

THE FLORIDA SENATE
2012 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/CS/HB 1101 — Insurance

by Economic Affairs Committee; Insurance and Banking Subcommittee; and Rep. Horner (CS/CS/SB 1620 by Budget Subcommittee on General Government Appropriations; Banking and Insurance Committee; and Senator Richter)

The bill changes the exemption provisions for alien insurers, substantially revises the regulation of captive insurers, and changes a number of provisions relating to various types of insurance and insurance coverage as well as the regulation of insurance companies, insurance agents, and insurance adjusters.

Alien Insurers

The bill revises the current exemption provisions relating to alien insurers by providing that an insurer who has an affiliate would not be disqualified from obtaining an exemption, and by expanding the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States. The bill creates an exemption from the certificate of authority (COA) requirements for an alien insurer issuing life insurance or annuity contracts covering only persons who are not residents of the U.S., if the insurer meets the following requirements:

1. The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
 - has been an insurer for at least the last 3 consecutive years; or
 - is the wholly owned subsidiary of an authorized insurer; or
 - is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding 3 years.
2. Prior to the OIR granting eligibility to an alien insurer to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
 - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
 - Maintain a surplus of at least \$15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under ch. 625, part II, F.S.
 - Have a good reputation for providing service and paying claims.

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- Furnish the OIR with annual and quarterly financial statements.
- Provide certain disclosures to policy or contract applicants.

Captive Insurance Companies

The bill deletes the current definition of captive insurer and establishes capital and reserve requirements for each type of captive insurer and removes the current requirement that captive insurers are also subject to the same level of surplus specified for various lines of insurance written in this state.

Definitions - 2012 Summary of Legislation Passed Committee on Banking and Insurance This summary is provided for information only and does not represent the opinion of any Senator, Senate Officer, or Senate Office. CS/CS/HB 1101 Page: 2

The bill redefines captive insurer as meaning a domestic insurer established under ch. 628, part V, F.S., including any of three specified types of captive formation, defined as:

- Pure captive insurance company means a company that insures the risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof. A pure captive must have at least \$100,000 of unimpaired paid-in capital, and in the case of a pure captive incorporated as a stock insurer, at least \$250,000 of unrestricted net assets. A pure captive must possess and maintain unimpaired surplus of at least \$150,000.
- Industrial insured captive insurance company means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies. An industrial insured captive insurance company incorporated as a stock insurer must have at least \$200,000 of unimpaired paid-in capital. If it is incorporated as a stock insurer or organized as a limited liability company, it must possess and maintain unimpaired surplus of at least \$300,000. If it is incorporated as a mutual insurer, it must possess and maintain unimpaired surplus of at least \$500,000. An industrial insured captive insurance company can also provide reinsurance, but only on risks written for the industrial insured group.
- Special purpose captive insurance company means a captive insurance company licensed under ch. 628, F.S., that does not meet the definition of any other type of captive insurance company. A special purpose captive insurance company must have an amount of unimpaired paid-in capital, unrestricted net assets, and unimpaired surplus determined by the OIR.

The bill also defines the following:

- Industrial insured means an insured that: (a) has gross assets in excess of \$50 million; (b) procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or through the services of a person licensed as a property and casualty insurance agent, broker, or consultant in that person's state of domicile; (c) has at least 100 full-time employees; and (d) pays annual premiums of at least \$200,000 for each line of insurance

purchased from the industrial insured captive insurer or at least \$75,000 for any line of coverage in excess of at least \$25 million in the annual aggregate.

- Captive reinsurance company means a reinsurance company that is formed or licensed under ch. 628, F.S., and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company cannot directly insure risks, it can only reinsure risks. A captive reinsurance company may write reinsurance contracts covering risks in any state. A captive reinsurance company must possess and maintain capital or unimpaired surplus of the greater of \$300 million or 10 percent of reserves. At least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in Florida.

- Qualifying reinsurer parent company means a reinsurer that is authorized in Florida to write reinsurance and that has a consolidated GAAP net worth of at least \$500 million and a consolidated debt to total capital ratio of no more than 0.50.

- Controlled unaffiliated business means a company that is not in the corporate system of a parent, but that has an existing contractual relationship with the parent or affiliated company and has its risks managed by a captive insurance company.

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Authority of Captives to Write Insurance; Restrictions -

The bill allows captives to write any insurance authorized by the insurance code except workers compensation and employer's liability, health, personal motor vehicle, life, or personal residential property insurance, with the following restrictions:

- A pure captive insurance cannot insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

- An industrial insured captive insurance company cannot insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies.

- A special purpose captive insurance company can only insure the risks of its parent.

- A captive insurance company may not accept or cede reinsurance except as explicitly provided.

Requirements to Obtain Licensure; OIR Regulatory Authority -

The bill requires that to conduct business in Florida, a captive must obtain from the OIR a license to conduct insurance in Florida and must: hold at least one board of directors' meeting each year in Florida; maintain its principal place of business in Florida; and appoint a resident registered

agent to act on its behalf in Florida. The bill provides that a captive insurance company must have at least three incorporators, of whom at least two must be residents of Florida. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, at least one of the members of the board of directors must be a resident of Florida.

The bill defines restrictions on eligibility of officers and directors. The bill requires that a prospective captive insurer filing for a license must include background investigations, biographical affidavits, and fingerprint cards as evidence of the trustworthiness and competence of its officers and directors.

The bill provides that the OIR may prescribe additional capital or net asset requirements, depending on the type, volume, and nature of the insurance. The bill states a captive insurance company may not pay a dividend out of capital or surplus in excess of the limitations specified in ch. 628, F.S., without the prior approval of the OIR.

Upon approval by the OIR, a foreign or alien captive insurance company may become a domestic captive insurance company by complying with the requirements of a domestic captive insurance company. The bill retains the provision in current law that an industrial insured captive insurer does not need to be incorporated in Florida if it has been validly incorporated in another jurisdiction.

Exemptions -

The bill exempts captives from the following statutory requirements that had previously applied to captives:

- Sections 624.407, F.S., and s. 624.408, F.S., which require that captives maintain the same level of surplus specified for various lines of insurance in this state.

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- Section 624.4085, F.S., which defines the requirements for risk-based capital for insurers in Florida.
- Section 624.4095, F.S., which establishes standards for required ratios of written premiums to surplus for various lines of insurance.

Other Changes Enacted

The bill also enacts the following changes:

Licensure of Agents, Adjusters, and Entities –

Allows the DFS to provide licensing examinations in Spanish at the expense of the applicant.

Expands the list of entities to whom a limited license for travel insurance may be issued.

Allows a licensed independent adjuster or a licensed agent to supervise up to 25 individuals who are not required to obtain a license to perform functions in connection with entering data into an automated claims adjudication system for portable electronics insurance claims. Provides that a resident of Canada cannot obtain a license as a nonresident independent adjuster for the purpose of adjusting portable electronics insurance claims, unless the individual obtains an adjuster license in another U.S. state.

Motor Vehicle Insurance

Specifies that a salvage motor vehicle dealer is not required to carry the \$25,000 combined single-limit liability coverage for bodily injury and property damage, or the \$10,000 PIP coverage, for vehicles that cannot be operated legally on state roads.

Clarifies that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate that applies to judgments and decrees, whichever is greater, that is in effect on the date the payment became overdue.

Specifies that an insurer providing PIP coverage does not have a right of reimbursement from an owner or registrant of a motor vehicle used as a taxi cab.

Allows the cancellation of a private passenger motor vehicle insurance policy, regardless of whether the first 2 months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored.

Residential and Commercial Property Insurance

Provides a definition of the term "rebate" within the context of performing repairs made pursuant to sinkhole damage.

Specifies that the alternative dispute resolution procedure for personal and commercial residential property insurance claims can be requested only by the policyholder, as a first-party claimant, or by the insurer.

Provides that when the notice of loss is reported more than 36 months after a declaration of a state of emergency by the Governor in response to a hurricane, the alternative claim dispute resolution process is not available.

Citizens Property Insurance Company

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Requires Citizens to begin offering a basic personal lines policy similar to an HO-8 policy by January 1, 2013.

Requires that in establishing replacement costs for dwelling coverage, Citizens must accept the lowest valuation from 3 specified sources.

Other Provisions

Allows a not for profit self insurance fund to purchase excess insurance from surplus lines insurers or reinsurers and to purchase for its members coverage for health, accident, or hospitalization if certain conditions are met.

Clarifies that a current exemption from filing specified reinsurance information applies to any insurer with less than \$500,000 in direct written premiums in Florida in the preceding calendar year, and not more than \$250,000 of premium during the preceding calendar quarter and less than 1,000 policyholders at the end of the preceding calendar year.

Provides that a surplus lines carrier is not required to provide 45 days' notice of nonrenewal if the insurer has manifested its willingness to renew.

Specifies that it is an unfair or deceptive act or practice for someone to knowingly present a property and casualty certificate of insurance that has been altered after being issued.

Provides that an insurer with surplus as to policyholders of \$25 million or less can qualify as a limited apportionment company (LAC) for all statutory purposes.

Provides that mandated health benefits are not intended to apply only to limited benefit types of health benefit plans, unless specifically designated otherwise.

Adds accumulated interest on allowed claims as a new class for distribution of claims from an insurer's estate, which precedes the priority of claims of shareholders and other owners.

If approved by the Governor, these provisions take effect July 1, 2012, except as otherwise expressly provided in this act.

Vote: Senate 40-0; House 114-0