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/CS/SB 1620
INTRODUCER:	Budget Subcommittee on General Government Appropriatons, Banking and Insurance Committee and Senator Richter
SUBJECT:	Insurance
DATE:	March 1, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Fav/CS**
2.	Betta/Burgess	DeLoach	BGA	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill changes a number of provisions relating to the regulation of insurance companies, insurance agents, insurance adjusters, and insurance coverage, including:

- 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.
- Revises the current exemption provisions relating to such 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.
- 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 part II of ch. 625, F.S.
- Have a good reputation for providing service and paying claims.
- Furnish to the OIR with annual and quarterly financial statements.
- Provide certain disclosures to policy or contract applicants.

- Allows a not for profit self insurance fund 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.
- 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.
- 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.
- Requires Citizens to begin offering a basic personal lines policy similar to an HO-8 policy by January 1, 2013.
- Require that in establishing replacement costs for dwelling coverage, Citizens must accept the lowest valuation from 3 specified sources.
- Provides that mandated health benefits are not intended to apply only to limited benefit types of health benefit plans, unless specifically designated otherwise.
- Provides a definition of the term "rebate" within the context of performing repairs made pursuant to sinkhole damage.
- Allows an insurer to cancel a private passenger motor vehicle insurance policy within the first 60 days for nonpayment of premium.

- 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.
- 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.
- 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.
- Deletes the current definition of captive insurer and redefines it as meaning a domestic insurer established under part V of ch. 628, 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.
  - 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.
  - 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.
- 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.
- 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.

The bill provides an effective date of July 1, 2012, except as expressly provided otherwise.

This bill substantially amends the following sections of the Florida Statutes:
320.27, 624.402, 624.4625, 624.501, 624.610, 626.261, 626.321, 626.753, 626.9201, 626.9541, 627.351, 627.7015, 627.707, 627.7295, and 627.736, 627.7405, 628.901, 628.905, 628.907, 628.909, 628.911, 628.913, 627.271.

This bill creates the following sections of the Florida Statutes:
626.8675 and 627.6011, 628.906, 628.908, 628.910, 628.912, 628.914, 628.9141, 628.9142, 628.918, 628.919, 628.920.

This bill repeals the following section of the Florida statutes: 628.903.

II. Present Situation:

Motor Vehicle Dealers

Section 320.27(3), F.S., requires motor vehicle dealers licensed in Florida to be insured under a garage liability insurance policy or a general liability policy and a business automobile policy which must include a minimum of $25,000 combined single-limit liability coverage for bodily injury and property damage, and $10,000 of personal injury protection (PIP).
Section 320.27(1)(a), F.S., defines a "motor vehicle dealer" as any person engaged in the business of buying, selling or dealing in motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles. The definition specifies five separate classifications of motor vehicle dealers, one of which is a salvage motor vehicle dealer, which purchases salvaged or wrecked motor vehicles for the purpose of reselling the vehicle or its parts.

Alien Insurers

The Florida Insurance Code contains many 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[1] and financial reporting requirements.[2] 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.

Section 624.401, F.S., requires insurers and other risk-bearing entities to obtain a certificate of authority from the OIR prior to engaging in insurance transactions unless specifically exempted. Section 624.402(8), F.S., provides an exemption from the requirement to obtain a COA for any insurer domiciled outside the U.S. and insuring only persons who, at the time of issuance or renewal, are nonresidents of the U.S.[3] A "nonresident" is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and intends to maintain such place of domicile as her or his permanent residence. For purposes of this subsection, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the 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.

To be eligible for the exemption from the COA requirements, the insurer must:

- Not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to U.S. residents. The prohibition also applies to any affiliated person of the insurer. Under current law, if a holding company wants to establish a Florida office for their alien

[1] Section 624.4095, F.S.
[2] Section 624.424, F.S.
[3] Ch. 2011-174, L.O.F.

affiliate, they are prohibited if the holding company owns another entity already licensed in Florida.
- Register with the OIR.
- Provide a disclosure on all certificates, contracts, and policies issued in Florida stating that the policy has not been approved by the OIR.
- Provide the following information to the OIR on an annual basis:
  - Name of the insurer and the country of domicile;
  - Names of the owners, officers, and directors and the number of employees;
  - Lines of insurance and 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; and
  - A copy of filings required by the insurer's domicile.

Reinsurance Filing Requirements

Section 624.610(11), F.S., establishes specified information that must be filed by domestic or commercially domiciled insurers that cede directly written risks of loss. Section 624.619(11)(c), F.S., specifies certain exemptions from the filing requirements, including any insurer with more than $100 million in surplus as to policyholders, less than $500,000 in direct written premiums in Florida in the preceding calendar year, or less than 1,000 policyholders at the end of the preceding calendar year. The statute then provides that any ceding insurer "otherwise subject to this section with more than $250,000 in direct written premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection." The placement of this last provision creates some ambiguity as to its application.

Agent License Examinations

The Department of Financial Services (DFS) is responsible for licensing insurance agents, service representatives and adjusters, under Part I of ch. 626, F.S., titled the "Licensing Procedures Law." Section 626.261, F.S., establishes requirements for conducting examinations for licensee candidates.

Limited Licenses

Section 626.321, F.S., establishes categories for which the DFS will issue a license that authorizes an agent to transact a limited class of business. The following enumerated categories qualify for limited license:
- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary insurance;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multi-peril crop insurance;
- In-transit and storage personal property insurance; and

- Communications equipment property insurance, communications equipment inland marine insurance, and communications equipment service warranty insurance.

Under a limited license for travel insurance, the policy or certificate of travel insurance can cover risks incidental to travel, planned travel, or accommodations while traveling, including:

- Accidental death and dismemberment;
- Trip cancellation, interruption or delay;
- Loss or damage to personal effects or travel documents;
- Baggage delay;
- Emergency medical travel or evacuation; and
- Medical, surgical, or hospital expenses arising from an illness or emergency.

The travel insurance must be limited to travel or accommodations of no more than 60 days, but the policy or certificate can be issued for a term that exceeds 60 days. A limited license for travel insurance may be issued only to:

- A full-time salaried employee of a common carrier or a transportation ticket agency in connection with the sale of transportation tickets;
- An entity or individual that is a developer of a timeshare plan of an approved public offering statement;
- An entity or individual that is an exchange company operating an approved exchange program;
- An entity or individual that is a managing entity operating a timeshare plan;
- An entity or individual that is a seller of travel; or
- An entity or individual that is an affiliate of any of the listed entities.

Insurance Adjusters

Insurance adjusters are regulated by the DFS under part VI of ch. 626, F.S., entitled the "Insurance Adjusters Law."[4] Section 626.852, F.S., explicitly provides that the Insurance Adjusters Law does not apply to:

- Life insurance or annuity contracts;
- Third party administrators with a certificate of authority, or individuals employed by third party administrators;
- Any employee or agent of a state university board of trustees providing services for a self-insurance program; or
- Any person who adjusts only multi-peril crop insurance or crop hail insurance.

Section 626.862, F.S., provides that a licensed and appointed insurance agent is authorized to adjust claims for the insurers for which the agent is appointed, without obtaining a license as an adjuster.

The Insurance Adjusters Law provides separate definitions and separate requirements for public adjusters,[5] independent adjusters,[6] company employee adjusters,[7] nonresident company

[4] Section 626.851, F.S.
[5] Section 626.854, F.S.

employee adjusters,[8] nonresident public adjusters,[9] and nonresident independent adjusters.[10] A nonresident independent adjuster is defined as a person who:

- Is a resident of Florida;
- Is a licensed independent adjuster in the state of residence, or if the state of residence does not license independent adjusters, the nonresident must have passed the relevant Florida examination for licensure; and
- Is a self-employed independent adjuster or is associated with or employed by an independent adjuster firm or other independent adjuster.

Additional requirements for nonresident independent adjusters are contained in s. 626.8734, F.S.

Limited Apportionment Companies

A limited apportionment company is a company with surplus as to policyholders below a certain prescribed level. Four separate sections in current law have established apparently conflicting requirements necessary to qualify as an LAC. Section 627.351(2)(b)3., F.S., provides a threshold of $20 million or less of surplus as to policyholders to qualify as an LAC.
Section 627.351(6)(c)13., F.S., provides a threshold of $25 million or less of surplus as to policyholders to qualify as an LAC. Further, s. 215.555(4)(e)3.,F.S., specifically references the $20 million definition of LAC under s. 627.351(2)(b)3., F.S.; however, s. 215.555(4)(b)4., F.S., specifically references the $25 million definition of LAC under s. 627.351(6)(c), F.S.

Section 627.351(2)(b)3., F.S., established the Windstorm Insurance Risk Apportionment plan, and authorized the OIR to adopt a plan for the equitable apportionment of windstorm coverage among insurers authorized to transact property insurance on a direct basis in Florida.[11]
Section 627.351(2)(b)3., F.S., requires that the plan provide that any member insurer with $20 million or less of surplus as to policyholders can apply with OIR to qualify as an LAC. The section specifies that the apportionment of windstorm loss to an LAC cannot exceed that LAC's gross participation, and the LAC cannot be required to participate in marketwide aggregate windstorm losses exceeding $50 million. Further, if the OIR determines that any regular assessment will result in the impairment of surplus of an LAC, the OIR must direct that LAC's share of the assessment to be deferred.

Because all residual market windstorm risk is now covered by Citizens Property Insurance Corporation (Citizens) under s. 627.351(6), F.S., the Windstorm Insurance Risk Apportionment plan created by s. 627.351(2), F.S., is no longer active. Nevertheless, the $20 million threshold that it establishes to qualify as an LAC is still in effect through a cross-reference from legislation regulating the Florida Hurricane Catastrophe Fund (FCHF) under ch. 215, F.S.

Section 215.555(4)(e)3., F.S., specifically references the definition of limited apportionment companies under s. 627.351(2)(b)3., F.S., for the purpose of allowing the FHCF to advance the

[6] Section 626.855, F.S.
[7] Section 626.856, F.S.
[8] Section 262.858, F.S.
[9] Section 626.8582, F.S.
[10] Section 626.8584, F.S.
[11] Section 627.351(2)(b), F.S.

amount of estimated reimbursement payable to an LAC under the FHCF contract. Accordingly, only those companies with surplus at or below $20 million could qualify to receive the advance from the FHCF.

Section 627.351(6), F.S., establishes Citizens Property Insurance Corporation, and s. 627.351(6)(c)13., F.S., specifies that the Citizens' plan of operation must provide that any assessable insurer with surplus as to policyholders of $25 million or less may petition the OIR to qualify as an LAC, for the purpose of allowing the LAC to pay any regular assessment on a monthly basis as the assessments are collected by the LAC from its policyholders. Further, if the OIR determines that any regular assessment will result in the impairment of surplus of an LAC, the OIR must direct that LAC's share of the assessment be deferred.

The $25 million threshold for LACs also has a statutory cross-reference tying it into the statutes regulating the FHCF. Section 215.555(4)(b)4., F.S., specifically references the definition of limited apportionment companies under s. 627.351(6)(c), F.S., for the purpose of allowing the LACs to participate in an additional layer of FHCF coverage not otherwise available. Accordingly, those companies with surplus up to $25 million could qualify as LACs for participating in the additional layer of FHCF coverage.

Mandated Health Benefit Coverages

Sections 627.6401, F.S., through 627.64193, F.S., there are 17 different statutory sections that impose various forms of mandatory health benefits that must be included in every health insurance policy, unless an exception is designated within the statutory section that describes the specific mandate being imposed. Many of the mandates provide for exceptions within the specific section that imposes the mandate, as follows:

- Section 627.6406, F.S., Maternity care, explicitly exempts health insurance coverage that does not provide for hospitalization in connection with childbirth.
- Section 627.6408, F.S., Osteoporosis screening, does not apply to "specific-accident, specific-disease, hospital indemnity, Medicare supplement, or long-term care health insurance, or the state employee health insurance program."
- Section 627.641, F.S., Newborn children, does not apply to disability income or hospital indemnity policies, or to normal maternity policy provisions.
- Section 627.6416, F.S., Child health supervision services, does not apply to "disability income, specified disease, Medicare supplement, or hospital indemnity policies."
- Section 627.6417, F.S., Surgical procedures and devices incident to mastectomy, does not apply to "disability income, specified disease other than cancer, or hospital indemnity policies."
- Section 627.64171, F.S., Outpatient postsurgical care, does not apply to "disability income, specified diseases other than cancer, or hospital indemnity policies."
- Section 627.6418, F.S., Mammograms, does not apply to "disability income, specified disease, or hospital indemnity policies."
- Section 627.64193, F.S., Cleft lip and cleft palate, does not apply to "specified-accident, specified-disease, hospital indemnity, limited benefit disability income, or long-term care insurance policies."

Alternative Procedure for Claim Dispute Resolution

Section 627.7015, F. S., establishes procedures for a mediated claim resolution process for all claimants and insureds under personal lines and commercial residential policies. The process is available prior to the commencing of the appraisal process or commencing litigation. If requested by the insured, legal counsel is permitted. The process explicitly excludes commercial coverages, motor vehicle coverages, or liability disputes on a property insurance policy. When a first party claim is filed for the mediation process, the insurer is obligated to notify all first-party claimants of their right to participate in the mediation program. If the insurer fails to comply with its obligations, the insured is relieved from any contractual obligation to participate in the loss appraisal process as a precondition to legal action. For purposes of the alternative dispute resolution procedure, the term "claim" means any dispute between an insurer and an insured over a material issue of fact, with four exceptions, specified as follows:

- When the insurer has a reasonable basis to suspect fraud;
- When, based on agreed-upon facts as to the cause of the loss, there is no coverage under the policy;
- When the insurer has a reasonable basis to believe the claimant has intentionally made a material misrepresentation relevant to the claim, and the entire claim is denied based on the misrepresentation; or
- When the controversy is less than $500, unless the parties agree to mediate the dispute.

Cancellation of Motor Vehicle Insurance Policies

Prior to the effective date of a private passenger motor vehicle insurance policy or a binder for such a policy, the insurer or agent must collect from the insured an amount equal to 2 months premium. This is not applicable if:

- The insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group.
- The insurer issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents.
- All policy payments are paid through a payroll deduction plan or an automatic electronic funds transfer payment plan from the policyholder.[12]

For policies under which the first 2 months of premium are not required to be paid up front, the insurer may not cancel the new policy or binder during the first 60 days immediately following the effective date of the policy or binder except for nonpayment of premium.

Overdue Payments of Personal Injury Protection (PIP) Benefits

Section 627.736(4)(d), F.S., provides 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 established to apply to judgments and decrees,[13] whichever is greater. The interest rate for judgments is established by the Chief

[12] Section 627.7295(7), F.S.
[13] Section 55.03, F.S.

Financial Officer (CFO) four times[14] a year to apply to each calendar quarter in the year.[15] The CFO is to average the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then add 400 basis points. The statute states that the interest is to be applied "for the year in which the payment became overdue." [16]

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 United States.
- 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 (OIR) under part V of ch. 628, F.S. That part defines a captive insurer to be "a domestic insurer established under part I[17] to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts risk under a contract of insurance."[18] Captives may apply to OIR to provide commercial property, commercial casualty, and commercial marine insurance coverage, except workers' compensation or employer's liability insurance.[19] An industrial insured captive insurer may provide workers compensation and employer's liability insurance, but only in excess of at least $25 million in the annual aggregate.[20] Section 628.903(2), F.S., defines an "industrial insured captive insurer" as a captive insurer that:

[14] The CFO is to establish the interest rate on December 1, March 1, June 1, and September 1.
[15] The quarters are specified as beginning January 1, April 1, July 1, and October 1.
[16] Section 627.736(4)(d), F.S.
[17] Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."
[18] Section 628.901, F.S.
[19] Section 628.905(1), F.S.
[20] Section 628.905(6), F.S.

- Has as its stockholders or members only industrial insureds[21] that are insured by the captive;
- Provides insurance only to the industrial insureds that are its stockholders or members and affiliates of its parent corporation, or provides reinsurance to insurers only on risks written for the industrial insureds who are stockholders or members and affiliates of the industrial insured captive or its parent company; and
- Maintains unimpaired capital and surplus of at least $20 million.

Section 628.907, F.S., requires all captives 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 requires that all captive insurers are also subject to the same level of surplus[22] that is specified for various lines of insurance written in this state.

III. Effect of Proposed Changes:

Section 1 amends s. 320.27, F.S., relating to requirements imposed on licensed Florida motor vehicle dealers. The bill specifies that a salvage motor vehicle dealer, as defined in s. 320.27(1)(c)5., F.S., 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. The liability and PIP coverage requirements cover risk that arises only when a motor vehicle is being driven; this provision of the bill removes the requirement of coverage for vehicles that cannot be driven.

Section 2 revises the current exemption from the certificate of authority (COA) requirements for an insurer domiciled outside the U.S. covering nonresidents of the U.S. at the time of issuance or renewal. Under current law, the alien insurer, or any affiliated person, may not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued to any person in the U.S. The bill makes the following changes:

- Only the alien insurer is prohibited from soliciting, selling, or accepting application for any policy or contract to be delivered or issued for delivery in the U.S. The affiliated person is removed from this restriction.
- The definition of nonresident is revised to include a trust or other entity organized and domiciled under the laws of a country other than the U.S.

New Exemption from the COA Requirements

The bill creates s. 624.402(9), F.S., which provides an exemption from the COA requirements for insurers domiciled outside the U.S. selling life and annuity coverage to persons in Florida who, at the time of issuance, are not U.S. residents if the following conditions are met:

- 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 three consecutive years; or
  - Is the wholly owned subsidiary of an authorized insurer; or

[21] 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.
[22] Sections 624.407, F.S, and 624.408, F.S.

  - 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 three years.
- Prior to the OIR granting an alien eligibility 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 part II of ch. 625, F.S.
  - Have a good reputation for providing service and paying claims.
  - Furnish the OIR with annual and quarterly financial statements.
  - Allow access to the insurer's books and records pertaining to its operations in Florida, at the request of the OIR.
  - Provide certain disclosures to policy or contract applicants, such as the identity and rating assigned by each rating organization that has rated the insurer. Also the insurer must disclose that the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

The OIR may waive the three year operating requirement if the insurer has "operated successfully" for at least one year prior and has a surplus of at least $25 million. The bill also provides that these provisions do not impose upon the OIR any duty or responsibility to determine the actual financial condition or claims practices of an unauthorized insurer, and the status of eligibility, if granted, indicates only that the insurer appears to be financially sound and that the OIR has no credible evidence to the contrary. The bill provides that if the OIR has reason to believe that such an insurer is insolvent or is in unsound financial condition, or is no longer eligible to issue policies or contracts subject to the conditions of this subsection, the OIR may conduct an investigation or examination and may withdraw eligibility of the insurer.

The definition of nonresident is provided by a cross-reference to s. 624.402(8), F.S.

Eligible insurers issuing policies or contracts pursuant to this subsection are subject to part IX of ch. 626, F.S., and the OIR may take action against such insurers for violations of the Unfair Trade Practices Act. Insurers violating provisions of this new subsection are also subject to the penalties provided in ss. 624.15 and 626.910, F.S.

All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States are subject to ch. 896, F.S., Offenses Related to Financial Transactions.

This subsection does not create an exception to the agent licensure requirements of ch. 626, F.S. An insurer issuing policies or contracts are required to appoint the agents the insurer uses to sell such policies or contracts as provided in ch. 626, F.S.

Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509, F.S.

Section 3 amends s. 624.4625, F.S., relating to corporation not for profit self-insurance funds. The bill allows a not for profit self insurance fund to purchase for its members coverage for health, accident, or hospitalization if certain conditions are met.

Section 4 amends s. 624.501(9), F.S., relating to the fees applicable for the original appointment and biennial renewal fee for limited appointments as agents. Current law provides a fee of $60 (including tax) for the original appointment fee and the biennial renewal fee for an appointment for each agent, with an exception that is applicable only to agents selling or soliciting motor vehicle rental insurance. For those limited agents, the original appointment fee and the biennial renewal fee is also $60, but the fee is not required to be paid for each individual that sells the product, but rather the fee must be paid only for each office, branch office, or place of business covered by the license.

The bill adds travel insurance to the exception that is currently applicable only to motor vehicle rental insurance. As a result, for the sale of travel insurance, an insurer would be required to pay the $60 original appointment fee and the $60 biennial renewal fee only for each office, branch office, or place of business covered by the license.

Section 5 amends s. 624.610(11)(c), F.S., by clarifying that the 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 no more than $250,000 of premium during the preceding calendar quarter and fewer than 1,000 policyholders at the end of the preceding calendar year, or to any insurer with more than $100 million in surplus as to policyholders.

Section 6 creates s. 626.261(5), which allows the DFS to provide licensing examinations in Spanish. Applicants seeking to be given an examination in Spanish must bear the full cost incurred by the DFS in developing, administering, grading and evaluating the examination. In determining whether to allow the examination to be translated and administered in Spanish, the DFS must consider the percentage of population who speak Spanish.

Section 7 amends s. 626.321, F.S., relating to limited agent licenses. The bill removes a current reference to the OIR's review of travel insurance under s. 624.605(1)(q), F.S., which refers to a miscellaneous subcomponent of the definition of casualty insurance. The bill adds event cancellation and damage to travel accommodations as permissible perils for inclusion under travel insurance. The bill increases the maximum allowable duration of travel or accommodations which a travel insurance policy or certificate may cover from the current 60 days limit to 90 days. The bill expands the list of individuals or entities to whom a limited license for travel insurance may be issued to include full-time salaried employees of a licensed general lines agent and business entities that offer travel planning services when the insurance activities are in connection with travel, providing:

- The license issued to a business entity offering travel planning services encompasses each office, branch office, or place of business using the entity's business name to sell insurance;

- The application for licensure must list the name, address, and phone number for each place of business covered under the license, and the licensee is obligated to provide updated information to the DFS for every place of business that is added to or deleted from the license within 30 days of the change.
- The licensed entity is directly responsible for the acts of those acting under the license.

Section 9 creates s. 626.8675, F.S., providing an exemption from part VI of ch. 626, F.S., for portable electronics insurance claims employees. The bill 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. "Automated claims adjudication system" is defined as a preprogrammed computer system for the resolution of portable electronics insurance claims, as long as the system:

- Is used only by a licensed independent adjuster, a licensed agent, or an individual supervised under this provision;
- Complies with all claims payment requirements of the Florida Insurance Code; and
- Is certified as compliant by a licensed independent adjuster who is an officer of a business entity licensed under ch. 626, F.S.

The bill provides that a resident of Canada cannot obtain a license as a nonresident independent adjuster for the purposes of adjusting portable electronics insurance claims, unless the individual obtains an adjuster license in another U.S. state.

Section 626.8675, F.S., will have an effective date of January 1, 2013.

Section 10 amends s. 626.9201, F.S., to provide that a surplus lines carrier is not required to provide 45 days' notice of nonrenewal if the insurer has manifested its willingness to renew and to offer is not rescinded prior to the expiration of the policy, or if a notice of cancellation for nonpayment of premium is provided to the named insured.

Section 11 amends s. 626.9541, F.S., to specify that if someone knowingly presents a property and casualty certificate of insurance that has been altered after being issued, such action is an unfair or deceptive act or practice under s. 626.9541(1)(a), F.S.

Section 12 amends s. 627.351, F.S. The bill changes the threshold level of surplus to qualify as an LAC under s. 627.351(2)3., F.S., from the current $20 million to $25 million. As a result, the statutory definitions and cross-references for LACs will be consistent. An insurer with surplus as to policyholders of $25 million or less can qualify as an LAC for all statutory purposes, including being qualified to receive advances from the FHCF under s. 215.555(4)(e)3., F.S.

The bill amends s. 627.351(6), F.S., to require Citizens to begin offering a basic personal lines policy similar to an HO-8 policy by January 1, 2013. The bill amends s. 627.351(6), F.S., to require that in establishing replacement costs for dwelling coverage, Citizens must accept the lowest valuation from the following three sources: (1) replacement cost software designed to establish insurance replacement costs; (2) a replacement cost valuation prepared by a licensed real estate appraiser, that is designed to establish insurance replacement cost; or (3) a replacement cost valuation prepared by a licensed contractor or a professional engineer.

Section 13 creates s. 627.6011, F.S., relating to mandated health insurance coverages. The bill provides that, rather than the current practice of designating all exemptions within each statutory section that describes the specific mandate being imposed, mandatory health benefit are not intended to apply to the types of health benefit plans listed in s. 627.6561(b)-(e), F.S., (limited coverage plans), unless the mandate specifically designates otherwise. The bill defines "mandatory health benefits" to mean those set forth in s. 627.6401, F.S., through s. 627.64193, F.S., along with any cross-references, and all mandatory treatment or health coverages or benefits that are enacted after the effective date of the bill.

Section 14 amends s. 627.6699,F.S., relating to the definition of "carrier" under the Employee Health Care Access Act. The bill expands the current exemption from the definition of "carrier," in s. 627.6699, F.S. Currently, multiple-employer welfare arrangements (MEWAs) are explicitly excluded from the definition of "carrier," and thereby are exempted from the requirements that are imposed on carriers by s. 627.6699, F.S. The CS adds voluntary employees' beneficiary association, defined in 26 USC s. 501(c)(9), to the explicit exclusion from the definition of "carrier." Further, the CS specifies that the term "carrier" does not include an insurer or HMO to the extent that it insures members of a MEWA or a voluntary employees' beneficiary association.

Section 15 amends s. 627.7015, F.S., relating to alternative procedures for claim dispute resolution for personal lines and commercial residential property insurance. The bill specifies that the alternative dispute resolution procedure can be requested only by the policyholder, as a first-party claimant, or by the insurer. For all purposes within the alternative dispute resolution procedure, every current reference to either "insured" or "first-party claimant" is replaced in the bill with the term "policyholder." The bill adds an exception to the circumstances under which a claim would qualify for the alternative procedure for claim dispute resolution. Under current law, for purposes of the alternative dispute resolution procedure, the term "claim" means any dispute between an insurer and an insured over a material issue of fact, with four specified exceptions. The bill adds a fifth specific exception, namely that when the notice of loss is reported more than 3 years 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.

Section 16 amends s. 627.707, F.S., relating to sinkhole claims. Current law prohibits a policyholder from accepting a rebate form any person performing repairs made pursuant to sinkhole damage. The bill provides a definition of the term "rebate" to mean a remuneration, payment, gift, discount, or transfer of any item of value to the policyholder as an incentive or inducement to obtain the repairs.

Section 17 amends s. 627.7295, F.S., relating to motor vehicle insurance contracts. The bill 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 nonpayment of premium when the check or other method of payment presented is subsequently dishonored. The bill also removes current language that limits the cancellation of policies within the first 60 days only for the reason of nonpayment of premium. This section is effective upon the act becoming a law.

Section 18 amends s. 627.736, F.S., by clarifying 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. This provision specifies a more precise date than the current statutory language which states that the interest is to be applied "for the year in which the payment became overdue." This section is effective upon the act becoming a law.

Section 19 amends s. 627.7405, F.S., relating to the right of reimbursement by an insurer providing PIP coverage. Current law specifies that an insurer providing PIP coverage on a private passenger motor vehicle has the right to obtain reimbursement of PIP benefit payments from the owner of a commercial motor vehicle or that owner's insurer if the injuries resulted from the insured having been an occupant of the commercial vehicle or having been struck by the commercial vehicle while not an occupant of a motor vehicle. The bill 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.

Captive Insurance Companies. Sections 20 through 36 of the bill create, amend and repeal a number of provisions relating to the regulation of captive insurance companies, as follows:

Section 20 amends s. 628.901, F.S., to delete the current definition of captive insurer and redefines it as meaning a domestic insurer established under part V of ch. 628, F.S., including any of the three following specified types of captive formation, each of which are defined as:

1. Pure captive insurance company means a company that insures the risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.
2. 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.
3. 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 can also provide reinsurance only on risks written for the industrial group.

In addition to defining the specific types of authorized captive insurance company formations, the bill provides the following definitions:

- "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.
- "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.
- "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.
- "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.

- "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.

Section 21 Repeals s. 628.903, F.S., which contains the definitions in the current law which are being replaced by the definitions in the bill.

Section 22 Amends s. 628.905, F.S., to require captives to apply for their license through the Commissioner of Insurance at the OIR. The bill allows captives to write any insurance authorized by the insurance code except workers compensation, 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. 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.

Before receiving a license, a captive formed as a corporation must file with the OIR:

- A certified copy of its articles of incorporation and bylaws;
- A statement of its financial condition under oath by its president and secretary;
- Evidence of the amount and liquidity of the proposed captive's assets relative to the risks to be assumed;
- Evidence of adequate expertise, experience, and character of the person(s) who will manage the company;
- Evidence of the overall soundness of the company's plan of operation;
- Evidence of adequate loss prevention programs of the company's parent, member organizations, or industrial insureds; and
- Any other factors considered relevant by the OIR in determining whether the company will be able to meet its obligations. The bill provides that a captive insurer or a captive reinsurance company must pay to the OIR a nonrefundable fee of $1,500 for processing the application, and an annual renewal fee of $1,000. The OIR may also charge $5 for any document requiring authentication.

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, and filing the necessary organizational documents with the Secretary of State, along with a certificate of good standing issued by the OIR.

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.

Section 23 Creates s. 628.906, F.S., relating to restrictions on eligibility of officers and directors. The bill requires that a prospective captive insurer filing for a license under s. 628.905, F.S., must include background investigations, biographical affidavits, and fingerprint cards as evidence of the trustworthiness and competence of its officers and directors. The OIR may deny, suspend or revoke the certificate if a captive insurer's officer or director served in that capacity for an specified entity that became insolvent within 2 years of the service of the officer or director, unless the officer or director demonstrates that he or she did not contribute to the insolvency. The OIR may deny, suspend or revoke the captive insurer's certificate if any person who has the ability to exercise control or influence over the captive insurer has been found guilty of any felony crime involving moral turpitude punishable by imprisonment of one year or more.

Section 24 Amends s. 628.907, F.S., establishing the following amounts of unimpaired paid-in capital and net assets:

- 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.
- Industrial insured captive incorporated as a stock insurer must have at least $200,000 of unimpaired paid-in capital.
- Special purpose captive insurance company must have an amount of unimpaired paid-in capital and unrestricted net assets determined by the OIR.

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.

Section 25 Creates s. 628.908, F.S., relating to surplus requirements and restrictions on payment of dividends. The bill states that the OIR may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

- For a pure captive insurance company, at least $150,000.
- For an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, at least $300,000.
- For an industrial insured captive insurance company incorporated as a mutual insurer, at least $500,000.
- For a special purpose captive insurance company, an amount determined by the OIR.

The bill states a captive insurance company may not pay a dividend out of capital or surplus in excess of the limitations set forth in ch. 628, F.S., without the prior approval of the OIR.

Section 26 Amends s. 628.909, F.S., relating to the applicability of other statutory provisions to captive insurers. Among other changes, the bill exempts captives from the requirements of:

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

Section 27 Creates s. 628.910, F.S., relating to incorporation options and requirements. The bill provides that:

- A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, or incorporated as a public benefit, mutual benefit, or religious nonprofit corporation.
- An industrial insured captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, or incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

The bill provides that a captive insurance company must have at least three incorporators, of whom at least two must be residents of Florida. The bill provides that for a captive insurance company formed as a corporation, before the articles of incorporation or organization are transmitted to the Secretary of State, the incorporators must file in triplicate the articles of incorporation with the OIR. If the OIR finds the articles to conform with law, it will endorse its approval and return two sets of the articles to the incorporators for submission to the Department of State.

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 specifies that a captive formed as a corporation will be subject to all provisions of the general corporation law, as well as the provisions of ch. 628, F.S. If there is a conflict between the general corporation law and ch. 628, F.S., the provisions of ch. 628, F.S., will govern.

Section 28 Amends s. 628.911, F.S., relating to reports and statements. The bill requires captive insurance companies and captive reinsurance companies to submit an annual report on financial condition to the OIR before March 1st. The bill retains current law requiring the report to be verified by oath from two executive officers, and the report must be compiled using generally accepted accounting principles unless the OIR approves alternative accounting measures. The bill retains the provision in current law allowing the Financial Services Commission to adopt by rule the form in which captive insurers must report.

The bill allows a captive insurer to apply for filing the annual report on a fiscal year-end that is consistent with its parent company's fiscal year-end. If an alternative reporting date is granted the report is due 60 days after the parent company's fiscal year end.

Section 29 Creates s. 628.912, F.S., relating to discounting of loss and loss adjustment expense reserves. The bill allows a captive reinsurance company to discount its loss and loss adjustment expense reserves at treasury rates applied to the expected payment pattern associated with the reserves. A captive reinsurance company must file annually an actuarial opinion on the loss and

loss adjustment expense reserves provided by an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive company or its affiliates.

Section 30 Amends s. 628.913, F.S., relating to captive reinsurance companies. The bill allows a captive reinsurance company to apply to the OIR for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the OIR may write reinsurance contracts covering risks in any state; however, a captive reinsurer is not allowed to directly insure risks.

The bill requires that to conduct business in this state, a captive reinsurance company must:
- Obtain from the OIR a license authorizing it to conduct business as a captive reinsurance company in this state;
- Hold at least one board of directors' meeting each year in Florida;
- Maintain its principal place of business in Florida; and
- Appoint a registered agent to accept service of process and act on its behalf in Florida.

Additionally, before receiving a license, a captive reinsurance company must file with the OIR:
- A certified copy of its charter and bylaws.
- A statement under oath of its president and secretary showing its financial condition. Other documents required by the OIR.
- Evidence of the amount of liquidity of the captive reinsurance company's assets relative to the risks to be assumed.
- Evidence of the adequacy of the expertise, experience, and character of the person who manages the company.
- Evidence of the overall soundness of the company's plan of operation.
- Other overall factors considered relevant by the OIR in ascertaining if the company would be able to meet its policy obligations.

Section 31 Creates s. 628.914, F.S., relating to minimum capitalization and reserves for captive reinsurance companies. The bill states the OIR may not issue a license to a captive reinsurance company unless the company possesses and maintains capital or unimpaired surplus of the greater of $300 million or 10 percent of reserves. The surplus may be in the form of cash or securities. The OIR may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted. Further, a captive reinsurance company may not pay a dividend out of capital or surplus in excess of these limitations without the prior approval of the OIR.

Section 32 Creates s. 628.9141, F.S., relating to incorporation of a captive reinsurance company. The bill requires a captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders. A captive reinsurance company must have at least three incorporators of whom at least two must be residents of Florida. The capital stock must be issued at a par value of at least $1 and no more than $100. At least one of the board of directors must be a resident of Florida.

Section 33 Creates s. 628.9142, F.S., relating to provisions on the effect of reinsurance on required reserves. The bill allows a captive insurance company to provide reinsurance on risks ceded by any other insurer. Additionally, a captive insurance company may take credit for reserves on risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with s. 624.610, F.S.

Section 34 Creates s. 628.918, F.S., relating to management of assets of a captive reinsurance company. The bill requires that at least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in Florida.

Section 35 Creates s. 628.919, F.S., establishing regulations and standards to ensure risk management control by a parent company. The bill requires the Financial Services Commission to adopt rules to establish standards to ensure that a parent company or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company.

Section 36 Creates s. 628.920, F.S., relating to the eligibility of a captive insurance company to obtain a certificate of authority to act as an insurer. The bill specifies that a licensed captive insurance company that meets requirements imposed on an insurer must be considered for a certificate of authority to act as an insurer in Florida.

Section 37 amends s. 627.271, F.S., relating to the priority for the distribution of claims from an insurer's estate, pursuant to an order of liquidation. Current law provides a prioritized list of 10 specifically defined classes for receiving claims from an insurer's estate. The tenth (last) class are the claims of shareholders and other owners. The bill adds another class between the current classes 9 and 10, thereby pushing the current class 10 back into class 11. The new class 10 is the interest on allowed claims for classes 1 through 9, and this interest shall precede the priority of claims of shareholders and other owners.

Section 38 provides that if CS/SB 578 (allowing surplus lines carriers to remove policies from Citizens under certain conditions) is adopted, the surplus lines carrier must maintain an A.M. Best rating of A- (which provision is currently in CS/SB 578) or, alternatively, a Demotech rating of A.

Section 39 provides an effective date of July 1, 2012, except as expressly provided otherwise.

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:

Salvage motor vehicle dealers will save the cost of the premiums for the purchase of the $25,000 combined single-limit liability coverage for bodily injury and property damage, and the $10,000 PIP coverage, for vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads.

By expanding the exemptions from the COA requirements to insurers domiciled outside of the U.S., and selling life insurance policies and annuity contracts to nonresidents of the U.S., the bill will allow for an increase in the lines and types of insurance offerings. The bill will reduce the regulatory burden for these insurers while preserving regulatory oversight on insurers selling policies and contracts to U.S. residents. Nonresidents could benefit from such coverage.

The definition of "nonresident" is expanded under s. 624.402(8), F.S., to include a trust or other entity organized and domiciled under the laws of a country other than the United States. This will allow life insurance trusts and other entities to obtain coverage under these non-regulated policies.

A residential property insurer with surplus as to policyholders of greater than $20 million, but not more than $25 million can now qualify as an LAC for the purpose of receiving advances from the FHCF under s. 215.555(4)(e)3, F.S.

States that have seen growth in captive insurance companies report positive economic impact through job creation. The legislation is intended to make captive insurance a more attractive alternative than it currently is, and thereby expand the proportion of Florida insureds that rely on captive insurance domiciled in Florida. To the extent that insureds move to a captive form of coverage, their current form of insurance coverage will be displaced. The net effect may be a growth in jobs for insurance personnel such as actuaries, lawyers, accountants, adjusters, administrators, and support personal, but that effect is indeterminable at this time. Additionally, the bill requires a captive insurer to maintain its principal place of business and hold at least one annual board of directors meeting in Florida.

For a company forming a captive insurance company, an insurance policy tailored to the individual company's risk profile should effectuate overall premium savings.

C. Government Sector Impact:

The bill allows the DFS to administer licensing examinations in Spanish, depending on the percentage of the population who speak Spanish. If the DFS determines that it will provide examinations in Spanish, it will incur incremental costs to develop, administer, and grade the Spanish examinations. The DFS estimates that the development of new examination would be $45,000. These incremental costs are to be borne by the applicants who elect to take the examinations in Spanish. Based on data obtained from Texas, which administers a Spanish translation examination, the DFS estimates that a candidate taking the Spanish translation examination would pay $341 for the examination, rather than the current cost of $43 to take the examination in English.

The DFS reports that in order to comply with the bill's procedure for travel insurance agents, it will need to make changes to its computer system, which it estimates will cost approximately $5,000.

Provisions in the bill will require policy contract changes for travel insurance, motor vehicle insurance, health insurance and residential property insurance contracts and rates. The OIR anticipates that its product review units will have significant workload increases. The amount of this impact is indeterminate at this point.

The bill requires the Financial Services Commission to engage in rulemaking to establish the standards necessary to ensure that a parent company is able to exercise control of the risk management function of a controlled unaffiliated business insured by a pure captive insurance company. To the extent that insureds move to a captive form of coverage, their current form of insurance coverage will be displaced, as will the premium tax collected for that coverage. Part of the purpose for captive insurance is to provide lower overall premiums for the insured. If the amount of taxes and fees collected for new captive insurance is less than the premium tax being displaced, there will be a net reduction in total premium tax collected. Any effect from this is indeterminable at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 9 of the bill defines an "automated claims adjudication system" as a preprogrammed computer system used to resolve portable electronics insurance claims. The term portable electronics insurance is not currently defined in the insurance code nor in the bill.

VIII. Additional Information:

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

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The CS removes a requirement that a vehicle must be issued a certificate of destruction in order to qualify for the exemption from carrying the $25,000 combined single-limit liability coverage for bodily injury and property damage, or the $10,000 PIP coverage.

The CS revises the current exemption provisions relating to alien insurers in the following manner:

- Deletes the reference to affiliated persons from the prohibition on insurers soliciting or selling policies, or accepting applications for any person in the United States. Thus, an insurer who has an affiliate would not be disqualified from obtaining an exemption.
- Expands 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 CS also creates an exemption from the 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 part II of ch. 625, F.S.
- Have a good reputation for providing service and paying claims.
- Furnish to the OIR with annual and quarterly financial statements.
- Provide certain disclosures to policy or contract applicants, such as the date the insurer was organized; the identity and rating assigned by each rating organization that has rated the insurer; the insurer does not hold a COA; the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

The CS specifies that the exemption from filing specified reinsurance information applies to direct insurance writers that wrote less than $500,000 for the previous year and less than $250,000 for the most recent quarter and had fewer than 1,000 policyholders at year-end.

The CS changes the effective date for the allowance for 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.

The CS removes the prohibition against a patronage dividend or other payment from being paid to a production credit association or a federal land bank association.

The CS 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 and to offer is not rescinded prior to the expiration of the policy, or if a notice of cancellation for nonpayment of premium is sent.

The CS specifies that if someone knowingly presents a property and casualty certificate of insurance that has been altered after being issued, such action is an unfair or deceptive act or practice under s. 626.9541(1)(a), F.S.

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

The CS requires that in establishing replacement costs for dwelling coverage, Citizens must accept the lowest valuation from the following 3 sources: (1) replacement cost software designed to establish insurance replacement costs; (2) a replacement cost valuation prepared by a licensed real estate appraiser, that is designed to establish insurance replacement cost; or (3) a replacement cost valuation prepared by a licensed contractor or a professional engineer.

The CS provides that mandated health benefits are not intended to apply to the types of health benefit plans listed in s. 627.6561(b)-(e), F.S., (limited coverage plans), unless specifically designated otherwise.

The CS expands the current exemption from the definition of "carrier," in s. 627.6699, F.S. Currently, multiple-employer welfare arrangements (MEWAs) are explicitly excluded from the definition of "carrier," and thereby are exempted from the requirements that are imposed on carriers by s. 627.6699, F.S. The CS adds voluntary employees' beneficiary association, defined in 26 USC s. 501(c)(9), to the explicit exclusion from the definition of "carrier." Further, the CS specifies that the term "carrier" does not include an insurer or HMO to the extent that it insures members of a MEWA or a voluntary employees' beneficiary association.

The CS provides a definition of the term "rebate" within the context of prohibiting rebates to policyholders from any person who performs repairs for sinkhole damage.

The CS 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.

The CS deletes the current definition of captive insurer and redefines it as meaning a domestic insurer established under part V of ch. 628, F.S., including any of the four following specified types of captive formation, each of which are 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.
- 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.
- 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.
- 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.

The CS 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.
The CS adds to the priority of distribution of claims from the estate of an insolvent insurer, a class 10 for the interest on allowed claims of classes 1 through 9, which shall precede the priority of claims of shareholders and other owners.

The CS provides that if CS/SB 578 (allowing surplus lines carriers to remove policies from Citizens under certain conditions) is adopted, the surplus lines carrier must maintain an A.M. Best rating of A- (which provision is currently in CS/SB 578) or, alternatively, a Demotech rating of A.

CS by Banking and Insurance on February 2, 2012:
The CS prohibits a patronage dividend or other payment from being paid to a production credit association or a federal land bank association, if the payment is directly or indirectly based on the premium charged to that member for crop hail or multi-peril crop insurance, and specifies that any such payment is an unlawful rebate in violation of ss. 626.573, F.S., and 626.9541(1)(h), F.S.

The CS removes provisions in the original bill that would have established 120 days as the notice requirement for cancelling or nonrenewing residential property insurance policies in most circumstances.

The CS provides that if requested by the policyholder, any person having relevant information would be allowed to attend a session of the mediated claim resolution process for personal lines and commercial residential policies.

The CS provides that sections 11 and 12 of the bill are to be effective upon the act becoming a law.

B. Amendments:

None.