

**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 Committee on Criminal and Civil Justice

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BILL: CS/SB 516

INTRODUCER: Banking and Insurance Committee and Senator DiCeglie

SUBJECT: Motor Vehicle Liability Policies

DATE: April 11, 2023                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 516 amends Florida’s Financial Responsibility Law regarding the operation of a motor vehicle to permit certain risk retention groups and surplus lines insurers to provide commercial auto insurance coverage. Risk retention groups are authorized by federal law and sell insurance to eligible members and shareholders. Surplus lines insurers sell insurance coverage that is not available from insurers licensed in the state. Risk retention groups, as well as surplus lines insurers, 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.

The risk retention groups and surplus lines insurers authorized by the bill to provide commercial auto insurance coverage must have an “A” or higher rating for financial strength and “VIII” or higher rating for financial size from A.M. Best Company.

The bill has a negative, but likely insignificant, fiscal impact to the Department of Highway Safety and Motor Vehicles.

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

**II. Present Situation:**

**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 1) purchasing auto insurance from an insurance carrier authorized by the Office of Insurance Regulation (OIR) to do business in Florida;<sup>1</sup> or 2) obtaining a certificate of self-insurance from the Department of Highway Safety and Motor Vehicles (DHSMV) after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.<sup>2</sup>

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

The DHSMV administers the Financial Responsibility Law by requiring all licensed insurance companies to provide electronic notification of all policies that are issued or cancelled.<sup>5</sup> Vehicle owners must show proof of personal injury protection and property damage liability coverage to register a vehicle,<sup>6</sup> and must provide proof of bodily injury liability coverage if they are involved in an accident and charged with a moving violation.<sup>7</sup> A vehicle owner who fails to maintain continuous coverage may have his or her driver's license and registration suspended.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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<sup>1</sup> Section 324.021(8), F.S.

<sup>2</sup> Sections 324.161 and 324.171, F.S. *Also see* Florida Department of Highway Safety and Motor Vehicles, Self-Insurance, <https://www.flhsmv.gov/insurance/self-insurance/firm/> (last accessed March 8, 2023).

<sup>3</sup> Sections 624.404, 627.062, 627.410, and 627.4102, F.S.

<sup>4</sup> Section 627.7275, F.S.

<sup>5</sup> Sections 324.0221, 324.252, F.S., and Rules 15A-3.007 and 15A-3.012, F.A.C.

<sup>6</sup> Sections 324.022, 324.023, F.S., and Rule 15A-3.006, F.A.C.

<sup>7</sup> Section 324.021, F.S. *Also see*, Florida Highway Safety and Motor Vehicles, *Florida Insurance Requirements*, <https://www.flhsmv.gov/insurance/> (last accessed March 8, 2023).

<sup>8</sup> Section 324.0221, F.S.

<sup>9</sup> Sections 324.021(7), 324.022, and 627.736, F.S.

<sup>10</sup> Section 324.023, F.S.

<sup>11</sup> Section 324.021(9), F.S.

<sup>12</sup> Sections 324.032, F.S.

Commercial motor vehicles operating on Florida's highways are subject to state and federal regulations related to size and weight limits, safety standards, and registration requirements. Commercial vehicles that weigh 10,001 pounds or more, and engage in interstate commerce or haul hazardous materials, are subject to federal law, where required coverages range from \$750,000 to \$5 million.<sup>13</sup> 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.<sup>14</sup>

When the owner or operator of a motor vehicle purchases liability insurance to satisfy the financial responsibility law, the policy must be issued by an insurance company authorized to do business in Florida.<sup>15</sup> 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.<sup>16</sup>

### **Risk Retention Groups**

Federal law treats risk retention groups, which may sell insurance only to eligible members, differently than traditional insurance companies. 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.<sup>17</sup>

Authorized insurers must be licensed in every state in which they operate and the domicile state serves as the primary regulator. Risk retention groups need to be licensed as a liability insurer in only one state; further, those that were chartered prior to 1985 may operate under the laws of Bermuda or the Cayman Islands.<sup>18</sup> State regulators may require risk retention groups to comply with state laws relating to claim settlement and false or fraudulent acts, pay premium taxes, register with the designated state agent for service of process, and submit to financial exams if such exam has not been completed by the state in which the risk retention group is chartered.<sup>19</sup>

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

Risk retention groups may only provide liability insurance; the law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade,

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<sup>13</sup> 49 CFR § 387.9.

<sup>14</sup> Sections 207.002(1), 320.01(25), and 627.7415, F.S.

<sup>15</sup> Section 324.021(8), F.S.

<sup>16</sup> Section 324.171, F.S.

<sup>17</sup> 15 U.S.C. §3901(a)(4)(F) and s. 627.942(9), F.S.

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

<sup>19</sup> 15 U.S.C. § 3902(a)(1).

<sup>20</sup> 15 U.S.C. § 3902(a)(2).

<sup>21</sup> 15 U.S.C. § 3902(a)(1).

<sup>22</sup> National Association of Insurance Commissioners, *Risk Retention Groups*, [Risk Retention Groups \(naic.org\)](https://www.naic.org/risk-retention-groups) (last accessed March 8, 2023).

product, professional service, premise, operation, or activity of a state or local government.<sup>23</sup> Liability insurance does not include an employer's liability to its employees; thus, risk retention groups may not issue workers' compensation insurance policies to their members.<sup>24</sup>

Risk retention groups may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to the OIR and designate the Chief Financial Officer as agent for service of process.<sup>25</sup> According to the OIR, 140 risk retention groups are licensed in a state other than Florida and registered to do business in Florida.<sup>26</sup>

Risk retention groups licensed in Florida pay the same premium taxes as Florida-licensed insurers.<sup>27</sup> Risk retention groups registered to operate in Florida but licensed in another state pay the same premium taxes as surplus lines insurers that are allowed to sell lines of insurance that consumers cannot obtain from Florida-licensed insurers.<sup>28</sup> All risk retention groups operating in Florida must use agents who are licensed and appointed in Florida.<sup>29</sup>

The International Risk Management Institute describes "fronting" as the use of a licensed, admitted insurer to issue an insurance policy on behalf of a self-insured organization or captive insurer without transferring any risk.<sup>30</sup> The risk of loss under the policy remains with the self-insured entity or captive insurer, but the authorized insurer (and, in the event of insolvency, the guaranty association the insurer belongs to) assumes a credit risk because it would be required to honor the policy if the insured fails to honor the policy. This provides proof of coverage that is needed to satisfy financial responsibility laws.

Under the Florida Insurance Code, a "fronting company" is defined as "an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer which does not meet the requirements" to be an accredited or trustee reinsurer in Florida.<sup>31</sup> Section 624.404(4)(a), F.S., provides that "[n]o authorized insurer shall act as a fronting company for any unauthorized insurer which is not an approved reinsurer."

Florida law explicitly prohibits:

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<sup>23</sup> 15 U.S.C. 3901(a)(2)(A) and s. 627.942(9)(g), F.S.

<sup>24</sup> 15 U.S.C. 3901(a)(2)(B) and s. 627.942(4), F.S.

<sup>25</sup> Sections 627.943 and 627.944, F.S.

<sup>26</sup> Florida Office of Insurance Regulation, *Active Company Search*, <https://companysearch.myfloridacfo.gov/> (last accessed March 8, 2023).

<sup>27</sup> 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.

<sup>28</sup> 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 <https://www.fslso.com/>.

<sup>29</sup> Sections 627.943(5) and 627.944(12), F.S.

<sup>30</sup> International Risk Management Institute, *Glossary*, <https://www.irmi.com/term/insurance-definitions/fronting> (last accessed March 8, 2023).

<sup>31</sup> Section 624.404(4)(b), F.S.

- An authorized insurer or licensed motor vehicle service agreement company from acting as a fronting company for any unauthorized insurer or unlicensed motor vehicle service agreement company.<sup>32</sup>
- An authorized insurer or licensed home warranty association from acting as a fronting company for any unauthorized insurer or unlicensed home warranty association.<sup>33</sup>
- An authorized insurer or licensed service warranty association from acting as a fronting company for any unauthorized insurer or unlicensed service warranty association.<sup>34</sup>

### **Surplus Lines Insurance**

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.<sup>35</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 insurers are not “authorized” insurers as defined in the Florida Insurance Code,<sup>36</sup> which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.<sup>37</sup> Rather, surplus lines insurers are “unauthorized” insurers,<sup>38</sup> but may transact surplus lines insurance if they are made “eligible” by the OIR. To be made eligible to transact insurance, a surplus lines insurer must meet the following requirements related to regulatory oversight in other jurisdictions and solvency:<sup>39</sup>

- The surplus lines insurer is authorized in the state or country of its domicile as to the kind or kinds of insurance proposed to be placed with the insurer.
  - The insurer must have been an authorized insurer for at least the 3 preceding years. The OIR may waive the 3-year requirement if the insurer provides a product or service not readily available to Florida consumers or has operated successfully for a period of at least 1 year and has capital and surplus of not less than \$25 million.
- The surplus lines insurer or an agent requesting to export a policy to the surplus lines insurer must provide the OIR with a duly authenticated copy of the surplus lines insurer’s current annual financial statement, and also must provide any additional information regarding the insurer that the OIR requests.
- The surplus lines insurer must maintain a surplus as to policyholders of at least \$15 million.
  - Alien surplus lines insurers (insurers formed under laws other than those of Florida or any state, district, territory, or commonwealth of the United States) must also maintain in

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<sup>32</sup> Section 634.241, F.S.

<sup>33</sup> Section 634.326, F.S.

<sup>34</sup> Section 634.429, F.S.

<sup>35</sup> The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

<sup>36</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>37</sup> Section 624.09(1), F.S.

<sup>38</sup> Section 624.09(2), F.S.

<sup>39</sup> Section 626.918, F.S.

- the United States a trust fund for the protection of policyholders deemed adequate by the OIR of at least \$5.4 million.
- A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, F.S., and must be in compliance with ch. 625, F.S.
  - The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.
  - The officers and directors of the insurer must be competent and trustworthy, meeting the requirements of s. 624.404(3), F.S.

Policies issued by an impaired or insolvent surplus lines insurer are not covered by any of Florida's guaranty associations.

### **A.M. Best Credit Rating Agency**

A.M. Best, founded in 1899, is a credit rating agency and is the largest credit rating agency in the world specializing in the insurance industry. Headquartered in the United States, A.M. Best assesses the creditworthiness of and/or reports on over 16,000 insurance companies worldwide. The company<sup>40</sup> reports that its ratings are independent and summarize the insurance company's ability to pay claims, debts and other financial obligations in a timely manner.<sup>41</sup>

A Best's Credit Rating (BCR) is given by A.M. Best and is based on its opinion regarding an insurer's relative creditworthiness. According to A.M. Best:

The opinion represents a comprehensive analysis consisting of a quantitative and qualitative evaluation of balance sheet strength, operating performance, and business profile or, where appropriate, the specific nature and details of a security... A BCR is developed considering relevant aspects of Best's Rating Methodologies (BRMs).<sup>42</sup>

A.M. Best assigns each rated insurance company a Financial Strength Rating (FSR). The FSR is an opinion of an insurer's financial strength and ability to meet its on-going insurance policy and contract obligations.<sup>43</sup> The lowest FSR ranking is "D" (Poor) – the highest ranking is "A+" (Superior).<sup>44</sup> A ranking of "A" (Excellent) is the second highest ranking.

A.M. Best assigns each rated insurance company a Financial Size Category (FSC). The FSC is based on adjusted policyholders' surplus in U.S. dollars and is designed to provide an indicator of

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<sup>40</sup> A.M. Best is registered as a Nationally Recognized Statistical Rating Organization (NRSRO) by the Securities & Exchange Commission and as a Credit Rating Provider by the National Association of Insurance Commissioners in the US. *A.M. Best – About Us*, <https://web.ambest.com/about/> (last accessed March 8, 2023).

<sup>41</sup> *Id.*

<sup>42</sup> *A.M. Best – Guide to Best's Credit Ratings - Summary*, <https://web.ambest.com/ratings-services/guide-to-best-s-credit-ratings> (last accessed March 8, 2023).

<sup>43</sup> *A.M. Best – Guide to Best's Credit Ratings*, p. 20, <file:///C:/Users/thomas.tom/OneDrive%20-%20Florida%20Senate/Documents/SB%20516/AM%20Best%20Ratings.pdf> (last accessed March 8, 2023).

<sup>44</sup> *Id.*

the size of a company in terms of its statutory surplus and related accounts.<sup>45</sup> The FSC rankings start at “I” for a company with a surplus of less than \$1 million to a ranking of “XV” for a company with a surplus of greater than \$2 billion.<sup>46</sup> A ranking of “VIII” is for a company with a surplus of \$100,000 up to \$250 million.

### III. Effect of Proposed Changes:

The bill amends s. 324.021, F.S., to permit certain risk retention groups and surplus lines insurers to provide commercial auto insurance coverage. The risk retention groups and surplus lines insurers authorized by the bill to provide commercial auto insurance coverage must have an “A” or higher rating for financial strength and “VIII” or higher rating for financial size from A.M. Best Company.

### 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:

The bill may benefit members of risk retention groups who are able to buy their motor vehicle policies through the group at a lower rate and operators of commercial vehicles that are unable to obtain commercial vehicle coverage in the authorized market.

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<sup>45</sup> A.M. Best – Financial Size Category, [https://web.ambest.com/ratings-services/financial-size-category-\(fsc\)](https://web.ambest.com/ratings-services/financial-size-category-(fsc)) (last accessed March 8, 2023).

<sup>46</sup> *Id.*

**C. Government Sector Impact:**

The bill has a negative, but likely insignificant, fiscal impact to the DHSMV. The DHSMV will have to engage in structural testing to confirm successful file transfers with any risk retention group that directly insures its members in Florida or with any surplus lines insurer that provides automobile insurance coverage for commercial motor vehicles. This is needed to ensure that HSMV receives timely insurance information about policies that are issued or cancelled. This administrative cost would be absorbed within existing resources.

**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 March 22, 2023:**

The committee substitute makes the following changes:

- Provides that a surplus lines insurer as defined in s. 626.914(2), F.S., which is rated “A” or higher by A.M. Best Company may provide automobile insurance coverage for commercial motor vehicles.

**B. Amendments:**

None.