

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 379 Captive Insurance

**SPONSOR(S):** Insurance & Banking Subcommittee, Nuñez and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 610

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Gault	Cooper
2) Economic Affairs Committee	15 Y, 0 N, As CS	Gault	Tinker

### SUMMARY ANALYSIS

Captive insurance is a form of self-insurance where an insurer is created and wholly owned by one or more non-insurers to provide owners with coverage. Captive insurance was originally an offshore industry, but the United States now hosts domiciles with some of the highest numbers of captives in the world. Many states with legislation similar to CS/CS/HB 379 have experienced positive economic impacts. The bill is designed to match legislation common in the industry, to attract captive insurance companies and, ultimately, receive the economic benefits of a captive insurance domicile. Also, several economic benefits exist for businesses choosing to start a captive insurance company instead of purchasing traditional insurance.

Florida law currently provides for the creation of a captive insurance company but none exist in the state. The bill expands current law, creating new provisions relating to formation, incorporation, coverage, capital and surplus, licensure, reporting, and reinsurance.

The bill allows for the creation of pure captive insurance companies, association captive insurance companies, industrial insured captive insurance companies, special purpose captive insurance companies, and captive reinsurance companies.

The bill requires captive insurance companies to incorporate as a mutual or stock insurer, depending on the captive's formation.

The bill allows captive insurance companies to provide any and all insurance under the Florida Insurance Code, except for workers' compensation and employer's liability, life, health insurance, personal motor vehicle insurance, and personal residential property insurance. A captive reinsurance company, however, may only apply to write reinsurance covering property and casualty insurance or reinsurance contracts.

The capital and surplus required depends on the captive's formation. For instance: pure captives must have at least \$250,000 in total capital and surplus; and captive reinsurance companies must have capital or surplus not less than the greater of \$300 million or 10% of reserves.

Many licensure requirements required by law still apply to captives, but the bill includes specific requirements, such as, holding an annual board of directors' meeting in Florida.

The bill requires captive reinsurance companies to follow most of the provisions applying to captive insurance companies, but the bill also provides separate requirements in areas such as capital and surplus requirements, coverage, and incorporation.

The fiscal impact is indeterminate.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background on Captive Insurance:**

Captive insurance is a form of self-insurance where an insurer is created and wholly owned by one or more non-insurers to provide owners with coverage.<sup>1</sup> Unlike traditional self-insurance, the owner does not retain risk but transfers risk; the insured pay premiums to the captive insurer in exchange for the coverage of a specific risk.<sup>2</sup> Companies generally pursue this alternative risk transfer arrangement when commercial insurance becomes unavailable or reaches excessive costs.<sup>3</sup>

Captives may take many formations, often being divided into pure captives and group captives. Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,<sup>4</sup> meaning that the captive is a wholly-owned subsidiary that insures the risks of its parents and affiliates.<sup>5</sup> Group captives typically include association captives, industrial captives, risk retention groups, and reciprocals; each is owned by and insures a group.<sup>6</sup>

Branch captives and rent-a-captives are unique among the industry. A branch captive is essentially the extended arm of a pure captive from a separate domicile. Instead of forming a new pure captive, the branch captive remains within the same corporation.<sup>7</sup> Rent-a-captives allow companies unwilling or unable to meet the capital and surplus requirements on their own to use an outside entity's capital, surplus, and services for a rental fee.<sup>8</sup> Rent-a-captives today are commonly formed as segregated or protected cell captives, which organize legal barriers among its renters' assets.<sup>9</sup>

Forming a captive insurance company may provide a number of advantages including:

- *Tailored insurance policy.*<sup>10</sup> A captive insurer may be able to create overall savings and have more claims control through coverage and policy provisions that are unique to the individual business being insured and its risk profile.
- *Reduced premiums.*<sup>11</sup> Commercial insurers' costs include amounts to cover the insurers' profit margin and overheads, such as advertising and commissions. A captive insurer would not need to factor these elements into the premium it charges.
- *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.
- *Access to Reinsurance.* Captive insurance companies acquire direct access to wholesale reinsurance markets, thus evading related extra costs commercial carriers may include.<sup>12</sup>

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<sup>1</sup> <http://www2.iii.org/glossary/c/> (last viewed September 19, 2011).

<sup>2</sup> [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed October 7, 2011).

<sup>3</sup> *Id.*

<sup>4</sup> Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. Retrieved October 7, 2011.

<sup>5</sup> [http://hawaiicaptives.com/captive\\_basics/faqs.html](http://hawaiicaptives.com/captive_basics/faqs.html) (last viewed October 7, 2011).

<sup>6</sup> <http://www.captive.utah.gov/rrg.html> (last viewed October 7, 2011). See also: Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9.

<sup>7</sup> Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. Retrieved October 7, 2011.

<sup>8</sup> [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed October 13, 2011).

<sup>9</sup> <http://captive.com/newsstand/articles/GlosAlt.html> (last viewed October 13, 2011).

<sup>10</sup> <http://www.vermontcaptive.com/captive-basics/why-captive.html> (last viewed October 14, 2011). See also: <http://www.dccaptives.org/i4a/pages/index.cfm?pageid=3382>; <http://captive.insurance.ky.gov/CapHome.aspx>; Captive Insurance Basics: <http://www.sccia.org/displaycommon.cfm?an=3>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

- *Tax Deductions.* Premiums paid to the captive insurer may be deductible expenses for Federal income tax purposes.<sup>13</sup> Income tax against the captive insurer will vary depending on the coverage and amount, though certain companies may qualify for a full exemption.<sup>14</sup>

Some disadvantages to forming a captive insurance company may include:

- *Regulations.*<sup>15</sup> Companies planning to form a captive insurance company should expect heightened regulations compared to other available forms of self insurance.
- *Long-term.*<sup>16</sup> Benefits are not realized immediately. Formation is a long-term investment with elevated risk, and companies' commitment to the captive cannot be as flexible as with commercial policies.
- *Administrative Costs.*<sup>17</sup> Forming a captive may require extra personnel and management as well as time away from the parent company or companies. Administering a possible acquisition or merger may also become more complicated when a captive is involved.

### **Captive Insurance Domiciles:**

Early on, captive insurance companies were only available offshore. Most United States (U.S.) companies created their captive insurance company through Bermuda or the Cayman Islands. Although these and other offshore domiciles remain popular, the U.S. has become home to over 30 captive domiciles, including the District of Columbia (D.C.). A few U.S. captive domiciles, such as Florida, are considered inactive in the captive industry.<sup>18</sup> Most domiciles remain active, with numbers of captives ranging from one to several hundred.<sup>19</sup> The states with the most captive insurance companies are Vermont, Utah, Hawaii, South Carolina, and D.C., representing about 67% of captive insurance companies domiciled in the U.S.<sup>20, 21</sup>

Florida captive insurance legislation became effective in 1982. 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<sup>22</sup> 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."<sup>23</sup>

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<sup>13</sup> 26 U.S.C. 162(a)

<sup>14</sup> 26 U.S.C. 501(c)(15)

<sup>15</sup> <http://captive.insurance.ky.gov/Faq.aspx> (last viewed October 17, 2011).

<sup>16</sup> Captive Insurance Basics: <http://www.sccia.org/displaycommon.cfm?an=3> (last viewed October 17, 2011).

<sup>17</sup> <http://www.captive.com/service/SCG/ProsAndCons.html> (last viewed October 19, 2011).

<sup>18</sup> Meaning that legislation allows captive insurance companies, but, because regulations have not kept up to date or for various other reasons, none exist in the domicile. No captive insurance companies exist in Florida even though captives may be created under Chapter 628, Part V Fla. Stat.

<sup>19</sup> In 2010, Maine reportedly had 1 captive, while Vermont had 572; fourteen states had 10 or more captive insurance companies. [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed November 2, 2011). Vermont's current website shows that Vermont has over 900 captives. <http://www.vermontcaptive.com/about-us.html> (last viewed November 9, 2011).

<sup>20</sup> [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed November 2, 2011).

<sup>21</sup> Most states set forth similar criteria for captives to be domiciled in their state – i.e., capital and surplus requirements, reporting requirements, requirement to hold meetings in the state, etc. Many states set themselves apart by promoting their supportive infrastructure (captive managing firms, lawyers, auditors, etc., knowledgeable of captive insurance transactions) and working relationship with the industry. Vermont, for instance, emphasizes the number of its regulators working solely with captive insurance.

<sup>22</sup> Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."

<sup>23</sup> s. 628.901, F.S.

## Effect of the Bill:

### *Definitions*

Unlike current law, the CS/CS/HB 379 provides a definition section and includes eighteen definitions. The bill changes the term “captive insurer” to “captive insurance company” and redefines said term to mean a domestic insurer established under Part V,<sup>24</sup> including pure captive insurance companies, association captive insurance companies, special purpose captive insurance companies, or industrial insured captive insurance companies. These captive formations are all included in the definitions section. The bill retains the definition of an industrial insured and an industrial insured captive insurance company.<sup>25</sup>

### *Formation*

The statute only provides for the formation of pure captives<sup>26</sup> and industrial captives,<sup>27</sup> with more explicit qualifications and criteria for the latter. The bill expands the possible captive formations to include pure captives, association captives, special purpose captives, industrial insured captives, and captive reinsurance companies.

### *Incorporation*

Currently, before receiving authority to insure in Florida, insurers are required to incorporate as stock insurers,<sup>28</sup> mutual insurers,<sup>29</sup> or reciprocal insurers.<sup>30, 31</sup> The Florida Insurance Code, however, places captive insurance regulation under Chapter 628, titled “Stock and Mutual Insurers; Holding Companies,” seemingly excluding the incorporation of captives as reciprocal insurers. Further, no provision within the captive insurance law explicitly references incorporation options or requirements.

Like current law, the bill limits captive insurance companies’ corporate structure to stock and mutual insurers. Unlike current law, however, the bill creates provisions specifying the corporate arrangement allowable for different captive formations. For instance: pure captives must incorporate as stock insurers or as public benefit, mutual benefit, or religious nonprofit corporations;<sup>32</sup> association captives and industrial insured captives must incorporate as either stock insurers or mutual insurers; and captive reinsurance companies must incorporate as stock insurers.

The bill also requires the following of captive insurance and reinsurance companies:

- The captive must have at least three incorporators, of which, at least two must be Florida residents.
- At least one member of the captive’s board of directors must be a Florida resident.
- With stock insurers, the capital stock must be issued at par value of not less than \$1 or more than \$100 per share.
- The articles of incorporation must be provided in triplicate with the office before being transmitted to the Secretary of State.
- Florida Corporate and Not for Profit Corporate law apply, including fees, unless it conflicts with any provision in the bill.

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<sup>24</sup> Part V of Chapter 628 is titled “CAPTIVE INSURERS.”

<sup>25</sup> The structure of the definition of “industrial insured captive insurance company” has been modified, but the wording is essentially the same as current law.

<sup>26</sup> A captive that insures the risks of its parent and affiliated companies, by contemporary terms, is referred to as a “pure captive.” Current law does not explicitly refer to the formation of a “pure” captive; however, it only authorizes, other than industrial insured captive insurers, captive insurers that insure the risks of its parent and affiliated companies. s. 628.905(2), F.S.

<sup>27</sup> s. 628.903, F.S.

<sup>28</sup> A “stock insurer” is an incorporated insurer with its capital divided into shares and owned by its stockholders. s. 628.021, F.S.

<sup>29</sup> A “mutual insurer” is an incorporated insurer without permanent capital stock, the governing body of which is elected in accordance with [Chapter 628, Part I]. s. 628.031, F.S.

<sup>30</sup> A “reciprocal insurer” means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. s. 629.021, F.S.

<sup>31</sup> s. 624.404, F.S.

<sup>32</sup> Public benefit, mutual benefit, and religious nonprofit must adhere to the Florida Not for Profit Corporation Act.

### Coverage

Under current law, captives may apply to OIR to provide commercial property, commercial casualty, and commercial marine insurance coverage, but not workers' compensation or employer's liability insurance.<sup>33</sup> Also, an industrial insured captive insurer may provide workers compensation and employer's liability insurance only in excess of at least \$25 million in the annual aggregate.<sup>34</sup> The bill does not make this distinction between the formation of the captive and the allowable coverage. The bill allows captives to apply to OIR for all insurance authorized in Florida, except for workers' compensation and employer's liability, life, health insurance, personal motor vehicle insurance, and personal residential property insurance. With a captive reinsurance company, however, the bill distinctly allows it to apply to write reinsurance covering property and casualty insurance or reinsurance contracts.<sup>35</sup>

### Capital and Surplus

Current law requires industrial insured captive insurers to maintain unimpaired capital and surplus of at least \$20 million before it can be licensed.<sup>36</sup> Pure captive licensure requires unimpaired paid-in capital of at least \$500,000 and surplus of at least \$250,000.<sup>37</sup> The bill substantially reduces the capital and surplus requirements for industrial insured captives and pure captives, requiring a combined capital and surplus of \$500,000 for industrial insured captives<sup>38</sup> and \$250,000 for pure captives. The bill also specifies capital and surplus requirements for the other available captive formations. Note, however, that the bill allows OIR to decide the capital and surplus requirements for special purpose captive insurance companies.<sup>39</sup> The following chart exemplifies the bill's capital and surplus requirements according to formation.

#### CS/HB 379

Captive Formation	Capital	Surplus	Total
Pure Captive	\$100,000	\$150,000	\$250,000
Association Captive - stock	\$400,000	\$350,000	\$750,000
Association Captive - mutual	N/A	\$750,000	\$750,000
Industrial Captive - stock	\$200,000	\$300,000	\$500,000
Industrial Captive - mutual	N/A	\$500,000	\$500,000
Special Purpose Captive	Capital and surplus to be determined by OIR.		
Captive Reinsurance Company	Capital <i>or</i> surplus not less than the greater of \$300 million or 10% of reserves.		

The bill also allows the office to require additional capital – but not surplus – for captive insurance companies after considering the type, volume and nature of the insurance business transacted. However, OIR may require additional capital *or* surplus for captive *reinsurance* companies after the same considerations.

Finally, the bill requires captive insurance and reinsurance companies to obtain approval from OIR before they can pay out dividends<sup>40</sup> of excess capital or surplus.

### Licensure

Current captive law includes Chapter 628 of the Florida Insurance Code, which contains the requirements for stock and mutual insurers to apply for a permit<sup>41</sup> and the associated fees.<sup>42</sup> The bill

<sup>33</sup> s. 628.905(1), F.S.

<sup>34</sup> s. 628.905(6), F.S.

<sup>35</sup> The bill is also clear that a captive reinsurance company may not directly insure risks.

<sup>36</sup> s. 628.903(2)(c), F.S.

<sup>37</sup> s. 628.907, F.S.

<sup>38</sup> This requirement applies to industrial insured captives incorporated as *stock* corporations, as opposed to industrial insured captives incorporated as *mutual* corporations, which do not have a capital requirement.

<sup>39</sup> OIR must take into account the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of risks to be insured.

<sup>40</sup> Or any other form of distribution.

also includes Chapter 628,<sup>43</sup> but it creates additional filing requirements specific to captive insurance and reinsurance companies. If a conflict arises between the two, the specific provisions within the bill will govern.

The bill specifically requires the captive insurer or reinsurer to file with OIR the following:

- 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 (note: this is not an explicit requirement for captive reinsurance companies); and
- Any other factors relevant to OIR in ascertaining whether the company will be able to meet its policy obligations.

Further, applicants' officers and directors are subject to background investigations and must submit biographical affidavits and fingerprint cards. OIR may deny, suspend, or revoke authority to insure or reinsure:

- When an officer or director of an applicant was previously the officer or director of an insolvent business.<sup>44, 45</sup>
- When an officer, director, stockholder of 10% or more of securities, or incorporator has been found guilty or pleaded guilty or nolo contendere to any felony or crime of moral turpitude punishable by imprisonment of 1 year or more. Existing captives with a person falling under this provision must immediately remove this person or be subject to license revocation or suspension.

After meeting the filing requirements, the captive needs to obtain from OIR a license to insure or reinsure in Florida and do the following:

- 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.

CS/CS/HB 379 requires captive insurance and reinsurance companies to pay a processing fee of \$1,500 and a renewal fee of \$1,000. Additional \$5 fees may be applicable for documents requiring certification of authenticity or the commissioner's signature. Any fees required through the application process in Chapter 628 not in conflict with CS/CS/HB 379's fee requirements should also apply.

The bill applies the above application process and requirements to foreign or alien captive insurance companies<sup>46</sup> wishing to make Florida their captive's domicile. The bill also retains an exception provided in current law for industrial insured captive insurance companies - an industrial insured captive insurer need not be incorporated in Florida if it is validly incorporated in another jurisdiction.

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<sup>41</sup> s. 628.051, F.S. Application for permit to form insurer.

<sup>42</sup> s. 624.501, F.S. Filing, license, appointment, and miscellaneous fees.

<sup>43</sup> An example of a requirement from Chapter 628 would be the requirement of applicants to file the name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the insurer. s. 628.051(2)(b), F.S.

<sup>44</sup> Unless the officer or director's actions did not contribute to the insolvency or unless the officer or director is immediately removed.

<sup>45</sup> "Business" specifically refers to insurer, reinsurer, captive insurance company, captive reinsurance company, financial institution, or financial services businesses in and out of the U.S. Officers or directors are only considered to have been officers or directors of an insolvent business when the officers or directors held their positions within the two year period prior to insolvency.

<sup>46</sup> The bill does not provide a definition for foreign or alien captive insurance companies. Presumptively, these are captive insurance companies domiciled in another jurisdiction.

Thus, all other application requirements for domestic insurers should remain for foreign or alien industrial insured captive insurance companies except for reincorporating in this state.

For each captive formation, CS/CS/HB 379 specifies which group, parent, affiliates, etc. the captive insurance company is authorized to insure. Some additional requirements, however, are required of association captive insurance companies. Association captives must, on the first page of the policy or certificate, cover note, or confirmation of insurance, have the statement: "THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA CAPTIVE INSURERS LAW. PERSONS INSURED BY CAPTIVE INSURANCE COMPANIES DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER." The face of the policy must also, in boldface 14-point, state, "CAPTIVE INSURANCE COMPANIES' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY."

### *Reporting*

Current law requires captive insurance companies to submit, at least annually, a financial condition report to OIR,<sup>47</sup> and grants the Financial Services Commission authority to adopt by rule the form in which captive insurers shall report.<sup>48</sup> The law explicitly states that this is the only annual report that is required. The bill revises this language so that a captive insurance company *may* not be required to submit any other annual report, though limits the scope of other possible annual reporting requirements to Part V, Captive Insurers. The Financial Services Commission retains the authority to adopt by rule the form in which captive insurance companies shall report. The bill specifically requires captive reinsurance companies to report identically.

Additionally, the bill requires the financial report to be annual but no later than March 1, as opposed to current law, in which annual reporting is based around the company's fiscal year.<sup>49</sup> However, the bill does allow captive insurance companies to apply to file annually based on the parent company's fiscal year.

### *Reinsurance*

Current law regulates captive reinsurance from both the perspective of a captive insurance company *acquiring* reinsurance and from the perspective of a captive insurance company *providing* reinsurance.<sup>50</sup> First, the law specifies that captive insurers may only use reinsurers authorized by OIR to reinsure part or all of its risks.<sup>51</sup> In certain circumstances, however, credit on account of reinsurance may be ceded to an unauthorized reinsurer.<sup>52</sup> Second, captive insurers are not permitted to reinsure risks in Florida when those risks are written by unauthorized insurers.<sup>53</sup> While the provisions under current law direct regulation mostly at captive insurance companies *acquiring* reinsurance, the bill's provisions direct regulation mostly at captive insurance companies *providing* reinsurance.

Not all companies can form captive reinsurance companies. CS/CS/HB 379 only allows reinsurance companies authorized<sup>54</sup> to provide reinsurance in Florida to form captive reinsurance companies. Once formed, the captive reinsurance company cannot directly insure risk.

Specific incorporation, reporting, capitalization, and licensing requirements for captive reinsurance companies have been provided above. The bill further provides requirements for captive reinsurance companies regarding discounting loss and loss adjustment expense reserves, and the management of companies' assets, as follows:

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<sup>47</sup> The report must be verified under oath by two of the captive's executive officers. s. 628.911(2), F.S.

<sup>48</sup> s. 628.911, F.S.

<sup>49</sup> s. 628.911(2), F.S.

<sup>50</sup> Note that most of the section referring to reinsurance refers to captive insurance companies acquiring reinsurance.

<sup>51</sup> s. 628.913(1)(a), F.S.

<sup>52</sup> s. 628.913(1)(b), F.S.

<sup>53</sup> s. 628.913(6), F.S.

<sup>54</sup> The bill explains which reinsurance companies qualify in the definition section under "Qualifying reinsurer parent company."

- Captive reinsurance companies are allowed to discount their loss and loss adjustment expense reserves. If they do, they must file an annual actuarial opinion on loss and loss adjustment expense reserves by an independent actuary.
- At least 35% of a captive reinsurance company's assets must be managed by an asset manager domiciled in Florida.

*Miscellaneous*

- The bill provides net asset requirements for nonprofit captive insurance companies formed as pure captives<sup>55</sup> and special purpose captives.<sup>56</sup>
- The Financial Services Commission is required to set standards ensuring that a parent or affiliated company can exercise risk management control of any unaffiliated business to be insured by a pure captive.
- OIR must consider licensed captive insurance companies for issuance of a certificate of authority to act as an insurer in this state.

The bill provides that it will be effective upon becoming a law.

**B. SECTION DIRECTORY:**

- Section 1. Amends s. 628.901, F.S., by creating and revising definitions.
- Section 2. Amends s. 628.905, F.S., by expanding licensure requirements.
- Section 3. Creates s. 628.906, F.S., by adding application requirements and putting restrictions on the eligibility of officers, directors, incorporators and certain stockholders.
- Section 4. Amends s. 628.907, F.S., by specifying capital requirements for different captive formations and restricting dividend payment.
- Section 5. Creates s. 628.908, F.S., providing specific surplus requirements for different captive formations and restricting dividend payment.
- Section 6. Amends s. 628.909, F.S., by excluding certain laws in the Florida Insurance Code from being applicable.
- Section 7. Creates s. 628.910, F.S., providing specific incorporation options and requirements for different captive formations.
- Section 8. Amends s. 628.911, F.S., by revising reporting requirements and including captive reinsurance companies.
- Section 9. Creates s. 628.912, F.S., providing requirements for captive reinsurance companies discounting loss and loss adjustment expense reserves.
- Section 10. Amends s. 628.913, F.S., by substantially revising and creating specific authorization and licensure requirements for captive reinsurance companies.
- Section 11. Creates s. 628.914, F.S., providing minimum capital or surplus for captive reinsurance companies and restricting payment of dividends.
- Section 12. Creates s. 628.9141, F.S., providing specific incorporation requirements for captive reinsurance companies.

<sup>55</sup> Net assets must at least be \$250,000.

<sup>56</sup> Net asset requirement determined by OIR.

- Section 13. Creates s. 628.9142, F.S., providing authorization for captives to reinsure ceded risks and providing requirements to receive credits on reserves.
- Section 14. Creates s. 628.918, F.S., providing requirement for managing assets of captive reinsurance companies.
- Section 15. Creates s. 628.919, F.S., providing requirement of standards ensuring parent control of risk management over controlled unaffiliated businesses.
- Section 16. Creates s. 628.920, F.S., providing eligibility for a captive insurance company to receive a certificate of authority.
- Section 17. Amends s. 626.7491(2)(e), F.S., by revising a reference to captive insurance companies.
- Section 18. Repeals s. 628.903, F.S.
- Section 19. Provides that the act will be effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to OIR,<sup>57</sup> even though the initial volume of captive insurance applications cannot be determined, at least two additional employees will be necessary – an insurance examiner II and a financial examiner/analyst supervisor. The estimated two additional employees are based on the number of initial employees obtained in South Carolina in 2000, which was four – a marketer, analyst, lawyer and actuary. South Carolina licensed two captive insurance companies in its first year and nine captive insurance companies in its second year.<sup>58</sup> A total of seven captive insurance companies were active after two years given that four deactivated.<sup>59</sup> The number of applications received during that two year time period has not been provided.

OIR also believes additional funding will be necessary for outsourcing actuarial services and changing the OIR's computer systems to account for captive filings. No specific amount has been provided.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

States that have seen growth in captive insurance companies have seen positive economic impact through job creation. If the number of captive insurance companies grows in Florida, one would expect

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<sup>57</sup> OIR staff analysis for HB 379 dated December 20, 2011, is on file with the House Insurance & Banking Subcommittee.

<sup>58</sup> <http://doi.sc.gov/captives/Pages/Information.aspx#generalinfo> (last viewed January 6, 2012).

<sup>59</sup> *Id.*

similar job growth for actuaries, lawyers, accountants, administrators, and support personal. Also, for a company forming a captive insurance company, an insurance policy tailored to the individual company's risk profile should effectuate overall savings.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Financial Services Commission to set rules establishing standards to ensure that a parent or affiliated company can exercise risk management control over any unaffiliated business to be insured by a pure captive.

The bill allows the Financial Services Commission to adopt by rule the form in which captive insurance companies must report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Insurance & Banking Subcommittee unanimously adopted one strike-all amendment to HB 379 and one amendment to the strike-all. The strike-all retained many provisions of the bill while making the following changes:

- Amended the definitions for captive insurance company, captive reinsurance company, qualifying reinsurer parent company and industrial insured captive insurance company to address drafting errors and make technical changes.
- Clarified that a captive insurance company cannot provide workers compensation, health, personal motor vehicle and personal residential property insurance.
- Required an association captive insurance company to inform its insureds that the policies are not covered by the Florida Insurance Guaranty Association and the rates and forms are not regulated by any regulatory agency.
- Provided that a captive insurance company must pay the same application fees and other miscellaneous fees that currently apply to other types of insurance companies in Florida.
- Clarified the requirements for a captive insurance company to file its articles of incorporation for approval with OIR prior to formation of the company.
- Corrected various drafting errors and technical changes pertaining to the premium taxes to be paid and the annual reports to be filed by captive insurance companies.
- Clarified that a captive reinsurance company cannot directly insure risks.
- Deleted the section pertaining to the annual captive reinsurance tax.
- Retained current law allowing industrial insured captive insurance companies not to reincorporate in Florida if validly incorporated in another jurisdiction.

The amendment to the strike-all:

- Required applicants for insurance and reinsurance licensure to provide OIR detailed biographical information for specified individuals.
- Allowed OIR to deny applicants who have engaged in certain criminal activities.
- Permitted OIR to take certain disciplinary action against captive insurers and reinsurers for specified crimes.

On January 12, 2012, the Economic Affairs Committee unanimously adopted a strike-all amendment to CS/HB 379. The strike-all retained many provisions of the bill while making the following changes:

- Clarified that a captive insurance company cannot provide workers compensation and employer's liability, life, health, personal motor vehicle or personal residential property insurance.
- Clarified that both captive insurance and captive reinsurance companies must pay application and renewal fees.
- Clarified when OIR may deny, suspend, or revoke a license.
- Added specifications for fingerprinting officers and directors.
- Corrected a drafting error regarding the incorporation of an industrial insured captive insurance company.

This analysis is drafted to the committee substitute as passed by the Economic Affairs Committee.