VCIA: Dodd-Frank's Surplus Lines Regulations Shouldn't Impact Captives

October 13, 2011 | A.M. Best Company, Inc.

Captives should not be impacted by the Dodd-Frank Act's provisions that relate to surplus lines, according to a white paper from the Vermont Captive Insurance Association.

The Dodd-Frank's Nonadmitted and Reinsurance Reform Act was intended to streamline the regulation and taxation of surplus lines insurance, but "some of the definitions in NRRA are so broad that questions have been raised about its potential impact on captive insurance," Richard Smith, VCIA president, said in an email.

To address VCIA members' concerns, the VCIA's federal legislative counsel, James T. McIntyre of McIntyre & Lemon in Washington, D.C., wrote a white paper on the potential application of NRRA to captive insurance.

"While some of the paper's conclusions regarding NRRA's application to captives are not absolute, it is clear to VCIA that NRRA's provisions regarding state taxation of 'nonadmitted insurance' were not intended to and do not apply to captive insurance," Smith said.

"The long-standing and substantial constitutionally based limitations on state taxation of independently procured insurance remain in place," he said.

Although the VCIA believes NRRA's provisions regarding state taxation of nonadmitted insurance do not apply to captive insurance, "we plan to discuss with members of Congress the potential need of legislative clarification to eliminate any ambiguity," Smith said.

The purpose of the NRRA was to simplify a confusing and inconsistent system for regulating surplus lines. It set taxation, regulatory and licensing authority under the exclusive authority of the home state of the insured (Best's News Service, Sept. 9, 2011).

So far, 44 states have adopted legislation to implement NRRA, according to the white paper.

(By Meg Green, senior associate editor, BestWeek: Meg.Green@ambest.com)