup>20</sup> Prelicensure coursework is not required for an applicant who is a member or veteran.

<sup>21</sup> Section 626.9272, F.S.

<sup>22</sup> Section 626.924, F.S.

OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT  
UNLICENSED INSURER.

The first page of surplus lines policies must have the following disclosure:

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE  
NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

When a policy is exported to a surplus lines insurer, the insured must sign or provide documented acknowledgement 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.

*The Florida Surplus Lines Service Office*

Section 626.921, F.S., creates 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.<sup>23</sup> The FSLSO’s responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.<sup>24</sup> The FSLSO is operated under the supervision of a board of governors.<sup>25</sup> All Florida-licensed surplus lines agents are deemed members of the FSLSO and must register with the FSLSO.<sup>26</sup> The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors, and claim adjustment companies.

The Florida Surplus Lines Service Office is required to conduct the following activities:<sup>27</sup>

- Receive, record, and review all surplus lines insurance policies;
- Maintain records of the policies reported to the service office 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 .06 percent;<sup>28</sup> and

<sup>23</sup> Section 626.921(1), F.S.

<sup>24</sup> *See Id.*

<sup>25</sup> Section 626.921(4), F.S.

<sup>26</sup> Section 626.921(2), F.S.

<sup>27</sup> *See generally* s. 626.921(3), F.S.

<sup>28</sup> *See* <https://www.fslso.com/compliance/agent-procedures-manual>, (last visited Jan. 13, 2022). Section 626.921(3)(f), F.S.

The Florida Surplus Lines Service Office is authorized to collect up to .3 percent of total gross premium. The fee is used to pay for the cost of operating the Service Office and is to be paid by the insurer.

- Other activities as specified by statute.

### ***Surplus Lines Tax***

Premiums charged for surplus lines coverages are subject to a premium receipts tax of 4.94 percent of all gross premiums charged for the insurance.<sup>29</sup> The tax is collected from insureds by surplus lines agents who must remit the tax to the FLSO. The FLSO then remits the tax to the DFS. The DFS deposits 8.8 percent of the taxes collected into the Insurance Regulatory Trust Fund and the other 91.2 percent into the General Revenue Fund.

### **Domestic Surplus Lines Insurance**

Historically, surplus lines insurers generally may not write surplus lines insurance in their state of domicile. In recent years, however, some states have enacted laws authorizing the creation of domestic surplus lines insurers, which are surplus lines insurers that offer surplus lines policies in their state of domicile. Prior to the creation of the domestic surplus lines laws, 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 in the original insurer's state of domicile. Over 20 states have authorized domestic surplus lines insurance.<sup>30</sup> A review of the state laws authorizing domestic surplus lines insurers show that laws authorizing the formation of domestic surplus lines insurance often have certain requirements in common:

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

Certain commonalities are also present in laws authorizing domestic surplus lines insurers regarding the application of state and federal laws on insurance:

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

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<sup>29</sup> Section 626.932, F.S.

<sup>30</sup> Arizona (*see* s. 20-407.01, Az. S.), Arkansas (*see* s. 23-65-350, Ar. C.), Connecticut (*see* s. 38a-271a, Ct. S.), Delaware (*see* 18 Del. C. s. 1932), Georgia (*see* 33-5-20.2, Ga. C.), Illinois (*see* 215 Il. C.S 5/445a), Iowa (*see* s. 5151.4A, Ia. C.A.), Louisiana (*see* s. 22:436.1, La. R.S.), Missouri (*see* s. 384.018, V.A.M.S), Nebraska (*see* s. 44-5506.01, Neb. R.S.), Nevada (*see* s. 685A.082, Nev. R.S.), New Hampshire (*see* s. 405:24, N.H. Rev. Stat.), New Jersey (*see* s. 17:22-6.69b, N.J. Rev. St.), North Carolina (*see* s. 58-21-21, N.C.G.S.A.), North Dakota (*see* s. 26.1-44-03.2, NDCC), Ohio (*see* s. 3905.332, Oh. Rev. C.), Oklahoma (*see* 36 Ok. S.A. s. 1101.1), Texas (*see* s. 981.071-981.074, Tex. Ins. Code), Vermont (*see* 8 V.S.A. s. 5023a), Virginia (*see* s. 38.2-4811.1, V.C.A), and Wisconsin (*see* s. 618.41(13), W.S.A.).

The number of domestic surplus lines insurers has increased since 2011 from 15 to over 70, with the majority domiciled in Illinois and Delaware.<sup>31</sup>

### **Federal Nonadmitted and Reinsurance Reform Act of 2010**

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA or act) states that the placement of surplus lines insurance and surplus lines brokers are subject only to the statutory and regulatory requirements of the insured's home state.<sup>32</sup> The act provides that only the home state of an insured may require any premium tax payment for surplus lines insurance.<sup>33</sup> States are authorized to establish procedures to allocate tax revenues properly to states for multi-state risks and an insured's home state may require surplus lines brokers and insureds to annually file tax allocation reports detailing the portion of the policy premium attributable to exposure located in each state. States must participate in the national insurance producer database of the National Association of Insurance Commissioners (NAIC) or an equivalent uniform national database for the licensure of surplus lines brokers; a state that does not do so is prohibited from collecting fees related to licensing surplus lines brokers.<sup>34</sup> The eligibility requirements for surplus lines insurer must conform to the Non-Admitted Insurance Model Act of the NAIC unless the state adopts requirements that comply with the NRRA's requirements regarding allocation of nonadmitted premium taxes that include alternative nationwide uniform eligibility requirements.<sup>35</sup> The NRRA also prohibits state laws requiring a due diligence search to determine if the insurance can be obtained from an admitted insurer before placing surplus lines insurance for an exempt commercial purchaser<sup>36</sup> if certain disclosures are made.<sup>37</sup>

### **Florida Insurance Guaranty Association**

The Florida Insurance Guaranty Association (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."<sup>38</sup> It issues guaranty fund payments and provides related services for all lines of property and casualty insurance<sup>39</sup> with certain exceptions.<sup>40</sup> Florida law provides that the FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are less than

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<sup>31</sup> John N. Emmanuel and Zachary N. Lerner, *Locke Lord Excess and Surplus Lines Laws Manual*, pg. 1.6 (2021), available at <https://surplusmanual.lockelord.com/preface/> (last visited Jan. 13, 2022).

<sup>32</sup> 15 U.S.C. s. 8202.

<sup>33</sup> 15 U.S.C. s. 8201(a).

<sup>34</sup> 15 U.S.C. s. 8203.

<sup>35</sup> 15 U.S.C. s. 8204.

<sup>36</sup> Defined in 15 U.S.C. s. 8206(5), 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 the net worth, annual revenues, number of employees, not-for-profit annual budgeted expenditures, or status as a municipality.

<sup>37</sup> 15 U.S.C. s. 8205.

<sup>38</sup> Section 631.51, F.S.

<sup>39</sup> Section 631.57(3)(a), F.S. As established in s. 632.52, F.S., the Florida Insurance Guaranty Association (FIGA) covers "all kinds of direct insurance" with certain exceptions, such as life, annuity, health, disability, workers' compensation, and surplus lines insurance.

<sup>40</sup> *Id.*

\$300,000.<sup>41</sup> For policies providing homeowner’s insurance coverage, the FIGA provides for up to an additional \$200,000 for the portion of a covered claim, which related to the damage to the structure and contents.<sup>42</sup>

### **Florida Workers’ Compensation Insurance Guaranty Association**

The Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA) “provides a mechanism for the payment of covered claims under ch. 440, F.S., to avoid” delay and financial loss to claimants due to the insolvency of a workers’ compensation insurer.<sup>43</sup> The FWCIGA services workers’ compensation claims against insolvent workers’ compensation insurers<sup>44</sup> and self-insurance funds.<sup>45</sup> For purposes of the 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.<sup>46</sup>

### **Florida Life and Health Insurance Guaranty Association**

The Florida Life and Health Insurance Guaranty Association (FLHIGA) exists to “protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against the failure of an insurer issuing such policies or contracts to perform its contractual obligations due to its impairment or insolvency.”<sup>47</sup> The maximum obligation of the FLHIGA to provide payment for any covered claim or policy is:

- 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; and
- For all other benefits, including in long-term care policies, \$300,000, including cash values.

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<sup>41</sup> Section 631.57(1), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Section 631.902, F.S.

<sup>44</sup> “Insurer” means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For purposes of this act, “insurer” does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(5), F.S.

<sup>45</sup> “Self-insurance fund” means a group self-insurance fund authorized under s. 624.4621, F.S., a commercial self-insurance fund writing workers’ compensation insurance authorized under s. 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S. 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, F.S., an independent educational institution self-insurance fund as defined in s. 624.4623, F.S., an electric cooperative self-insurance fund as described in s. 624.4626, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(6), F.S.

<sup>46</sup> Section 631.904(2), F.S.

<sup>47</sup> Section 631.712, F.S.

### III. Effect of Proposed Changes:

The bill allows a domestic insurer possessing surplus as to policyholders of at least \$15 million, upon a resolution by its board of directors, to be made eligible as a domestic surplus lines insurer if approved by the Office of Insurance Regulation.

Eligible domestic surplus lines insurers may:

- Issue surplus lines insurance coverage in any jurisdiction, including this state;
- Issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue; and
- Issue coverage only if placed with the domestic surplus lines insurer by a surplus lines agent pursuant to the Surplus Lines Law.

Domestic surplus lines insurers are subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted.

Insurance policies issued by a domestic surplus lines insurer, however, are exempt from all requirements relating to insurance rating and rating plans, policy forms, premiums charged to insureds, policy cancellation, nonrenewal, and renewal, and other requirements in the same manner and to the same extent as surplus lines policies issued by an insurer domiciled in another state.

Policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in s. 626.932, F.S. Such policies are exempt from other taxes levied upon domestic and foreign admitted insurers.

Policies issued by a domestic surplus lines insurer are not eligible to participate in the:

- Florida Insurance Guaranty Association;
- Florida Life and Health Insurance Guaranty Association; and
- Florida Workers' Compensation Guaranty Association.

A domestic surplus lines insurer is considered an unauthorized insurer for purposes of the Surplus Lines Law. This has the effect of applying the Surplus Lines Law to domestic surplus lines insurers because s. 626.915, F.S., specifies that surplus lines insurance may be procured from unauthorized insurers, but only if the following conditions are met:

- The insurance is eligible for export;
- The insurer is an eligible surplus lines insurer;
- The insurance is placed through a licensed Florida surplus lines agent; and
- The other applicable provisions of the Surplus Lines Law are met.

The bill also specifies that a domestic surplus lines insurer is considered a nonadmitted insurer as defined in 15 U.S.C. s. 8506<sup>48</sup> for the purposes of the Federal Nonadmitted and Reinsurance

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<sup>48</sup> Under 15 U.S.C. s. 8206(9), a "nonadmitted insurer" means, with respect to a state, an insurer not licensed to engage in the business of insurance in such state, but does not include a risk retention group, as that term is defined in 15 U.S.C. 3901(a)(4).

Reform Act of 2010. This clarifies that the provisions of that law apply to domestic surplus lines insurers.

The bill is effective July 1, 2022.

#### **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:

The bill may have an indeterminate impact on tax collections as policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in s. 626.932, F.S. Such policies, however, are exempt from other taxes levied upon domestic and foreign admitted insurers.

B. Private Sector Impact:

The bill will allow insurers domiciled in Florida to be made eligible to transact surplus lines insurance in Florida.

When fewer domestic insurers are willing to write a particular line of insurance, more insurance is likely to be written with surplus lines insurers. An example of this principle can be observed with the Florida property insurance market. Below are the amounts in total premium that surplus lines insurers collected for some common lines of property insurance:

Coverage	2017 Premium <sup>49</sup>	2020 Premium <sup>50</sup>
Commercial Property	\$1.711 billion	\$2.708 billion
Homeowners (HO-3)	\$360.582 million	\$437.225 million
Dwelling Property	\$97.844 million	\$165.739 million

Allowing domestic insurers to become eligible to transact surplus lines insurance may increase the number of property insurance policies written by surplus lines insurers. During a period of decreasing availability of property insurance from admitted insurance companies and often sizable rate increases by those admitted companies willing to write coverage, surplus lines carriers have taken on an increasing role in the Florida market. Consumers may benefit from the additional availability of coverage that domestic surplus lines insurers may provide. However, surplus lines property insurance policies are not subject to the jurisdiction of the Office of Insurance Regulation regarding rates and forms and if a surplus lines carrier becomes insolvent, surplus lines policies are not backed by the Florida Insurance Guaranty Association.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 626.914 of the Florida Statutes.

This bill creates section 626.9182 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.)

None.

<sup>49</sup> Florida Surplus Lines Service Office, *2020 Annual Report*, pg. 17, available at [https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/2017-annual-report.pdf?sfvrsn=a4041835\\_0](https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/2017-annual-report.pdf?sfvrsn=a4041835_0) (last visited Jan. 12, 2022).

<sup>50</sup> Florida Surplus Lines Service Office, *2017 Annual Report*, pg. 19, available at [https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/big-picture-2020-annual-report.pdf?sfvrsn=112a8e82\\_5](https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/big-picture-2020-annual-report.pdf?sfvrsn=112a8e82_5) (last visited Jan. 14, 2022).

B. Amendments:

None.

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

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