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NRRA Not Applicable to Captives, Study Finds

October 17, 2011 | By [Caroline McDonald, PropertyCasualty360.com](http://CarolineMcDonald.PropertyCasualty360.com)

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Owners of captive insurers concerned that they need to relocate their captive because of Nonadmitted and Reinsurance Reform Act (NRRA) requirements can now rest easy, according to a white paper on the subject.

The new federal, part of the Dodd Frank Act, has no applicability to captive insurance, concludes an independent white paper prepared commissioned by the Vermont Captive Insurance Association (VCIA) by the law firm of McIntyre and Lemon, PLLC of Washington, D.C.

“If you had, or did not have a surplus lines or self-procurement tax issue before Dodd Frank, it didn’t change anything,” Dave Provost, Deputy Commissioner of Captive Insurance tells NU Online News Service. “It didn’t change the state’s laws on the taxation of captive premiums.”

He adds, “If somebody is telling you to change now, I think I’d be asking ‘Why didn’t you tell me this last year, or 10 years ago?’”

Some of the misunderstanding, he explains, is that people were “panicking that they needed to move their captive to their business’ home state to avoid self-procurement tax. But if it didn’t apply before, it doesn’t apply now.”

Provost says, “Both the language of the legislation itself and the legislative intent are clear that the law was meant to apply only to the surplus lines market—not captive insurance.”

A consortium of the VCIA, the Captive Insurance Companies Association and the National Risk Retention Association agreed with the conclusion of the white paper. “There was no intent to have NRRA encompass captive insurance,” says Rich Smith, president of the Vermont Captive Insurance Association.

Dan Towle, Vermont's director of Financial Services, tells NU, "There has been quite a bit of misinformation on the topic. Certain states are using this as an opportunity to try to bring captives to their state and generate new tax revenue. It is our position that when you have read the white paper and analyze the NRRRA that it is clear that this is not applicable to captives."

This misinformation, he says, "does a disservice to the captive insurer and to the industry."

The white paper analyzed Congressional legislative intent, quoting from the chief bill sponsors, and determined the focus of the bill is on surplus lines of insurance, according to the State of Vermont.

Based on the analysis and the language of the NRRRA itself, the white paper concludes:

- Captive insurers should not be subject to the NRRRA's nonadmitted insurance provisions because they are not placing nonadmitted insurance within the meaning of the NRRRA.
- The NRRRA did not change the application of state independently-procured insurance laws, nor should it restrict the collection of premium taxes paid for independently-procured insurance to the "home state" of the insured, as it does for nonadmitted insurance.

Towle notes, "It is prudent for captive insurance companies to seek counsel from their attorneys, tax advisors and captive managers if they have questions on the applicability of self procurement taxes."

He adds, however, that "Generally speaking, if you have been advised that self-procurement taxes were not applicable before the NRRRA, they would not be applicable now. The NRRRA itself did not create any new taxes."

The white paper can be read in its entirety at www.VermontCaptive.com/DoddFrank.