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Florida Opens, Closes Surplus Lines Opportunities

The recent legislative session in Tallahassee was relatively quiet, a matter some attribute to this being an election year. But even in quiet years, Florida lawmakers tend to make some noise about the insurance industry and this year was no different.

When insurance is a topic among Florida lawmakers, the surplus lines industry is typically brought into the discussions, more so than in other states.

Douglas Mang, of the law firm Mang & Santurri, P.A., who serves as general counsel for the Florida Surplus Lines Association, says there is a good reason for this. The legislature deals with difficult insurance issues and the surplus lines industry specializes in answering difficult questions.

“When there is a need, then it’s the surplus lines industry that fills that void. They have in many, many instances, at least during the time that I’ve been involved with it,” Mang told *Insurance Journal*. “So they should be in the mix, if for no better reason than that’s their whole purpose, to provide a market for the hard-to-place risk. When those issues arise, that’s where they ought to be.”

Some of what Florida lawmakers did this session could create opportunities for the surplus lines industry, whereas in other cases, their actions frustrated opportunities for the surplus lines industry.

Lawmakers agreed to make changes to laws governing insurance agent and surplus lines licensing (HB633), private flood insurance (SB542), a homeowners’ bill of rights (SB708) and, of course, Citizens Property Insurance Corp. (SB1672).

They even took time to clarify firearms in underwriting (SB 424) and regulate commercial parasailing (SB320).

For the surplus lines industry, the most recent session was also noteworthy for the insurance provisions that did not pass as much as for what did. For one, lawmakers declined to repeal the requirement that surplus lines agents file quarterly affidavits. The FSLA will try again on that as part of its efforts to streamline operations.

Citizens’ Clearinghouse

The biggest missed opportunity for surplus lines came with lawmakers’ decision against allowing surplus lines

carriers to participate in the Citizens clearinghouse for removing business from the state-backed insurer.

That was an unfortunate and “ill-informed” decision, according to Mang, who says some lawmakers do not understand the safeguards in place for policyholders and how safe the surplus lines market is even though it does not participate in the state guaranty fund.

The decision to exclude surplus lines cost consumers one more option and the surplus lines industry an opportunity to more fully participate in the state’s property insurance market, according to Mang.

“In years past, there’s been a certain contingent that had been opposed to surplus lines taking any policies out of Citizens. It’s really an ill-informed position. Largely they’re considered with surplus lines being ‘unregulated,’ which is anything but the truth,” Mang said.

Mang said surplus lines carriers are not free from regulation in Florida since they have to provide annual statements and have a surplus that’s in excess of what’s required of an admitted carrier. They’re also subject to unlawful practices laws.

He said some lawmakers forget how the surplus lines industry “stepped in and supported the market” after Hurricane Andrew and has been there ever since.

“Keep this in mind, it’s kind of interesting, there was absolutely no danger in the provision to anyone who had the time to read the bill, for anybody that was participating in this clearinghouse. It went to the admitted market first, and only if there were no offers made by the admitted market could the surplus lines market then bid on the risk, and then it was totally a voluntary issue as to whether or not the insured went with the surplus lines market,” said Mang.

Then, any insureds who decided to go with the surplus lines market would have had the option to go back into Citizens if they were dissatisfied for any reason.

Mang said the constituents of some of the lawmakers who opposed including surplus lines in take-outs of Citizens also could benefit from going into the surplus lines market because in the event of a storm, they would not be subject to assessments as are policyholders of Citizens.

“They ought to be looking at it more than they are, but we’ll continue our educational program to see if we can’t make sense out of it,” Mang vowed.

While that opportunity was lost for now, the Citizens legislation (SB1672) contains other provisions that might benefit the surplus lines industry.

The law bans Citizens from writing new commercial residential multi-peril policies in the coastal account. Instead, Citizens will write separate wind and all-other perils policies.

Mang thinks this change might open up surplus lines opportunities.

“[T]here’s always been a very adequate market for commercial residential, and it would seem to me that that should be a market that is written primarily by the admitted market, and when they can’t write, or won’t write, then the surplus lines market is plenty able to write those coverages and they shouldn’t be going into Citizens, he said, adding “but that’s my opinion.”

Private Flood

While disappointed with how the Citizens legislation panned out, the surplus lines industry was pleased with the measure (SB542) that is intended to encourage more private industry involvement in the state’s flood insurance, a

market now dominated by the National Flood Insurance Program (NFIP) with its subsidized rates.

A sense of urgency that surrounded this bill early in the session faded after Congress blocked big hikes in insurance premiums mandated by a 2012 reform law, the Biggert-Waters act.

But lawmakers forged ahead with the legislation that creates a more inviting statutory framework for private insurers. The statute authorizes private insurers to offer four different types of flood coverage:

- Standard coverage matching that offered by the NFIP.
- Preferred coverage, which includes standard flood coverage and plus coverage for flood losses caused by water intrusion from outside the structure that are not otherwise covered.
- Customized coverage, which is broader than standard flood coverage.
- Supplemental coverage to the NFIP flood policy or a standard or preferred policy from a private market insurer. This may cover for jewelry, art, deductibles, and additional living expenses but does not include excess flood coverage over other flood policies.

The law also allows private insurers to set their own rates prior to October 1, 2019, after which regulators must approve them. The time period is so Florida insurers can develop state flood data that is currently not available under the NFIP.

While the urgency may have faded after Congress blocked most Biggert-Waters rate hikes, Florida Insurance Commissioner Kevin McCarty believes the law will ultimately benefit consumers. “The Office of Insurance Regulation looks forward to the opportunity to work collaboratively with Florida insurers and well-capitalized reinsurers who are interested in providing a private sector alternative to the NFIP,” said McCarty.

While insurer and consumer groups support the law, few expect it to lead to a rush of private insurers into the flood market. Even supporters of the law noted that private insurers could already offer flood insurance under previous law but few chose to do so. The surplus lines industry’s interest has tended to be in the area of excess coverage, not the primary coverage handled by the NFIP.

“Our initial reaction is there is no need for a new law,” Michael Carlson, executive director of the Personal Insurance Federation of Florida, said. “But we support engaging in self-help. Florida’s market is complex and perhaps it will bring new capital into the market.”

Jay Beal, director of the Florida Association for Insurance Reform, similarly expressed his support. “Having a robust flood market is not going to happen overnight,” said Neal. “It’s going to be a long process, but this legislation was a good exercise.

Only one domestic insurer has begun offering private flood insurance. Homeowners’ Choice Property and Casualty Insurance Co. is doing so to its existing 140,000 policyholders.

Gainesville, Florida-based Flood Insurance Agency has been marketing Private Market Flood, underwritten by Lloyd’s of London. Flood Insurance Agency CEO Evan Hecht said that he started the program that is now in 19 states to target policyholders that were losing their federal premium subsidies under Biggert-Waters. Since then, however, he said he has sensed an appetite for coverage in other properties including commercial buildings.

Security First Managers has partnered with the surplus lines insurer Ironshore to offer primary flood coverage up to \$500,000, twice the limit of the NFIP. It is also offering excess coverage for luxury homes up to \$5 million.

Don Brown, a senior fellow at the free-market think tank R Street Institute, said that the new legislation has provisions that could lead to more involvement by private insurers.

First, Brown said, is the ability to offer “customized coverage” that can be broader than the standard coverage

available from the NFIP and, therefore, more tailored to policyholders' needs.

Second, Brown said, since insurers are allowed to set their own rates until October 1, 2019, they will have time to develop actuarial rates and gain a greater understanding of exactly what properties are at what level of risk.

"I believe that when companies refine the rating territories to a more granular level," Brown said, "that some companies will come up with a creative way to insure some properties."

Mang takes a practical view of the new flood insurance law.

"If the National Flood Program ever goes away or the rates go up, it'll be probably a bigger market than it is today," he said. "But right now, at least, it continues the recognition of surplus lines to write flood insurance."

That recognition of the surplus lines role is contained in a key provision of the flood bill that relieves surplus lines agents of a regulatory step, if and when the industry writes more flood coverage. Surplus lines agents have had to obtain declinations from three standard carriers before being able to write a flood policy— at rule which, Mang points out, was never hard to satisfy because no standard carriers wrote it.

The new flood law streamlines the process by eliminating this requirement. The law now allows a surplus lines agent to export a flood contract or endorsement without making this diligent effort to seek coverage from three or more authorized insurers.

"The net effect of that is with the surplus lines carriers can place flood insurance without the necessity of getting declinations from three carriers writing flood," according to Mang. "I think it's a good thing to do."

Non-Resident Reciprocity

Lawmakers also addressed the licensing of non-resident surplus lines agents with a law (HB 633) that exempts them from certain state requirements but only in cases where their own states do not have equal requirements.

Mang says the licensing change stems from ongoing efforts by states for more reciprocity.

"There's some history here," said Mang. "We are one of the few states that required non-resident agents, surplus lines agents, to come and take an examination before they could write in Florida. It goes back many years, but it started with at, one point in time, surplus lines, non-resident surplus lines agents, could not write in Florida, period, not at all. They had to have a surplus lines agent who was licensed in Florida."

Following litigation involving a related matter, a non-resident agent could then become licensed in Florida, and many did, but only if they took the examination, according to Mang, a rule he says made sense because a surplus lines agent residing in another state doesn't know what the rules and regulations are for placing coverages in Florida.

However, since enactment of the Nonadmitted and Reinsurance Reform Act (NRRRA) in 2011, states have been moving to reciprocity in licensing and Florida is now going along.

"Florida's one of the few states that is in the position that did not automatically recognize the licensing of a surplus lines agent on a non-resident basis. The department wanted to correct that inconsistency and allow for non-resident agents to be licensed in Florida," Mang said.

Mang says lawmakers stopped short of requiring non-resident agents to take an equivalent examination and be licensed as a surplus lines agent in their own state. However, he said the Department of Financial Services says that is how it will interpret and enforce the new law.

“[W]hile that provision came out of the statute, they also now require that if you are a non-resident agent, you have to take an equivalent examination and become a surplus lines agent in your state or domicile so that you’re not just being appointed without examination and then ergo being able to then go into all of the other states. So there is a little quid pro quo there, but that’s it.”

Parasailing

Parasailing—the sport in which people are lifted into the air by a motorboat — has received national attention in recent years with several deaths and accidents involving the unregulated activity in Florida. These accidents spurred lawmakers to pass and Gov. Rick Scott to sign a parasailing safety bill. (SB320). The bill creates regulations for commercial parasailing by establishing minimum requirements for liability insurance, including bodily injury liability coverage of at least \$1 million per occurrence and \$2 million annual aggregate. It also prohibits commercial parasailing under certain weather conditions.

Pam Worsham, owner of Cocoa Beach Parasail, hopes the guidelines weed out unscrupulous companies that have a negative effect on the industry. Worsham also said she hopes insurance rates for individual companies will drop if the industry is regulated.

“Everything that’s in that law, we’ve been doing already,” Worsham said. “A good operator, as far as the insurance, the equipment, the conditions, we all do that. What this is going to do is hold those people that opt not to accountable.”

Mang thinks there might be some opportunity in this parasailing regulation for the surplus lines industry.

“[T]he fact that insurance is now mandated is a good thing. I believe that you’ll find that will be an industry product, and probably more so with surplus lines than with the admitted market,” he said.

Gun Ownership

Florida also has a new law that bans insurance companies from refusing to serve or charging higher rates to applicants based on their [ownership of a firearm](#).

The bill also prohibits an insurer from disclosing information related to the ownership of weapons by a client without the consent of the insured. It extends to both existing and new policies.

Florida’s Office of Insurance Regulation found in a study last fall that one of the state’s top five property insurers — United P&C— considers the presence of firearms as a factor in underwriting.

Homeowners’ Rights

The so-called Homeowners’ Bill of Rights law was a priority of the state’s Chief Financial Officer Jeff Atwater who said it was needed to “notify Florida homeowners of their rights and responsibilities when filing an insurance claim and give them confidence that they will be treated fairly during a stressful situation involving their home.”

The 12-point bill of rights is meant to inform homeowners of timelines such as one requiring insurance companies to acknowledge a claim within 14 days of being filed. Additionally, insurers must within 30 days of receiving a proof-of-loss statement, confirm a claim is covered, partially covered or denied. Within 90 days, insurers must either pay the claim in full or in part or deny the claim.

The bill of rights also advises policyholders what they need to do in case they have property damage, including that they should contact their insurer before hiring a contractor.

It also prohibits post-claims underwriting such as using credit information to deny a claim or cancel a policy.

The bill of rights law is not everything Atwater or other supporters had hoped. They, and the insurance industry, were disappointed in the failure of the law to reform the state's post-claim "assignment of benefits" practices.

Under this controversial statute, homeowners can sign over their financial rights to be paid for a claim so that instead the payments are made directly to a contractor making repairs instead of to the homeowner. The contractor also assumes the policyholder's legal right to dispute a claim and file suit against an insurer. If the contractor prevails in court, in addition to the insurer having to pay the claim, it must also pay the contractor's legal bills.

Insurers believe this has fostered an environment in which trial lawyers and contractors work to maximize the monies they can receive from insurers regardless of the real cost of the claim.

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