



Substitute Senate Bill No. 377

Public Act No. 18-151

AN ACT AUTHORIZING AGENCY CAPTIVE INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2018*) An agency captive insurance company may be incorporated as (1) a stock insurer with its capital divided into shares and held by the stockholders, (2) a nonprofit corporation with one or more members, or (3) a manager-managed limited liability company.

Sec. 2. (NEW) (*Effective July 1, 2018*) (a) No agency captive insurance company may transact insurance business in this state unless:

(1) Each agent or producer that owns or controls the agency captive insurance company is, and remains, licensed in good standing in this state under sections 38a-702a to 38a-702r, inclusive, of the general statutes, and in all other states in which the insurance agent or insurance producer is licensed;

(2) The agency captive insurance company (A) insures only against the risks of commercial policies that are placed by or through agents or producers described in subdivision (1) of this subsection, (B) does not insure against risks of any health insurance policy or plan, and (C) submits to the Insurance Commissioner, in a manner specified by the

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commissioner, the form of commercial policies described in subparagraph (A) of this subdivision if the commissioner, in the commissioner's discretion, requires that the agency captive insurance company submit such policies to the commissioner;

(3) The agency captive insurance company discloses, in writing and in a form and manner prescribed by the Insurance Commissioner, to each policy holder under a policy described in subparagraph (A) of subdivision (2) of this subsection any limitations, rights and obligations that such agency captive insurance company holds, or is subject to, as a result of its affiliation with an insurance agent or insurance producer described in subdivision (1) of this subsection; and

(4) All risks insured by the agency captive insurance company are, if required by the Insurance Commissioner, (A) fronted by an insurance company authorized by any state for the type of insurance that the agency captive insurance company insures, (B) reinsured by a reinsurance company authorized or approved to conduct reinsurance business in this state, or (C) secured by a trust established in the United States for the benefit of policy holders and claimants, or funded by an irrevocable letter of credit or other arrangement approved by the commissioner.

(b) The Insurance Commissioner may require an agency captive insurance company to increase the funding of any security arrangement described in subdivision (4) of subsection (a) of this section. If the form of security arrangement is a letter of credit, the letter of credit shall be issued or confirmed by a bank approved by the commissioner. A trust or letter of credit described in subdivision (4) of subsection (a) of this section shall be established in a form and upon terms approved by the commissioner.

Sec. 3. Section 38a-91aa of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

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As used in sections 38a-91aa to 38a-91tt, inclusive, as amended by this act, and sections 1 and 2 of this act:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured or a member organization by virtue of common ownership, control, operation or management.

(2) "Agency captive insurance company" means a captive insurance company that:

(A) Is owned or directly or indirectly controlled by one or more insurance agents or insurance producers licensed in accordance with sections 38a-702a to 38a-702r, inclusive;

(B) Only insures against risks covered by insurance policies sold, solicited or negotiated through the insurance agents or insurance producers that own or control such captive insurance company; and

(C) Does not insure against risks covered by any health insurance policy or plan.

[(2)] (3) "Alien captive insurance company" means any insurance company formed to write insurance business for its parent and affiliated companies and licensed pursuant to the laws of an alien jurisdiction that imposes statutory or regulatory standards on companies transacting the business of insurance in such jurisdiction that the commissioner deems to be acceptable.

[(3)] (4) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations or other entities that has been in continuous existence for at least one year, where the association itself or some or all of the member organizations:

(A) Directly or indirectly own, control or hold with power to vote all

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of the outstanding voting securities or other voting interests of an association captive insurance company incorporated as a stock insurer;

(B) Have complete voting control over an association captive insurance company incorporated as a mutual corporation or formed as a limited liability company; or

(C) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

[(4)] (5) "Association captive insurance company" means any company that insures risks of the member organizations of an association, and includes a company that also insures risks of such member organizations' affiliated companies or of the association.

[(5)] (6) "Branch business" means any insurance business transacted in this state by a branch captive insurance company.

[(6)] (7) "Branch captive insurance company" means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

[(7)] (8) "Branch operations" means any business operations in this state of a branch captive insurance company.

[(8)] (9) "Captive insurance company" means any (A) pure captive insurance company, agency captive insurance company, association captive insurance company, industrial insured captive insurance company, risk retention group, sponsored captive insurance company or special purpose financial captive insurance company that is domiciled in this state and formed or licensed under the provisions of sections 38a-91aa to 38a-91tt, inclusive, as amended by this act, or (B) branch captive insurance company.

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[(9)] (10) "Ceding insurer" means an insurance company, approved by the commissioner and licensed or otherwise authorized to transact the business of insurance or reinsurance in its state or country of domicile, that cedes risk to a special purpose financial captive insurance company pursuant to a reinsurance contract.

[(10)] (11) "Commissioner" means the Insurance Commissioner.

[(11)] (12) "Controlled unaffiliated business" means any person:

(A) Who, (i) in the case of a pure captive insurance company, is not in the corporate system of a parent and the parent's affiliated companies, or (ii) in the case of an industrial insured captive insurance company, is not in the corporate system of an industrial insured and the industrial insured's affiliated companies;

(B) Who, (i) in the case of a pure captive insurance company, has an existing contractual relationship with a parent or one of the parent's affiliated companies, or (ii) in the case of an industrial insured captive insurance company, has an existing contractual relationship with an industrial insured or one of the industrial insured's affiliated companies; and

(C) Whose risks are managed by a pure captive insurance company or an industrial insured captive insurance company, as applicable, in accordance with section 38a-91qq.

[(12)] (13) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per-incident or aggregate limit established by the commissioner.

[(13)] (14) "Incorporated protected cell" means a protected cell that is established as a corporation or a limited liability company, separate

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from the sponsored captive insurance company with which it has entered into a participant contract.

[(14)] (15) "Industrial insured" means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and

(C) Who has at least twenty-five full-time employees.

[(15)] (16) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise an industrial insured group, and includes a company that also insures risks of such industrial insureds' affiliated companies.

[(16)] (17) "Industrial insured group" means any group of industrial insureds that collectively:

(A) Directly or indirectly own, control or hold with power to vote all of the outstanding voting securities or other voting interests of an industrial insured captive insurance company incorporated as a stock insurer;

(B) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual corporation or formed as a limited liability company; or

(C) Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer.

[(17)] (18) "Insurance securitization" or "securitization" means a transaction or a group of related transactions, which may include

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capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements, in which all or part of the result of such transaction is used to fund a special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer and by which:

(A) A special purpose financial captive insurance company directly or indirectly obtains proceeds through the issuance of securities by such company or any other person; or

(B) A person provides, for the benefit of a special purpose financial captive insurance company, one or more letters of credit or other assets that the commissioner has authorized such company to treat as admitted assets for purposes of its annual report. "Insurance securitization" or "securitization" does not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of a special purpose financial captive insurance company's capital and surplus requirements under section 38a-91dd, as amended by this act.

[(18)] (19) "Member organization" means any individual, corporation, limited liability company, partnership, association or other entity that belongs to an association.

[(19)] (20) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members.

[(20)] (21) "Parent" means any individual, corporation, limited liability company, partnership or other entity that directly or indirectly owns, controls or holds with power to vote more than fifty per cent of the outstanding voting:

(A) Securities of a pure captive insurance company organized as a stock insurer; or

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(B) Membership interests of a pure captive insurance company organized as a nonprofit corporation or as a limited liability company.

[(21)] (22) "Participant" means any association, corporation, limited liability company, partnership, trust or other entity, and any affiliated company thereof, that is insured by a sponsored captive insurance company pursuant to a participant contract.

[(22)] (23) "Participant contract" means a contract entered into by a sponsored captive insurance company and a participant by which the sponsored captive insurance company insures the risks of the participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

[(23)] (24) "Protected cell" means a separate account established by a sponsored captive insurance company, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of such participants as set forth in such participant contracts.

[(24)] (25) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

[(25)] (26) "Reinsurance contract" means a contract entered into by a special purpose financial captive insurance company and a ceding insurer by which the special purpose financial captive insurance company agrees to provide reinsurance to the ceding insurer for risks associated with the ceding insurer's insurance or reinsurance business.

[(26)] (27) "Risk retention group" means a captive insurance company organized under the laws of this state pursuant to the federal Liability Risk Retention Act of 1986, 15 USC 3901 et seq., as amended

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from time to time, as a stock insurer or mutual corporation, a reciprocal or other limited liability entity.

[(27)] (28) "Security" has the same meaning as provided in section 36b-3 and includes any form of debt obligation, equity, surplus certificate, surplus note, funding agreement, derivative or other financial instrument that the commissioner designates as a security for purposes of sections 38a-91aa to 38a-91tt, inclusive, as amended by this act.

[(28)] (29) "Special purpose financial captive insurance company" means a company that is licensed by the commissioner in accordance with section 38a-91bb.

[(29)] (30) "Special purpose financial captive insurance company security" means a security issued by (A) a special purpose financial captive insurance company, or (B) a third party, the proceeds of which are obtained directly or indirectly by a special purpose financial captive insurance company.

[(30)] (31) "Sponsor" means any association, corporation, limited liability company, partnership, trust or other entity that is approved by the commissioner to organize and operate a sponsored captive insurance company and to provide all or part of the required unimpaired paid-in capital and surplus.

[(31)] (32) "Sponsored captive insurance company" means a captive insurance company:

(A) In which the minimum required unimpaired paid-in capital and surplus are provided by one or more sponsors;

(B) That insures risks of its participants only through separate participant contracts; and

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(C) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.

[(32)] (33) "Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with the National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41, as amended from time to time, and as modified or supplemented by the commissioner.

Sec. 4. Subsection (a) of section 38a-91dd of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) (1) The Insurance Commissioner shall not issue a license to a captive insurance company or allow the company to retain such license unless the company has and maintains unimpaired paid-in capital and surplus of:

(A) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars;

(B) In the case of an association captive insurance company, not less than five hundred thousand dollars;

(C) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars;

(D) In the case of a risk retention group, not less than one million dollars;

(E) In the case of a sponsored captive insurance company, not less than two hundred twenty-five thousand dollars;

(F) In the case of a special purpose financial captive insurance

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company, not less than two hundred fifty thousand dollars; [and]

(G) In the case of a sponsored captive insurance company licensed as a special purpose financial captive insurance company, not less than five hundred thousand dollars; and

(H) In the case of an agency captive insurance company, not less than five hundred thousand dollars.

(2) (A) The Insurance Commissioner shall not issue a license to a branch captive insurance company or allow the company to retain such license unless the company has and maintains, as security for the payment of liabilities attributable to the branch operations:

(i) Not less than two hundred fifty thousand dollars; and

(ii) Reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operations. The commissioner may permit a branch captive insurance company to credit against any such reserves any security for loss reserves that the branch captive insurance company posts with a ceding insurer or is posted by a reinsurer with the branch captive insurance company, so long as such security remains posted.

(B) The amounts required under subparagraph (A) of this subdivision may be held, with the prior approval of the commissioner, in the form of (i) a trust formed under a trust agreement and funded by assets acceptable to the commissioner, (ii) an irrevocable letter of credit issued or confirmed by a bank approved by the commissioner, (iii) with respect to the amount required under subparagraph (A)(i) of this subdivision only, cash on deposit with the commissioner, or (iv) any combination thereof.

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Sec. 5. Subparagraph (A) of subdivision (2) of subsection (g) of section 38a-91ss of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(A) Proceeds from a special purpose financial captive insurance company securitization or letters of credit or other assets described in subdivision [(17)] (18) of section 38a-91aa, as amended by this act;