

**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.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1836

INTRODUCER: Banking and Insurance Committee and Senator Diaz de la Portilla

SUBJECT: Captive Insurers

DATE: April 8, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow/Johnson</u>	<u>Burgess</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Frederick</u>	<u>DeLoach</u>	<u>BGA</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill provides an exemption from certificate of authority requirements for life and health insurers domiciled outside of the U.S. covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S., under certain conditions. Currently, life insurance policies or annuity contracts issued by an insurer domiciled outside of the U.S. covering only persons who, at the time of issuance, are not residents of the U.S. are exempt from the certificate of authority requirements if certain requirements are met. The bill substantially reduces the requirements that these life insurance policies or annuity contracts must meet to be exempt from regulation by the Office of Insurance Regulation (office).

This bill provides definitions under Part V of chapter 628, Florida Statutes, relating to captive insurers. Section 628.901, Florida Statutes, defines a "captive insurer" as a domestic insurer that is owned by, or is under common ownership with, a specific corporation or group of corporations for which the captive insurer provides insurance coverage. The bill deletes the current definition of captive insurer and provides that "captive insurer" means a pure captive insurer or an association captive insurer domiciled in this state. The bill adds a definition for "pure captive insurer" to mean a company that insures the risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof. The bill defines "association" as an association

of nursing homes, hospitals, skilled nursing facilities, assisted living facilities, or continuing care retirement communities. The bill defines “association captive insurer” as a company that insures risks of the member organizations of the association and their affiliated companies.

The bill adds certain information that an association captive insurer must include in its application to the office for a license. The bill requires that a captive insurer must maintain its principal place of business in Florida and hold at least one annual meeting in Florida for, depending on the structure of the insurer, the board of directors, the subscriber’s advisory committee, or the managing board.

The bill removes the current law requirement that, in addition to meeting the capital and surplus requirements applicable to captive insurers, a captive insurer must also meet the same level of capital and reserves that are specified for various lines of insurance written in this state, as contained in sections 624.407 and 624.408, Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 624.402, 628.901, 628.905, and 628.909.

The bill creates section 628.908, Florida Statutes.

The bill repeals section 628.903, Florida Statutes.

## **II. Present Situation:**

The Office of Insurance Regulation regulates and licenses insurers and other risk-bearing entities that do business in Florida.<sup>1</sup> Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code or ch. 636, F.S.<sup>2</sup>

The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policyholders in the event of insolvency. These provisions include minimum capital and surplus requirements<sup>3</sup> and financial reporting requirements.<sup>4</sup> In addition, five guaranty funds are established under ch. 631, F.S., to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding covered claims, up to limits provided by law. Generally, entities subject to regulation under the insurance code are subject to assessments of the applicable guaranty association.

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<sup>1</sup> Risk-bearing entities include, but are not limited to multiple-employer welfare arrangements, commercial self-insurance funds, warranty associations, health maintenance organizations, prepaid limited health service organizations, prepaid health clinics, and continuing care facilities.

<sup>2</sup> Section 20.121(3)(a)2., F.S.

<sup>3</sup> Section 624.4095, F.S.

<sup>4</sup> Section 624.424, F.S.

## Certificate of Authority Exemptions

Section 624.401, F.S., requires insurers and other risk-bearing entities to obtain a certificate of authority prior to engaging in insurance transactions unless specifically exempted. Section 624.402, F.S., exempts various insurers from obtaining a certificate of authority if certain conditions are met. For example, life insurance policies or annuity contracts issued by an insurer domiciled outside of the U.S. covering only persons who, at the time of issuance, are not residents of the U.S. are exempt from the certificate of authority requirements if certain requirements are met.

## Captive Insurance

A captive insurer is an insurance company that primarily or exclusively insures a business entity, or entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. A captive insurance arrangement can provide a number of benefits, depending on the type of business arrangement, the domicile of the insured business and the captive insurer, and the coverages involved. Some benefits of captive insurance may include:

- *Lower insurance cost:* Two elements that an arm's length insurer must recover are acquisition cost (often in the form of agent commissions and advertising) and profit. A captive insurer would not need to factor these elements into the premium it charges.
- *Potential tax savings:* The premium paid by the insured entity is a deductible expense for Federal income tax purposes, and, under some circumstances, a portion of the captive insurer's income from the collected premium may not be recognized as taxable. Further, a captive insurer may be domiciled in a country where its investment income may receive more favorable tax treatment than in the U.S.
- *More tailored insurance plan:* A captive insurer may be able to create overall savings through coverage and policy provisions that are unique to the individual business being insured.
- *Cohesion of interest:* Because the control of the insured and the insurer would reside in a single entity, there could be a reduction in some of the areas of potential disagreement over claim verification, investigation and valuation.

In Florida, captive insurance is regulated by the Office of Insurance Regulation under Part V of ch. 628, F.S. Section 628.901, F.S., defines a "captive insurer" as domestic insurer established under Part I of ch. 628, F.S.,<sup>5</sup> to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from whom it accepts risk under a contract of insurance.

Section 628.907, F.S., requires all captive insurers to maintain unimpaired paid-in capital of at least \$500,000 and unimpaired surplus of at least \$250,000. Section 628.909, F.S., further

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<sup>5</sup> Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."

requires that all captive insurers are also subject to the same level of capital<sup>6</sup> and reserves<sup>7</sup> that are specified for various lines of insurance written in this state.

Section 628.903(2), F.S., defines an “industrial insured captive insurer” as a captive insurer that:

- Has as its stockholders or members only industrial insureds<sup>8</sup> that are insured by the captive.
- Provides insurance only to the industrial insureds that are its stockholders or members and affiliates of its parent cooperation.
- Provides reinsurance to insurers only on risks written by such insurers for the industrial insureds who are stockholders or members and affiliates of the industrial insured captive or its parent company.
- Maintains unimpaired capital and surplus of at least \$20 million.

The industrial insured captive insurer must maintain unimpaired capital and surplus of at least \$20 million. Other than the requirements for captive insurers and industrial insured captive insurers, current law does not delineate any other type of captive insurance.

### **III. Effect of Proposed Changes:**

#### **Certificate of Authority Exemptions (Section 1)**

The bill amends s. 624.402, F.S., to provide an exemption from certificate of authority requirements for life and health insurers domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S., if the insurer meets the following conditions:

- The insurer does not solicit business from U.S. residents.
- The insurer registers with the office.
- The insurer provides the following information to the office on annual basis:
  - Names of the owners, officers and directors and number of employees;
  - Types of products offered;
  - A statement from the applicable regulatory body of the insurer’s domicile certifying that the insurer is licensed or registered in that domicile;
  - A copy of filings required by the insurer’s domicile;
- The insurer is also required to include a disclosure in all certificates issued in Florida indicating that the policy has not been approved by the office.
- The insurer is required to provide written notice to the office within 30 days after ceasing operations.

Finally, the section defines a “nonresident” as a person who has not had his or her principal place of domicile in the U.S. for 180 days during the 365 days prior to purchasing or renewing the

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<sup>6</sup> Sections 624.407, F.S.

<sup>7</sup> Sections 624.408, F.S.

<sup>8</sup> Section 628.903(1), F.S. An industrial insured must have gross assets in excess of \$50 million, at least 100 full-time employees, and pay annual premiums of at least \$200,000 for each line of insurance.

policy; registered to vote in any state; made a statement of domicile in any state; or filed for homestead tax exemption on property in any state.

### **Captive Insurance (Sections 2-6)**

The bill amends s. 628.901, F.S., which defines “captive insurer.” The bill changes the section title from “ ‘Captive insurer’ defined” to “Definitions.” It amends the definition of a “captive insurer” to mean a pure captive insurer or an association captive insurer domiciled in this state and formed or licensed under the captive insurance part of ch. 628, F.S. The bill provides that “pure captive insurer” means a company that insures the risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof. “Association” is defined as a legal association of nursing homes, hospitals, skilled nursing facilities, assisted living facilities, or continuing care retirement communities. An “association captive insurer” is defined as a company that insures risks of the member organizations of the association and their affiliated companies.

The bill deletes s. 628.903, F.S., wherein the terms “industrial insured” and “industrial insured captive insurer” are currently defined, and incorporates the current definitions, without substantive change, into the amended s. 628.901, F.S.

The bill adds the following items to the information that an association captive insurer must provide in its application for a license.

- Evidence demonstrating that it intends to employ or contract with a reputable person or firm that possesses the appropriate expertise, experience, and character to manage the association captive insurer.
- If the association captive insurer operates with separate cells or segregated accounts, a certificate of insurance used to satisfy financial responsibility laws shall be issued in an amount not exceeding the total funds in the segregated accounts or separate cells of each member organization of the association.

The bill requires that a captive insurer must:

- Maintain its principal place of business in Florida; and
- Hold at least one annual meeting in Florida for, depending on the structure of the insurer, the board of directors, the subscriber’s advisory committee, or the managing board.

The bill removes the requirement that, in addition to meeting the capital and surplus requirements applicable to captive insurers, a captive insurer must also meet the same level of capital and reserves that are specified for various lines of insurance written in this state, as contained in ss. 624.407 and 624.408, F.S.

**Section 7** provides an effective date of July 1, 2011.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill substantially changes the capital and surplus requirements for captive insurers by removing the current requirement that, in addition to meeting the capital and surplus requirements applicable to captive insurers, a captive insurer must also meet the same level of capital and reserves that are specified for various lines of insurance written in this state, as contained in ss. 624.407 and 624.408, F.S. This could make it less costly to create a captive insurer and may allow a captive to provide coverage at a lower premium. This provision may also have an impact on the level of assurance that a captive insurer is able to meet its claims obligations.

The bill exempts health and health insurers domiciled outside of the U.S. covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S. if the insurer meets the certain conditions. Presently, life insurance policies or annuity contracts sold to nonresidents are able to be exempt from regulation by the office, if conditions that are more stringent are met. These provisions will allow nonresident consumers access to additional insurance coverage.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The original filed bill and the committee substitute bill are entitled, "An act relating to captive insurance." However, the committee substitute bill addresses three subject areas, namely captive insurance, life insurance, and health insurance.

**VII. Related Issues:**

The bill prohibits a captive insurer, except an industrial captive insurer, from insuring any risk other than those of its parent or affiliated companies. The bill defines a “captive insurer” to be a pure captive insurer or an association captive insurer. The bill defines a pure captive insurer as a company that insures the risks of its parent, affiliated companies, *controlled unaffiliated businesses*, or a combination thereof. The bill does not define “controlled unaffiliated business.”

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance Committee on April 5, 2011:**

The original bill defined seven new types of captive insurance that do not exist in current law and specified new filing requirements, fees, capital requirements, surplus requirements, reporting requirements, loss reserve provisions, stock conversion and merger provisions, and other provisions for the new types of captive insurers. The bill retains two of the newly defined types of captive insurance: association captive insurer and pure captive insurer. The CS definition for pure captive insurer remains the same as that in the original bill, but the CS narrows considerably the definition of “association.”

The bill exempts life and health insurers domiciled outside of the U.S. covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S. if the insurer meets the certain conditions.

- B. **Amendments:**

None.