

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 215 Risk Retention Groups
SPONSOR(S): Insurance & Banking Subcommittee, Truenow
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 846

FINAL HOUSE FLOOR ACTION: 119 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/HB 215 passed the House on February 15, 2024, and subsequently passed the Senate on March 5, 2024.

A risk retention group (RRG) is a type of liability insurance company owned by its members. RRGs allow businesses with similar insurance needs to pool risks and form their own insurance companies under a combination of state and federal laws. Members of an RRG must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations. RRGs may only provide liability insurance; the law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade, product, professional service, premises, operation, or activity of a state or local government.

RRGs must be domiciled in a state, but once licensed by the state of domicile, RRGs are permitted to insure members in all states. They must complete a registration process in the non-domiciliary states in which they want to do business. RRGs may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to the Office of Insurance Regulation (OIR) and designate the Chief Financial Officer as their agent for service of process.

Fronting is the use of a licensed, admitted insurer to issue an insurance policy on behalf of a self-insured organization or captive insurer without transferring any risk. The risk of loss under the policy remains with the self-insured entity or captive insurer, but the authorized insurer assumes a credit risk because it would be required to honor the policy if the insured fails to do so. This provides proof of coverage that is needed to satisfy financial responsibility laws when states require evidence of coverage written by an admitted insurer. Insurers typically charge between 5 and 10 percent of the premium being written in exchange for serving as fronting companies. Currently, an RRG cannot provide the coverage to its members in Florida that is required to satisfy motor vehicle financial responsibility laws. Therefore, it must utilize a fronting company.

Florida law contains financial responsibility requirements for owners or operators of motor vehicles, whether they are used for personal or commercial purposes. In general, the owner or operator of a motor vehicle must insure against losses from liability for bodily injury, death, and property damage by either purchasing auto insurance from an insurance carrier authorized by OIR to do business in Florida, or by obtaining a certificate of self-insurance from the Department of Highway Safety and Motor Vehicles after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.

The bill establishes that motor vehicle insurance coverage issued by RRGs operating under federal law, and registered to do business in the state, satisfies the financial responsibility requirements of state motor vehicle law.

The bill has no impact on local or state government revenues or expenditures. It has an indeterminate positive and negative direct economic impact on the private sector.

Subject to the Governor's veto powers, the bill is effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Risk Retention Groups

A risk retention group (RRG) is a type of liability insurance company owned by its members.¹ RRGs allow businesses with similar insurance needs to pool risks and form their own insurance companies under a combination of state and federal laws.² Members of an RRG must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations.³

RRGs may only provide liability insurance; the law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade, product, professional service, premises, operation, or activity of a state or local government.⁴ However, liability insurance does not include an employer's liability to its employees; thus, risk retention groups may not issue workers' compensation insurance policies to their members.⁵

Federal law treats risk retention groups differently than traditional insurance companies. Authorized insurers must be licensed in every state in which they operate and the domicile state serves as the primary regulator. In 1986, Congress passed the Liability Risk Retention Act (LRRRA) to help businesses and other entities obtain liability insurance that had become either unaffordable or unavailable.⁶ Under the LRRRA, RRGs must be domiciled in a state, but once licensed by the state of domicile, RRGs are permitted to insure members in all states.⁷ As a federal law, the LRRRA preempts state regulation, and makes it easier for RRGs to do business throughout the country.⁸ Those RRGs that were chartered prior to 1985 may operate under the laws of Bermuda or the Cayman Islands.⁹

Despite being governed by the LRRRA, RRGs must complete a registration process in the non-domiciliary states in which they want to do business, and must designate those states' insurance commissioners as their agents for service of process for any legal proceedings originating in those states.¹⁰ Additionally, RRGs must submit a plan of operation or feasibility study to the insurance commissioner of the domiciliary state before they may offer insurance in any state.¹¹ The plan or study must include the coverages, deductibles, coverage limits, rates and rating classification systems for each line of commercial liability insurance the RRG plans to cover.¹²

¹ National Association of Insurance Commissioners (NAIC), *Risk Retention Groups*, <https://content.naic.org/cipr-topics/risk-retention-groups> (last visited Dec. 4, 2023).

² *Id.*

³ 15 U.S.C. §3901(a)(4)(F) and s. 627.942(9)(f), F.S.

⁴ 15 U.S.C. 3901(a)(2)(A) and s. 627.942(9)(g), F.S.

⁵ 15 U.S.C. 3901(a)(2)(B) and s. 627.942(4), F.S.

⁶ Captive Insurance Companies Association (CICA), *Risk Retention Resources*, [https://www.cicaworld.com/risk-retention-resources/#:~:text=The%20Liability%20Risk%20Retention%20Act%20\(LRRRA\)%20is%20a%20federal%20law,crisis%E2%80%9D%20in%20the%20United%20States](https://www.cicaworld.com/risk-retention-resources/#:~:text=The%20Liability%20Risk%20Retention%20Act%20(LRRRA)%20is%20a%20federal%20law,crisis%E2%80%9D%20in%20the%20United%20States) (last visited Dec. 4, 2023). The LRRRA consists of sections 15 U.S.C. §§ 3902-3906.

⁷ *Id.*

⁸ *Id.*

⁹ 15 U.S.C. § 3901(a)(4) and s. 627.942(9), F.S.

¹⁰ NAIC, *supra* note 1.

¹¹ *Id.*

¹² *Id.*

State regulators may also require RRGs to comply with state laws relating to claim settlement and false or fraudulent acts, pay premium taxes, and submit to financial exams if such exam has not been completed by the state in which the RRG is domiciled.¹³

States cannot require RRGs to participate in any insolvency guaranty association.¹⁴ However, states may require notice that insurance provided by RRGs is not protected by an insolvency guaranty association.¹⁵ Unlike authorized insurers, RRGs do not submit rate and form filings with a state regulator for approval. Instead, risk retention groups apportion risk among their members; thus, rates are based on an actuarial analysis of the membership and policies can be tailored to suit the needs of the membership.¹⁶

Risk Retention Groups in Florida

RRGs may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to the Office of Insurance Regulation (OIR) and designate the Chief Financial Officer as their agent for service of process.¹⁷ According to OIR, 146 risk retention groups are licensed in a state other than Florida and registered to do business in Florida.¹⁸

Domestic RRGs pay the same premium taxes as other domestic insurers.¹⁹ Risk retention groups registered to operate in Florida but licensed in another state pay the same premium taxes as surplus lines insurers.²⁰ All risk retention groups operating in Florida must use agents who are licensed and appointed in Florida.²¹

Fronting Arrangements

The International Risk Management Institute (IRMI) describes “fronting” as the use of a licensed, admitted insurer to issue an insurance policy on behalf of a self-insured organization or captive insurer without transferring any risk.²² The risk of loss under the policy remains with the self-insured entity or captive insurer, but the authorized insurer assumes a credit risk because it would be required to honor the policy if the insured fails to do so.²³ This provides proof of coverage that is needed to satisfy financial responsibility laws when states require evidence of coverage written by an admitted insurer.²⁴ Insurers typically charge between 5 and 10 percent of the premium being written in exchange for serving as fronting companies.²⁵

¹³ 15 U.S.C. § 3902(a)(1).

¹⁴ 15 U.S.C. § 3902(a)(2).

¹⁵ 15 U.S.C. § 3902(a)(1).

¹⁶ NAIC, *supra* note 1.

¹⁷ See ss. 627.943 and 627.944, F.S.

¹⁸ Florida Office of Insurance Regulation, *Active Company Search*, <https://companysearch.myfloridacfo.gov/> (last visited Dec. 6, 2023).

¹⁹ S. 627.943(4), F.S. Pursuant to s. 624.509, F.S., premium taxes (typically 1.75 percent of the premium) are collected by the licensed insurer and paid to the Department of Revenue on or before March 1 of each year. A domestic insurer is one formed under Florida law. S. 624.06(1), F.S.

²⁰ S. 627.944(3), F.S. Pursuant to s. 626.932, F.S., premium taxes (4.94 percent of the premium) are collected by the licensed insurance agent and paid to the Department of Financial Services on a quarterly basis; premiums are also reported to the Florida Surplus Lines Service Office (FSLSO) which oversees the reporting requirements of eligible surplus lines insurers.

²¹ Ss. 627.943(5) and 627.944(12), F.S.

²² IRMI, *fronting*, <https://www.irmi.com/term/insurance-definitions/fronting> (last visited Dec. 6, 2023).

²³ *Id.*

²⁴ *Id.* Chapter 324, F.S. sets forth the financial responsibility laws for owners and operators of motor vehicles, whether used for personal or commercial purposes.

²⁵ IRMI, *supra* note 22.

The Florida Insurance Code (Code)²⁶ describes a fronting company as an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer, or more than 75 percent to two or more unauthorized insurers, of the entire risk of loss on all of the insurance written by it in Florida.²⁷ The unauthorized insurers that receive the risk do not meet the requirements to be an accredited or trusted reinsurer in Florida.²⁸ Additionally, no authorized insurer is permitted to act as a fronting company for any unauthorized insurer which is not an approved reinsurer.²⁹

Florida law explicitly prohibits:

- An authorized insurer or licensed motor vehicle service agreement company from acting as a fronting company for any unauthorized insurer or unlicensed motor vehicle service agreement company.³⁰
- An authorized insurer or licensed home warranty association from acting as a fronting company for any unauthorized insurer or unlicensed home warranty association.³¹
- An authorized insurer or licensed service warranty association from acting as a fronting company for any unauthorized insurer or unlicensed service warranty association.³²

The Code does not contemplate an authorized insurer acting as a fronting company for an RRG.

Financial Responsibility Law

Chapter 324, F.S., sets forth the financial responsibility laws for owners or operators of motor vehicles, whether they are used for personal or commercial purposes. In general, the owner or operator of a motor vehicle must insure against losses from liability for bodily injury, death, and property damage by either purchasing auto insurance from an insurance carrier authorized by OIR to do business in Florida,³³ or by obtaining a certificate of self-insurance from the Department of Highway Safety and Motor Vehicles (DHSMV) after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.³⁴

When the owner or operator of a motor vehicle purchases liability insurance to satisfy the financial responsibility law, the policy must be issued by an insurance company authorized to do business in Florida.³⁵ When an owner or operator self-insures a vehicle or fleet of vehicles, the owner or operator must provide audited financial statements to DHSMV showing an unencumbered net worth that satisfies the Financial Responsibility Law.³⁶

Effect of the Bill

The bill establishes that motor vehicle insurance coverage issued by RRGs operating under federal law, and registered to do business in the state, satisfies the financial responsibility requirements of state motor vehicle law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²⁶ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the “Florida Insurance Code.”

²⁷ S. 624.404(4)(b), F.S. See also s. 624.410, F.S.

²⁸ *Id.*; see also s. 624.410, F.S.

²⁹ S. 624.404(4)(a), F.S.

³⁰ S. 634.241, F.S.

³¹ S. 634.326, F.S.

³² S. 634.429, F.S.

³³ S. 324.021(8), F.S.

³⁴ Ss. 324.161 and 324.171, F.S. See also Florida Department of Highway Safety and Motor Vehicles, Self-Insurance, <https://www.flhsmv.gov/insurance/self-insurance/firm/> (last visited Dec. 18, 2023).

³⁵ S. 324.021(8), F.S.

³⁶ S. 324.171, F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive direct economic impact on private sector businesses that save money by receiving coverage from the RRGs of which they are a member instead of having to pay a fronting company. However, it will have a negative impact on insurers that have acted as fronting companies for the placement of coverage by RRGs.

D. FISCAL COMMENTS:

None.