

Fla.'s 'Captive'-ating New Insurance Legislation

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Law360, New York (May 14, 2012, 1:27 PM ET) — During the 2012 regular legislative session, the Florida Legislature^[1] passed Committee Substitute for House Bill 1101, an omnibus insurance bill that contains many provisions relating to various types of insurance.

One of the important parts in this legislation is the section pertaining to captive insurance. On April 24, 2012, the bill was signed into law by Florida Gov. Rick Scott, and it takes effect on July 1, 2012.

Although Florida captive insurance legislation became effective in 1982, the law creates new and specific criteria and standards for captive insurance. 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 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.”

Further, the new law allows the state of Florida to become a major player in captive insurance — enabling the formation of new captive insurers in the state — competing with the 30-plus other states for captive insurance business.

Overall, the new law will provide Florida with several important economic boosters, including:

- Businesses in Florida that set up captive insurers in the state will reduce overhead costs because they won't have to pay state-regulated premiums.
- The law will aid in job creation. As businesses set up their own captive insurers, companies will need to hire risk managers, accounting managers and others to run this entity.
- Potential uptick in Florida's hotel and hospitality industry due to the law requiring captive insurers to hold an annual board meeting in the state.

Effect of the Bill

Definitions

Unlike current law, the bill provides a definition section and includes 15 definitions. The bill changes the term “captive insurer” to “captive insurance company” and redefines that said term to mean that a domestic insurer established under Part V, including pure captive insurance companies, special purpose captive insurance companies and 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.

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 and not more than \$100 per share.
- The articles of incorporation must be provided in triplicate and approved by OIR before being filed with the Florida secretary of state.

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.

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. 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 allows it to apply to write reinsurance covering property and casualty insurance or reinsurance contracts in a distinct manner.

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. For other types of captive insurers, currently law requires unimpaired paid-in capital of at least \$500,000 and surplus of at least \$250,000.

Additionally, current law also requires captive insurers to comply with the same capital and surplus requirements imposed on Florida domestic insurers, i.e., \$5 million. The bill reduces the capital and surplus requirements for captive insurance companies in Florida substantially. The bill's capital and surplus requirements according to formation are as follows:

- Pure captives will be required to maintain \$100,000 in capital and \$150,000 in surplus for a total of \$250,000.
- Stock industrial insured captives will be required to maintain \$200,000 in capital and \$300,000 in surplus for a total of \$500,000.
- Mutual industrial insured captives will be required to maintain \$500,000 in surplus with no capital requirements.
- The capital and surplus requirements of special purpose captives will be determined by OIR.
- The capital and surplus requirements for captive reinsurance companies will not be less than the greater of \$300 million or 10 percent of reserves.

Licensure

The bill creates filing requirements specific to captive insurance and reinsurance companies. Specifically, it requires the captive insurer or reinsurer to file with the 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 insured's (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 are required to submit biographical affidavits and fingerprint cards. The 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.
- When an officer, director, stockholder of 10 percent 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 one 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 a license from the OIR 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.

The bill 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.

Reporting

Current law requires captive insurance companies to submit, at least annually, a financial condition report to the OIR, and grants the Florida Financial Services Commission authority to adopt by rule the form in which captive insurers shall report. 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. 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 purchasing reinsurance and from the perspective of a captive insurance company providing reinsurance.

First, the law specifies that captive insurers may only use reinsurers authorized by OIR to reinsure part or all of its risks. In certain circumstances, however, credit on account of reinsurance may be ceded to an unauthorized reinsurer.

Second, captive insurers are not permitted to reinsure risks in Florida when those risks are written by unauthorized insurers.

Not all companies can form captive reinsurance companies. The bill only allows reinsurance companies currently authorized to provide reinsurance in Florida to form captive reinsurance companies. Once formed, the captive reinsurance company cannot directly insure risk.

Further, the bill provides requirements for captive reinsurance companies regarding discounting loss and loss adjustment expense reserves, and the management of companies' assets, as follows:

- 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 percent of a captive reinsurance company's assets must be managed by an asset manager domiciled in Florida.

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[1] This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives.

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