

Florida Enacts New Captive Insurance Law

LIFE, ANNUITY, AND RETIREMENT LITIGATION | MAY 1, 2012



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May 1, 2012 -- Last week, Florida's Governor, Rick Scott, signed legislation providing for the formation of captive insurers interested in providing various types of property and casualty insurance, other than workers' compensation insurance, personal motor vehicle, and residential property insurance. The legislation will take effect July 1, 2012. Life and health insurance is specifically excluded from the permissible uses of a captive insurer.

Although Florida had already created the operational standards and criteria for domiciling and licensing captives in the state, the new legislation sets out the formation, capitalization requirements, permissible types of coverage, reporting, etc., standards that the Governor hopes will encourage the formation of captives in Florida. The law will also authorize the formation of captive reinsurers that will be permitted only to provide reinsurance on property and casualty risks.

The new law requires minimum policyholder surplus (capital and surplus) of between \$250,000 and \$500,000, depending on whether the captive is formed as a pure captive or an industrial insured captive. A pure captive insurer is defined under the new law as one that only insures risks of its parent, affiliated companies or controlled unaffiliated businesses. An industrial insured captive insurer is one that can only provide insurance to industrial insureds that are its stockholders or, in the case of a mutual, its members or to the stockholders and affiliates of the captive's parent. To be considered an industrial insured, the insured must meet an asset test, purchase insurance through the use of a full-time insurance manager or licensed broker or agent, have at least 100 employees and meet an annual premium payment test.

The law also requires the captive insurer to have at least one board meeting each year in Florida and maintain its principal place of business in the state as well as the payment of a \$1,500 application fee and a yearly renewal fee of \$1,000. The law has other financial requirements relating to the maintenance of reserves and liquidity to help assure the solvency of Florida captives.

Approximately 30 jurisdictions have enacted captive insurance laws over the past decade, and one of the distinguishing features of the various laws is the premium tax rate charged. Vermont, for example, one of the first states to enact a captive law, charges a sliding scale tax based on the amount of premiums the captive collects. Tennessee uses a flat rate of 1% of gross premiums collected. The Florida law provides for a premium tax rate of 1.75% on gross premium receipts.