



# Insight from Carlton Fields

May 2011

## Capitol Report: Florida Property Insurance Law (Part I)

By Kelly Cruz-Brown

### Capital Build-Up Incentive Program

Effective July 1, 2011, Committee Substitute for Senate Bill 1087 (CS/HB 1087) allows an insurer that obtained a surplus note through the Capital Build-Up Incentive Program that was issued prior to January 1, 2011 to request a renegotiation of the terms of the surplus note. As a condition to the renegotiation of terms, the insurer may be exempt from certain premium-to-surplus ratios as determined by the Florida Office of Insurance Regulation (FOIR) in certain circumstances.

The deadline an insurer must submit its request to renegotiate the surplus note to the Florida State Board of Administration is January 1, 2012.

### Credit for Reinsurance

Effective July 1, 2011, Committee Substitute for Senate Bill 1087 (CS/HB 1087) increases the surplus requirements from 100 million to 250 million for assuming insurers in connection with reinsurance credits and reduction in collateral requirements. The bill further specifies the rating agencies that may rate such assuming insurers.

### De-Regulation of Commercial Insurance Rates

The Florida Legislature has passed Committee Substitute for Committee Substitute House Bill 99

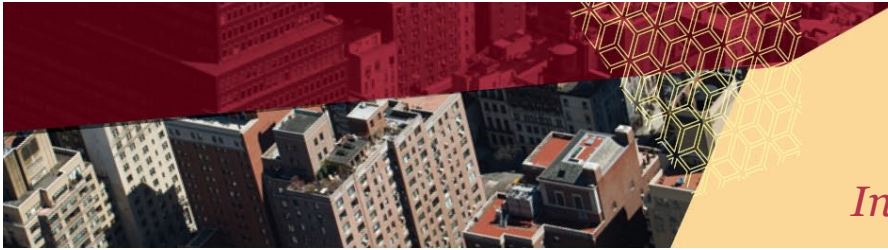
(CS/CS HB 99) to expand the types or kinds of commercial insurance exempt from Florida's rate filing and approval process in Florida. Upon becoming law, effective October 1, 2011, the lines types or kinds of commercial insurance exempt from Florida's rate filing and approval requirements are:

- Fiduciary liability
- General liability
- Nonresidential property, except for collateral protection insurance as defined in section 624.6085, Fla. Stat.
- Nonresidential multi peril
- Excess property
- Burglary and theft
- All commercial motor vehicle

However, an insurer writing these lines of business must notify the Florida Office of Insurance Regulation (FOIR) of any changes to the rates for insurance and risks described above no later than 30 days after the effective date of the change. The notice must include the name of the insurer, the type or kind of insurance subject to rate change of insurance, and the average statewide percentage change in rates. Insurers will be required to maintain actuarial data concerning the kind or type of insurance for 2 years after the effective date of changes to those rates. The insurer's actuarial data is subject to examination by the FOIR and the FOIR may require the insurer to incur the costs as-

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sociated with an examination. Upon examination, the FOIR shall, in accordance with generally accepted and reasonable actuarial techniques, consider the statutory rate factors and standards set forth in the Florida Insurance Code to determine if the rate is excessive, inadequate, or unfairly discriminatory.

### **Discriminatory Taxes - Reinsurance**

Senate Memorial 484 would inform the 112th Congress of the impacts Florida may face if a new tax, introduced by the 111th Congress as H.R. 3424, were imposed on the gross revenues of foreign based reinsurance companies.

### **Disqualification from Licensure in the Financial Services Business**

Upon becoming law, Committee Substitute for House Bill 1087 (CS HB 1087) bars a person who commits a first degree felony, capital felony, a felony involving money laundering, fraud, or embezzlement, or a felony directly related to the “financial services business” from applying for licensure under the Florida Insurance Code. The term “Financial services business” is defined to mean any financial activity regulated by the Florida Department of Financial Services (FDFS), the Florida Office of Insurance Regulation (FOIR), or the Office of Financial Regulation (OFR).

Furthermore, certain waiting periods for licensure are specified for other crimes:

- Fifteen (15) years for felonies involving moral turpitude;
- Seven (7) years for all other felonies; and,
- Seven (7) years for misdemeanors related to the financial services business.

The FDFS is authorized to adopt rules for additional waiting periods, which must provide for mitigating and aggravating factors. The application of mitigating factors may not reduce a waiting period to less than seven (7) years. The applicable waiting period begins upon the applicant’s final release from supervision or completion of the criminal sentence imposed.

Upon conclusion of the waiting period, the applicant bears the burden of demonstrating that he or she has been rehabilitated, does not pose a risk to the insurance-buying public, and is qualified for licensure.

The permanent bar and waiting periods are not subject to section 112.011, Fla. Stat., which provides that prior convictions are not a bar to certain employment with the state and that persons whose civil rights have been restored are not barred from engaging in an occupation, profession, or business for which a license, permit, or certificate is required.

### **Exemption of Non-U.S. Insurers from Certificate of Authority Requirements**

Effective July 1, 2011, Committee Substitute for House Bill 1087 (CS HB 1087) exempts any insurer domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. from the requirement to obtain a Certificate of Authority.

Under the bill, 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 which (s) he intends to maintain as her or his permanent home.

To be eligible for the exception, the insurer must:

- Not solicit business from residents of the U.S.;
- Register with the Florida Office of Insurance Regulation (FOIR) via letter upon



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notification upon commencing business from Florida;

- Annually, by March 1st, must provide the FOIR:
  - o Names of the owners, officers and directors and number of employees.
  - o Lines of insurance and types of products offered;
  - o A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile; and,
  - o A copy of filings required by the insurer's domicile.

The exempt insurer must include a disclosure on all certificates issued in Florida reflecting that the policy has not been approved by the FOIR. The insurer may not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to any U.S. resident. For purposes of this bill, the term "resident" means 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.

The bill imposes penalties upon non-U.S./alien insurers that fail to comply with its requirements.

### Insurer Annual Statements

Effective July 1, 2011, Committee Substitute for House Bill 1087 (CS HB 1087), revises the limits on the number of years the same accountant or partner of an accounting firm may be used in preparing an insurer's audited financial report. The 7-year limi-

tation on using the same accountant is reduced to a period of 5 years; however, the current 2-year waiting period – the period that the same accountant or partner of an accounting firm must wait until he or she may resume preparing the insurer's audited financial report after the 5 year period – is increased to 5 years.

### Motor Vehicle Service Warranty Agreements

Effective July 1, 2011, Committee Substitute for House Bill 1087 (CS HB 1087) allows a consumer to purchase a motor vehicle service agreement for a premium amount negotiated by the salesperson, notwithstanding current restrictions on discriminatory pricing for motor vehicle service agreements. However, the salesperson is not empowered to change other terms or conditions of the service agreement.

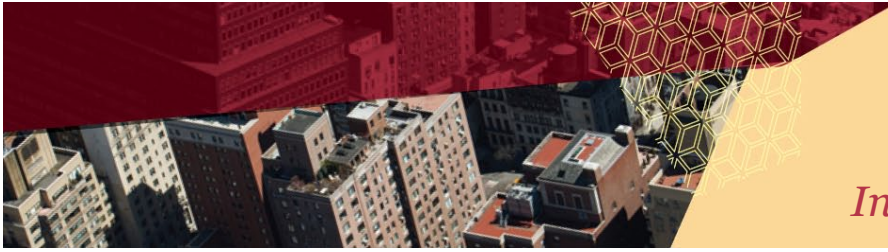
### Payment of Workers' Compensation Benefits

Effective July 1, 2011, Committee Substitute for House Bill 1087 (CS HB 1087) allows workers' compensation benefits to be paid on a prepaid card, if authorized by the injured employee. When payment is made on a prepaid card, the employee must be provided with:

- At least one means of accessing their entire compensation payment once per week without incurring fees;
- The ability to make point-of-sale purchases without incurring fees from the financial institution issuing the prepaid card; and,
- The terms and conditions of the prepaid card program.

The carrier's obligation to pay compensation is satisfied when it directly deposits





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compensation onto the prepaid card, and compensation is considered paid on the date the funds become available for withdrawal by the employee. Carriers are required to keep records of all payments made.

The Florida Department of Financial Services (FDFS) is delegated rulemaking authority relating to the payment of benefits on a prepaid card.

### **Persons Designated to Receive Insurer Notices**

Effective July 1, 2011, Committee Substitute for House Bill 1087 (CS HB 1087) adopts the previous industry practice of delivering certain required policy notices to only the party with administrative authority on the policy, the “first named insured.”

The bill requires the following policy notices to be delivered to only the “first named insured” rather than all “named insured(s):”

- Notices of nonrenewal or renewal premium for workers’ compensation, employer’s liability, property, and casualty insurance;
- Notices of cancellation or termination for property and casualty insurance;
- Notices of renewal premium, nonrenewal, cancellation, or termination for any personal lines or commercial residential property insurance policy, including, but not limited to, homeowner’s, mobile home owner’s, farmowner’s, condominium association, condominium unit owner’s, and apartment building; and,
- Notices of renewal premium, cancellation, intent not to renew, intent to transfer, and eligibility for insurance through the Automobile Joint Underwriting Association in policies providing motor vehicle insurance.

### **Receiverships – Ancillary Proceedings**

Effective July 1, 2011, Committee Substitute for Senate Bill 1087 (CS/HB 1087) authorizes the Florida Department of Financial Services (FDFS) to be appointed an ancillary receiver to an out-of-state insurer when it is necessary to obtain records to adjudicate the covered claims of Florida policyholders.

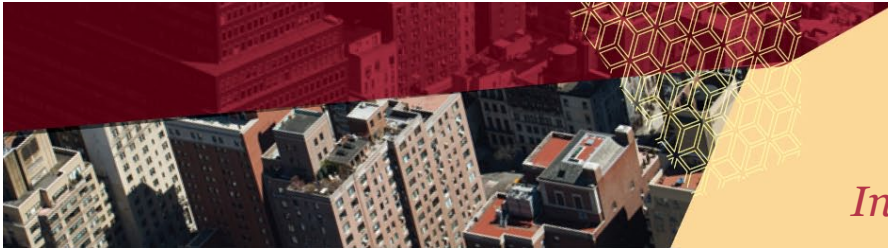
The bill also appropriates funds sufficient to cover the unreimbursed costs for ancillary proceedings opened for the purpose of obtaining records necessary to adjudicate the covered claims of Florida policyholders.

Finally, individuals with control over the affairs of the insurer in receivership proceedings, reliable for penalties, fines, or other costs assessed against a guaranty association or the receiver that result from the individuals’ refusal or delay in providing records.

### **Receiverships – Guaranty Funds**

Effective July 1, 2011, Committee Substitute for Senate Bill 1087 (CS/HB 1087) amends provisions relating to the Florida Insurance Guaranty Association (FIGA) and the Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA) concerning the definition of the term “covered claims”. The bill deletes the specific exclusion from coverage of a claim rejected by another state’s guaranty based on the grounds that an insured’s net worth is greater than that allowed under that state’s guaranty law. The bill also excludes any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state’s statutory exclusions including, but not limited to, those based on coverage, policy type, or an insured’s net worth.

### **Receiverships – Payment of Claims by the**



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### **Florida Department of Financial Services**

Effective July 1, 2011, Committee Substitute for Senate Bill 1087 (CS/HB 1087) provides coverage by the State Risk Management Trust Fund to specified officers and employees of the Florida Department of Financial Services (FDFS) for any liability under the federal act relating to priority of claims, 371 31 U.S.C. s. 3713, for any action taken by such persons in the performance of their receivership duties. It is believed that extending coverage to protect FDFS employees from this personal liability would allow those employees to timely administer and distribute an estate without fear that a federal claim will arise at a later date subjecting them to personal liability for having paid such claims.

### **Receiverships – Title Insurers**

Effective July 1, 2011, Committee Substitute for Senate Bill 1087 (CS/HB 1087) requires the receiver of a title insurer in rehabilitation to file a rehabilitation plan that provides for the following:

- Title insurance policies on real property in Florida are to remain in force, unless assessments on other title insurers would be insufficient to pay the insurer's claims;
- Title insurance policies on real property in other states ("out-of-state policies") that do not statutorily provide for payment of future losses of title insurers in receivership may be cancelled as of a date approved by the court, with a claims filing deadline established; and,
- Separate allocations of remaining estate assets to fund claims made on out-of-state policies that, respectively, have been cancelled or remain in force, and a formula for determining funds to be allocated to these claims.

When a title insurer is ordered into rehabilitation, all remaining title insurers are liable for an

assessment to pay outstanding claims on the insurer's policies covering real property in Florida and associated administrative expenses. Upon the receiver's request, the Florida Office of Insurance Regulation (FOIR) is required to order an annual assessment sufficient to pay such amounts, and an annual assessment in subsequent years until specified criteria are met.

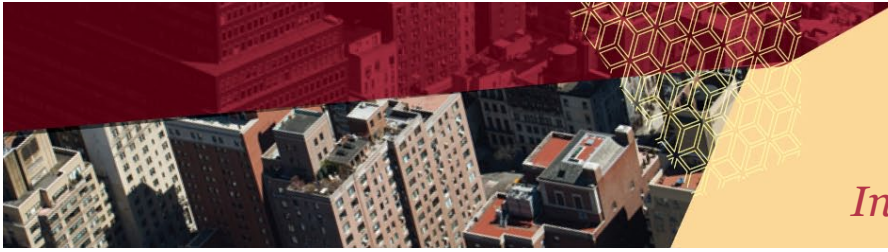
Assessments are to be based on each title insurer's pro-rata share of direct title insurance premiums written in Florida in the previous calendar year, and cannot exceed specified levels. When an assessment has been ordered, the insurer in rehabilitation cannot issue new policies and cannot be released from rehabilitation until all assessments have been repaid.

To reimburse insurers for assessments paid, the FOIR is required to order a surcharge on all subsequently issued title insurance policies on Florida real property. The surcharge cannot exceed \$25 per transaction for each impaired title insurer and must be sufficient to repay all assessments within 7 years.

When a foreign title insurer with Florida policies is placed in receivership by its domiciliary state, the Florida Department of Financial Services (FDFS) is authorized to apply for a court order appointing it an ancillary receiver for purposes of making assessments on the insurer's Florida policies.

### **Service Warranty Companies**

Effective July 1, 2011, Committee Substitute for House Bill 1087 (CS HB 1087) creates new exemptions to the licensure requirements for service warranty entities. A service warranty entity is exempt from licensure requirements if the service warranties it offers are only offered, marketed, or sold to nonresidents of this state. The exempt service warranty entity must to file a letter of notification with the Florida



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Office of Insurance Regulation (FOIR) stating that it is licensed or otherwise not required to be regulated in the state in which the entity transacts business.

The notification letter must include the home office address and contact information; information about the entity's ownership and employees; and states in which business is transacted.

The entity must also notify the FOIR within 30 days of ceasing business in Florida. Unlicensed entities offering service warranty agreements to Florida residents may be charged with a criminal misdemeanor of the first degree.

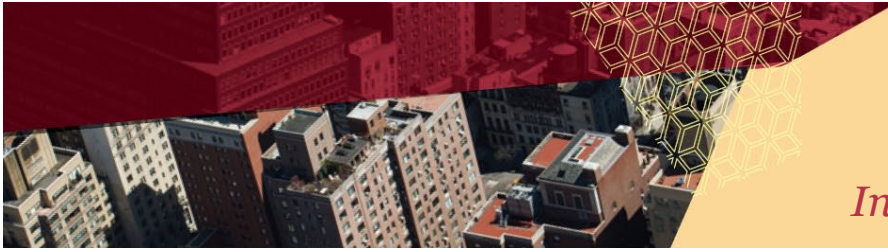
### Surplus Lines Insurance

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 1816 (CS/CS/CS SB 1816) amends various provisions of Florida's Surplus Lines Law to comply with the Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) passed by the 111th Congress. The bill becomes effective upon becoming law and requires that:

- Surplus lines agents must file within 45 days after the end of the calendar quarter an affidavit with the Florida Surplus Lines Office (FSLSO) stating that the agent has submitted all of the agent's surplus lines transactions to the FSLSO. Current law requires the affidavit to be filed on or before the end of the month after the end of the quarter.
- The surplus lines tax must be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida and Florida is the home state as defined by the NRRRA. The tax rate is limited to the tax rate where an insured risk is located.
- The surplus lines agents have 45 days following each calendar quarter to pay to the FSLSO all service fees related to policies reported during the previous quarter. Current

law requires monthly payments. The fee will be computed on the gross premium when the surplus lines policy covers risks that are only partially in Florida, and Florida is the home state as defined by the NRRRA.

- The Florida Department of Financial Services (DDFS) and the Florida Office of Insurance Regulation (FOIR) are authorized to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted insurance taxes for multistate risks pursuant to the NRRRA. The agreements are authorized to create a comprehensive system for reporting, collecting, and allocating these taxes. The agreement may:
  - Create a clearinghouse to receive and disburse nonadmitted insurance taxes;
  - Create reporting requirements;
  - Determine the methods for collecting and for warding taxes to the appropriate state;
  - Develop a premium tax allocation formula for multi-state nonadmitted risks;
  - Provide for audits and exchanging information;
  - Facilitate the reasonable administration of the cooperative reciprocal agreement; and,
  - Provide for a service fee of up to 0.3 percent of gross premium on transactions processed by the clearinghouse to fund the operations of the clearinghouse.
- The FSLSO is authorized to collect the total tax imposed on a multi-state risk nonadmitted insurance premium and must implement the cooperative reciprocal agreement.



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- The OIR and the DFS are granted rulemaking authority to administer agreements reached with other states.
- The Legislature is authorized to review any cooperative reciprocal agreement, and, if the Legislature determines that the cooperative agreement is not in the best interest of the state, it shall instruct the Chief Financial Officer to withdraw from the agreement.
- After the execution of a cooperative reciprocal agreement, the FDFS is directed to report to the President of the Senate and Speaker of the House of Representatives on the terms of the agreement. The report must include:
  - o The actual and projected collections and allocations of nonadmitted insurance premium taxes for multistate risk for each participating state;
  - o A detailed description of the administrative structure of the agreement;
  - o The tax rates of any participating state; and,
  - o The status of other cooperative reciprocal agreements established throughout the country, including a state-by-state listing of passed or pending legislation responding to the NRRRA
- The bill requires insureds obtaining independently procured coverage to pay the independently procured premium tax and the service fee to the FLSO within 45 days following each calendar quarter in which the insurance was procured. Current law requires payment within 30 days after the insurance is procured. This tax will be computed on the gross premium when the independently procured policy covers risks that are only partially in Florida and Florida is the home state as de-

fined by the NRRRA. The tax rate is limited to the tax rate where an insured risk is located.

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As of this writing, some of the bills reported are awaiting review by the Governor and are subject to his veto authority. The reader is encouraged to check the ultimate status of any bill by visiting the Legislature's web site ([www.leg.state.fl.us](http://www.leg.state.fl.us)). Please select the "Enrolled" (ER) version of the bill. This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives.