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What New Fla. Citizens Bill Means for Surplus Lines Insurers

WRITTEN BY

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On March 17, after much debate in both the house and the senate, S.B. 1028, which establishes both an admitted and a surplus lines commercial risk clearinghouse, was enrolled for presentation to Gov. Ron DeSantis.[1]

The bill represents a continued effort by the Florida Legislature to depopulate the state's insurer of last resort, Citizens Property Insurance Corp., which began in 2013 with the establishment of a personal lines clearinghouse.

An insurance clearinghouse, in this context, is an electronic interface in which a broker can input underwriting data about a risk and participating insurers can make offers of coverage on that risk before it is placed with Citizens. The clearinghouse acts as an intermediary between the brokers, Citizens and private insurers who may be able to write the coverage.

Upon being signed into law, the bill will establish a clearinghouse for new submissions and renewal policies that are currently with Citizens, to be placed with admitted carriers for commercial residential and nonresidential risks. Should a submission for coverage or a renewal not receive an offer of comparable coverage from the admitted clearinghouse within five days of receipt, the commercial risk will then be available for placement through a surplus lines clearinghouse.

Per the bill, "comparable coverage" amounts to "coverage that is equivalent to or better than coverage from the corporation as to all aspects of such coverage, as determined by the corporation through the clearinghouse process and applicable program standards."

The bill specifies that the surplus lines clearinghouse will only be accessible to "approved surplus lines clearinghouse insurers."

As a threshold for approval, a surplus lines insurer must be eligible in Florida by meeting all eligibility requirements of Florida Statutes Section 626.918, including being authorized in its domicile state to write commercial property coverages and maintaining the mandated level of capital and surplus. Additionally, the bill limits participation in the surplus lines clearinghouse to only those insurers with a "financial strength rating of 'A-' or higher and a financial size category of A-VII or higher from A.M. Best Company."

And most notably, the bill requires that the surplus lines insurer first be recommended by the commercial lines clearinghouse administrator for verification by the Florida Office of Insurance Regulation.

The “commercial lines clearinghouse administrator” established by the bill is given significant authority to dictate the operating procedure and select participants for the surplus lines clearinghouse.

Per the bill, in order to be selected as the administrator, an individual or entity must have confirmed expertise in the surplus lines market; a minimum of five years of public audited financials; the ability to facilitate the participation of all approved surplus lines insurers in the clearinghouse; the capability to collect and remit, directly or indirectly through an agent, all taxes and service fees applicable to surplus lines policies; and meet “other criteria that the corporation determines necessary to effectively and timely establish and administer the commercial lines clearinghouse for surplus lines insurance.”

It is likely that based on these demanding requirements, the selected clearinghouse administrator will be a large brokerage entity with an already developed surplus lines structure in place.

The process for placement of a risk through the surplus lines is as follows: First, a surplus lines insurer must meet all the criteria to be recommended for approval by the administrator and ultimately be approved. Second, a commercial risk submitted to the admitted clearinghouse must remain for five days from receipt of submission for placement with Citizens without an admitted offer of comparable coverage. Lastly, an offer of comparable coverage must be made by one of the approved surplus lines clearinghouse insurers.

Notably, if there is an offer of comparable coverage through the surplus lines clearinghouse in which the total cost of insurance coverage for the risk is not more than 15% that of Citizens, the risk is no longer eligible for placement with Citizens. If the offer of coverage is more than 15% greater in price than Citizens’ offer, the insured may choose to either accept the surplus lines policy or be insured by Citizens.

This means that an insured who wants Citizens coverage may not have the option, even if an admitted carrier will not take on the risk, if a surplus lines insurer will write the risk at a cost at or below 15% of the cost of a Citizens policy.

Surplus Lines Insurance: Definition, Regulation and Bill Implications

Surplus lines insurance, also known as excess and surplus insurance, is a type of insurance coverage provided by nonadmitted insurers for risks that admitted insurance companies will not cover or cannot adequately insure. Surplus lines insurers are exempt from filing their policy forms and having rates approved by the state in which they are issuing policies on a nonadmitted basis. This allows surplus lines insurers leeway in crafting coverages for risks where admitted carriers do not have the flexibility to do so within their underwriting guidelines or risk profiles.

It is a common misperception, however, that surplus lines insurers are unregulated. This perception that surplus lines is the lawless, Wild West of the insurance market mainly stems from the fact that surplus lines insurers are not licensed in the states where they do surplus lines business.

However, federal regulation as incorporated by all U.S. states requires that a surplus lines insurer be licensed to write the kind of policies they are issuing on a surplus lines basis in at least one state. Additionally, a majority of states, including Florida, have their own separate eligibility requirements for surplus lines insurers before a broker can place risks with that insurer.

This federal regulation, the Nonadmitted and Reinsurance Reform Act, came into effect on July 21, 2011, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and created a standardized regulatory scheme for surplus lines insurers. As part of the NRRA, regulatory authority of surplus lines transactions is limited to the home state of the insured or physical location of the risk.

Each state therefore has a section of their insurance code dedicated to the regulation of surplus lines insurance policies issued to their home state insureds. Florida specifically has an expansive statutory framework for surplus lines insurance represented by Florida Statutes Sections 626.901 through 626.939. As such, Florida is able to regulate and monitor surplus lines policies on risks located in the state, of which the commercial policies submitted to Citizens would be included.

Criticism of the Surplus Lines Clearinghouse

While the bill certainly represents a vote of confidence from the Florida Legislature in the surplus lines market to effectively cover the risks that would previously have gone to Citizens, there has been, and likely will continue to be, criticism of the mechanisms created to effectuate that transfer.

A major criticism of the bill from the surplus lines industry is that the creation of a surplus lines clearinghouse for commercial risks is unnecessary. To critics, the bill represents a complex regulatory scheme for a market designed to function with less restrictions and one that is currently functioning efficiently.

Surplus lines insurers already enjoy freedom from rate and form filings to effectively accommodate risks that the admitted market won't write. There is no evidence to suggest that commercial risks are having difficulty being placed in the surplus lines market when they can't be met by the admitted market. In fact, the surplus lines market has seen consistent growth in Florida in the last few decades.

While a clearinghouse makes more sense for personal lines coverages, as we have seen a withdrawal of insurers from writing homeowners coverage in recent years, critics have pointed to the fact that the commercial property market is less dire. In fact, in the legislative premeeting bill analysis published by the Florida Senate Banking and Insurance Committee, the Legislature pointed out that from 2023 to 2025, there has been a reduction in Citizens' commercial property policy count by more than half.[2]

And while unnecessary legislation is not inherently harmful to the market it regulates, as it pertains to the surplus lines market, the mere fact of increased regulation may cause trepidation. In the past, critics of surplus lines regulation have taken the position that an increase in regulation in the present, even when seemingly beneficial, could result in a future clawback of freedoms the surplus lines market currently experiences.

An increase in the regulatory burden put on surplus lines insurers could result in less of a willingness to write those risks in Florida. This would be the opposite of the goal that the Florida legislature is trying to achieve with the bill.

Additionally, there is growing concern that other states will be quick to follow Florida's lead in creating commercial lines clearinghouses to depopulate their state-backed insurers with the surplus lines market

A second area of criticism for the bill is the mechanics of the clearinghouse as the Legislature designed it. Possibly the biggest sticking point for detractors of the bill is that the commercial clearinghouse administrator, likely to be a large private company, is given a great deal of authority over who can participate in the surplus lines clearinghouse and how the clearinghouses operate.

This means that if a surplus lines insurer wants to compete in the marketplace for these risks, they must both be approved by the administrator and comply with the administrator's rules as, perhaps, a quasi-regulator. Further, who can serve as administrator is limited by the definition of the "commercial lines clearinghouse administrator" in the bill. As previously noted, it is very likely that the chosen administrator will be a sophisticated entity already operating in the surplus lines space. This chosen entity could even be a market participant themselves.

Conclusion

S.B. 1028 represents a notable development for the surplus lines marketplace in Florida. While it certainly creates an additional pathway for commercial policies to be written by surplus lines insurers, there is a fair amount of criticism and concern that it will not be an entirely positive development.

As there is the possibility of more states choosing to emulate Florida's approach to depopulating its state-backed insurer of last resort, there will likely be much more discussion on both sides about whether clearinghouses are, on the whole, a beneficial development for surplus lines insurers.

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[1] The corresponding house bill was H.B. 943. In Florida, the governor generally has seven days to sign or veto an act, but because the bill was enrolled for presentation to the governor after the Legislature adjourned the 2026 Regular Session sine die on March 13, the governor has 15 days from presentment to sign or veto. The governor's signature is not strictly required for enactment; if he neither signs nor vetoes the bill within that 15-day period, it becomes law regardless. It does not appear that the bill has been presented yet.

[2] https://www.flsenate.gov/Session/Bill/2026/1028/Analyses/2026s01028.pre.bi.PDF.

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