

CHAPTER 46
FORMERLY
HOUSE BILL NO. 15

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO CAPTIVE INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 309(a), Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 309 Delegation of powers; duties.

(a) The Commissioner may delegate to the Commissioner's Deputy, authorized representative, examiner or an employee of the Department the exercise or discharge in the Commissioner's name of any power, duty or function, whether ministerial, discretionary or of whatever character vested in or imposed upon the Commissioner under this title.

Section 2. Amend § 330, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 330. Immunity from liability.

(a) No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized representatives or any examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(b) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination, investigation, or regulatory inquiry made under this chapter, if such an act of communication or delivery was performed in good faith and without fraudulent intent or intent to deceive.

(c) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a) of this section.

(d) A person identified in subsection (a) of this section shall be entitled to an award of attorney's fees and costs if they are the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of their activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or in fact at the time that it was initiated."

Section 3. Amend § 6902, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 6902. Definitions.

As used in this chapter, unless the context requires otherwise:

(4) "Alien captive insurance company" means any captive insurance company formed to write insurance business of a nature that the Commissioner determines is otherwise permissible under this chapter and is licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in such jurisdiction.

(8) "Branch business" means any insurance business transacted by a branch captive insurance company in this State.

(7) (9) "Branch captive insurance company" has the meaning given such term in § 6972(c) of this title means any foreign captive insurance company or alien captive insurance company that has been issued a certificate of authority 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, and has not otherwise been issued a certificate of authority by the Commissioner to transact insurance under this chapter.

(10) "Branch operations" means any business operations of a branch captive insurance company in this State.

~~(9)~~ (12) "Captive insurance company" means any pure captive insurance company, association captive insurance company, agency captive insurance company, sponsored captive insurance company, industrial insured captive insurance company, special purpose captive insurance company, special purpose financial captive insurance company, series captive insurance company, or risk retention group, whether domestic, foreign or alien, or branch captive insurance company, licensed under the provisions of this chapter.

~~(24)~~ (24) "Mutual insurer" has the meaning given such term in § 502 of this title. A captive insurance company incorporated as a nonstock corporation, in which the policyholders are the members, is a mutual insurer.

(31) "Series" means a series established under 6 Del. C. § 17-218(b), 6 Del. C. § 18-215(b), 12 Del. C. § 3804(a), or corresponding law of another state.

(32) "Series captive insurance company" means a series which has received a certificate of authority pursuant to this chapter.

Section 4. Amend § 6903(a) Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) Any person complying with § 6906 of this title may apply to the Commissioner for a certificate of authority to do any and all insurance business comprised in §§ 902-905, 906(a)(1),(2), (4)-(15) and (b), 907 and 908 of this title and to issue annuities as defined in § 2902 of this title; provided, however, that:

(1) No pure captive insurance company may directly insure any risks other than those of its parent, any of such parent's affiliated companies, and any controlled unaffiliated business;

(2) No association captive insurance company:

a. Organized as a reciprocal insurer may insure any risks that a reciprocal insurer is not permitted to insure under Chapter 57 of this title; and

b. May insure any risks other than those of the association members of its association and their affiliated companies, provided that an association captive insurance company may insure risks of any other person if the insurance for such other persons satisfies each of the following requirements:

1. The insurance lines for such other persons must be the same as are authorized by the Commissioner to be written by the association captive insurance company for its association members;

2. Such other persons conduct the same or a related or similar business as that of the association members of the association captive insurance company; and

3. The maximum amount of premiums received in any year from all such other persons cannot without the express written consent of the Commissioner exceed 50% of the gross direct premiums received by the association captive insurance company from its association members in its preceding financial year;

(3) No industrial insured captive insurance company:

a. Organized as a reciprocal insurer may insure any risks that a reciprocal insurer is not permitted to insure under Chapter 57 of this title; and

b. May insure any risks other than those of the industrial insureds of its industrial insured group and their affiliated companies, provided that an industrial insured captive insurance company may insure risks of any other person (other than a natural person in his or her individual capacity) if the insurance for such other persons satisfies each of the following requirements:

1. The insurance lines for such other persons must be the same as are authorized by the Commissioner to be written by the industrial insured captive insurance company for its industrial insureds;

2. Such other persons conduct the same or a related or similar business as that of the industrial insureds of the industrial insured captive insurance company; and

3. The maximum amount of premiums received in any year from all such other persons cannot without the express written consent of the Commissioner exceed 50% of the gross direct premiums received by the industrial insured captive insurance company from its industrial insureds in its preceding financial year;

(4) No risk retention group may insure any risks other than risks that may be insured by a risk retention group under Chapter 80 of this title;

(5) A special purpose captive insurance company may, in addition to the authority set forth in this section for captive insurance companies, provide insurance or reinsurance, or both, for such other risks as approved by the Commissioner;

(6) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(7) No captive insurance company may accept or cede reinsurance except as provided in § 6911 of this title; ~~and~~

(8) Any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by federal law or laws of this State or any other state having jurisdiction over the transaction, and any captive insurance company, unless prohibited by federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies; ~~and~~

(9) No series captive insurance company may provide insurance other than the kinds of insurance permitted in subparagraphs (1) through (5) hereof. A series may elect to apply for a Certificate of Authority as a pure, association, industrial insured or special purpose captive insurance company; or a series may elect to be licensed as a series captive insurance company.

Section 5. Amend § 6903(d), Title 18 of the Delaware Code making deletions as shown by strike through and insertions as shown by underline as follows:

(d) Each applicant captive insurance company shall pay to the Commissioner a nonrefundable application fee of ~~\$200~~ \$300 for reviewing its application to determine its completeness, and a nonrefundable processing fee of ~~\$3,000~~ \$3,200 for examining, investigating and processing its application for a certificate of authority, and the Commissioner is authorized to retain legal, financial and examination services and other expert services from outside the Department, the reasonable cost of which may be charged against the applicant. The provisions of § 330 of this title shall apply to reviews, examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a nonrefundable license fee for the year of registration and a nonrefundable renewal fee for each year thereafter of ~~\$300~~ \$400.

Section 6. Amend § 6903(e), Title 18 of the Delaware Code making deletions as shown by strike through and insertions as shown by underline as follows:

~~(e) Two or more captive insurance companies under common ownership and control shall pay the \$200 application fee and the \$300 renewal fee required by subsection (d) of this section as though they were a single captive insurance company; provided however, that each such captive insurance company shall be charged the reasonable cost of any legal, financial and examination services and other expert services from outside the Department retained by the Commissioner in connection with the examination, investigation and processing of its application for a certificate of authority. For purposes of this subsection, "common ownership and control" means the direct or indirect ownership of 80% or more of the outstanding voting securities or other voting interests of 2 or more captive insurance companies by the same person or persons has the meaning set forth in § 6914(e) of this title~~
For conducting regulatory reviews, investigations, or processing, the Commissioner is authorized to retain legal, financial and examination services and other expert services from outside the Department, the reasonable cost of which may be charged against the applicant or captive insurance company.

Section 7. Amend § 6905(a), Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) No captive insurance company shall be issued a certificate of authority unless it shall possess and thereafter maintain capital and surplus of:

- (1) In the case of a pure captive insurance company, not less than \$250,000;
- (2) In the case of an association captive insurance company, not less than \$750,000;
- (3) In the case of an industrial insured captive insurance company, not less than \$500,000;
- (4) In the case of an agency captive insurance company, not less than \$250,000;
- (5) In the case of a risk retention group, not less than \$1,000,000;
- (6) In the case of a sponsored captive insurance company, not less than \$500,000;

(7) In the case of a special purpose captive insurance company, not less than \$250,000 or such other amount determined by the Commissioner;

(8) In the case of a branch captive insurance company, not less than \$250,000 or such other amount determined by the Commissioner; ~~and~~

(9) In the case of a special purpose financial captive insurance company that is also a sponsored captive insurance company, not less than \$500,000, and in the case of a special purpose financial captive insurance company that is not also a sponsored captive insurance company, not less than \$250,000; ~~and~~

(10) In the case of a series captive insurance company, the minimum capital and surplus shall be an amount as specified by the Commissioner.

(b) In connection with the issuance of a certificate of authority, the Commissioner may prescribe additional minimum capital and surplus based upon the type, volume, and nature of insurance business transacted.

(c) Minimum capital and surplus described in paragraphs (a)(1)-(a)(7) of this section shall be maintained in this State and may be in the form of cash, an irrevocable letter of credit issued by a financial institution chartered by or licensed or otherwise authorized to do banking business in this State, or by any other financial institution approved by the Commissioner, or such other assets as may be approved by the Commissioner.

(d) Notwithstanding the foregoing, the minimum capital and surplus funds may be proceeds received by the captive insurance company resulting from the issuance by the captive insurance company of a surplus note as approved by the Commissioner.

Section 8. Amend § 6906, Title 18 of the Delaware Code making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6906. Formation of captive insurance companies.

(a) A pure captive insurance company may be incorporated as a stock corporation or as a nonstock corporation, or may be formed as a limited liability company, partnership, limited partnership, series, or statutory trust (including a limited liability company, limited partnership or statutory trust having one or more series).

(b) An association captive insurance company or an industrial insured captive insurance company may be incorporated as a stock corporation or as a nonstock corporation, may be formed as a limited liability company, partnership, limited partnership or statutory trust, or may be organized as a reciprocal insurer.

(c) A special purpose captive insurance company or a special purpose financial captive insurance company or an agency captive insurance company or a branch captive insurance company may be incorporated as a stock corporation or as a nonstock corporation, may be formed as a limited liability company, partnership, limited partnership or statutory trust (including a limited liability company, limited partnership or statutory trust having one or more series), or may be such other person, other than a natural person in that natural person's individual capacity, approved by the Commissioner.

(d) A sponsored captive insurance company, including a sponsored captive insurance company that is also a special purpose financial captive insurance company, may be incorporated as a stock corporation or as a nonstock corporation, or may be formed as a limited liability company, partnership, limited partnership, or statutory trust (including a limited liability company, limited partnership or statutory trust having one or more series).

(e) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901 et seq., as amended.

(f) In the case of a captive insurance company other than a branch captive insurance company:

(1) Formed as a corporation, at least 1 of the members of the board of directors or other governing body shall be a resident of, or have that member's principal place of business in, this State;

(2) Formed as a reciprocal insurer, at least 1 of the members of the subscribers' advisory committee shall be a resident of, or have its principal place of business in, this State;

(3) Formed as a limited liability company, at least 1 member, manager or person in whom management of the limited liability company is vested or to whom rights and powers to manage and control the business and affairs of the limited liability company have been delegated shall be a resident of, or have its principal place of business in, this State;

(4) Formed as a partnership, at least 1 partner or person in whom management of the partnership is vested or to whom rights and powers to manage and control the business and affairs of the partnership have been delegated shall be a resident of, or have its principal place of business in, this State;

(5) Formed as a limited partnership, at least 1 general partner or person in whom management of the limited partnership is vested or to whom rights and powers to manage and control the business and affairs of the limited partnership have been delegated shall be a resident of, or have its principal place of business in, this State; and

(6) Formed as a statutory trust, at least 1 trustee or person in whom management of the statutory trust is vested or to whom rights and powers to manage and control the business and affairs of the statutory trust have been delegated shall be a resident of, or have its principal place of business in, this State.

(g) A captive insurance company incorporated, formed or organized under the laws of this State or under the laws of another jurisdiction that is licensed under the provisions of this chapter shall have the privileges and be subject to the provisions of the laws of this State or the laws of such other jurisdiction, as applicable, under which such captive insurance company is incorporated, formed or organized as well as the applicable provisions contained in this chapter. In the event of conflict between the provisions of the laws of this State or the laws of such other jurisdiction, as applicable, under which such captive insurance company is incorporated, formed or organized, and the provisions of this chapter, the latter shall control.

Section 9. Amend § 6908, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6908 Examinations and investigations.

~~(a)~~—At least once in 3 years, and whenever the Commissioner determines it to be prudent, the Commissioner or the Commissioner's examiner shall personally visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and its compliance with the provisions of this chapter. The Commissioner may enlarge the aforesaid 3-year period to 5 years, provided said captive insurance company is subject to a comprehensive annual audit during such period of a scope satisfactory to the Commissioner by independent auditors approved by the Commissioner. The expenses and charges of the examination shall be paid to this State by the company or companies examined.

~~(b) The provisions of §§ 318-320, 321 (other than subsection (g)), 322 and 330 of this title shall apply to examinations conducted under this section.~~

Section 10. Amend § 6910, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6910. Legal investments; management of assets.

(a) Association captive insurance companies, special purpose captive insurance companies, series captive insurance companies, and risk retention groups shall comply with:

(1) The investment requirements contained in Chapter 13 of this title, as applicable; or

(2) Such investment requirements as may be approved by the Commissioner upon application by any such captive insurance company.

(b) No pure captive insurance company, industrial insured captive insurance company, agency captive insurance company, special purpose financial captive insurance company or branch captive insurance company shall be subject to any restrictions on allowable investments whatsoever, including those limitations contained in this title; provided, however, that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such captive insurance company.

(c) Loans of minimum capital and surplus funds required by § 6905 of this title are prohibited. Notwithstanding the foregoing, the minimum capital and surplus funds may be received by the issuance by the captive insurance company of a surplus note as approved by the Commissioner.

(d) Subject to subsections (a) and (b) of this section and § 6937 of this title, as applicable, a captive insurance company may own securities of or other interests in another captive insurance company, whether voting or nonvoting.

Section 11. Amend § 6914, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6914. Tax on premiums collected.

(a) Each captive insurance company, other than a sponsored captive insurance company (including a sponsored captive insurance company that is also a special purpose financial captive insurance company), and each protected cell of a sponsored captive insurance company shall pay to the Commissioner no later than March 1 of each year a tax at the rate of 2/10 of 1% on each dollar of direct premiums collected or contracted for, during the year ending December 31 next preceding, on policies or contracts of insurance written by the captive insurance company, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums with respect to such preceding year only, which amounts shall include only dividends or distributions of unabsorbed premiums or premium deposits returned or credited to policyholders, up to a maximum tax for such year of ~~\$125,000~~ \$200,000; provided however, that no tax shall be due or payable as to consideration received for annuity contracts.

(b) Each captive insurance company, other than a sponsored captive insurance company (including a sponsored captive insurance company that is also a special purpose financial captive insurance company), and each protected cell of a sponsored captive insurance company shall pay to the Commissioner no later than March 1 of each year a tax at the rate of 1/10 of 1% on each dollar of assumed reinsurance premiums collected or contracted for, during the year ending December 31 next preceding, on policies or contracts of insurance written by the captive insurance company, up to a maximum tax for such year of ~~\$75,000~~ \$110,000; provided, however, that no such tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (a) of this section, and no such tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if such transaction is part of a plan to discontinue the operations of such other insurer and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

(c) Except for a series captive insurance company, ~~the~~ annual minimum aggregate tax to be paid by a captive insurance company or a protected cell of a sponsored captive insurance company under subsections (a) and (b) of this section shall be \$5,000 and the annual maximum aggregate tax to be paid by a captive insurance company or a protected cell of a sponsored captive insurance company under subsections (a) and (b) of this section shall be \$200,000, provided, that the tax to be paid by a captive insurance company under subsections (a) and (b) of this section and this subsection is subject to subsections (d), (e) and ~~(h)~~ (f) of this section. Each series captive insurance company shall pay an annual minimum aggregate tax of \$3,500. The aggregation of the tax paid by more than one series captive insurance company formed within a limited liability company or statutory trust established under 6 Del. C. § 17-218(b), 6 Del. C. § 18-215(b), 12 Del. C. § 3804(a), or corresponding law of another state shall not be restricted by the annual maximum premium tax limitations under subsections (a) and (b) of this section.

~~(d) For all purposes of this section, 2 or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurance company.~~

~~(e) For all purposes of this section, "common ownership and control" means the direct or indirect ownership of 80% or more of the outstanding voting securities or other voting interests of 2 or more captive insurance companies by the same person or persons.~~

~~(f)~~ (d) The tax provided for in this section shall constitute all taxes collectible under the laws of this State from any captive insurance company, and no other occupation tax or other taxes shall be levied on or collected from any captive insurance company by this State or any county, city or municipality within this State, except ad valorem taxes on real and personal property used in the production of income.

~~(g)~~ (e) The tax provided for in this section shall be calculated on an annual basis, notwithstanding that policies or contracts of insurance or contracts of reinsurance are issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

~~(h)~~ (f) A captive insurance company that has 25 or more separate qualified individuals throughout a given tax year and that otherwise would be liable under this section for tax for such year in an amount exceeding \$50,000 shall

pay to the Commissioner under this section a tax for such year in the amount of \$50,000. For purposes of this subsection, "qualified individual" means a natural person employed in this State on a regular basis of 35 or more hours per week either by such captive insurance company, or by a wholly-owned subsidiary of such captive insurance company that provides captive insurance company management, operating, investment or related services exclusively to such captive insurance company. For purposes of this subsection only, if at least one of two or more captive insurance companies under common ownership and control has 25 qualified individuals, then all captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurance company. For purposes of this subsection only, "common ownership and control" means the direct or indirect ownership of 80% or more of the outstanding voting securities or other voting interests of two or more captive insurance companies by the same person or persons.

Section 11. Amend § 6916, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6916. Applicable laws.

(a) No provisions of this title, other than those contained in this chapter or specifically referenced in this chapter, shall apply to captive insurance companies except for the following which shall apply to captive insurance companies:

(1) Chapter 3 except for §§ 331, 332, and 333; and

(2) § 2716.

(b) Subchapter V of Chapter 11, Chapters 16, 16A, 18, 50, 58 and § 909 of this title shall apply to risk retention groups.

Section 12. Amend § 6974, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6974 Annual reports.

(a) Notwithstanding § 6907 of this title, a branch captive insurance company shall file with the Commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurance company or alien captive insurance company is formed, verified by oath of two of its executive officers. Such reports and statements shall be filed with the Commissioner on the same day that such reports and statements are due in the domiciliary jurisdiction of the foreign captive insurance company or alien captive insurance company.

(b) If the Commissioner is satisfied that the annual report filed in accordance with subsection (a) of this section provides adequate information concerning the financial condition of the branch captive insurance company, the Commissioner may waive the requirement for completion of the annual report required under § 6907 of this title. If the Commissioner is not satisfied with the reports and statements filed pursuant to subsection (a) of this section, a report that meets the requirements of § 6907 of this title shall be filed with the Commissioner at such date as the Commissioner shall establish.

(c) If the foreign captive insurance company or alien captive insurance company is not required to file reports or statements in its domiciliary jurisdiction, the requirements of § 6907 of this title shall apply.

Section 13. Amend § 6975, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6975 Examination of branch captives.

(a) The examination of a branch captive insurance company pursuant to § 6908 of this title shall be of branch business and branch operations only, so long as the branch captive insurance company provides annually to the Commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the domiciliary jurisdiction of the foreign captive insurance company or alien captive insurance company, and demonstrates to the Commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) Notwithstanding subsection (a) of this section, if the Commissioner elects to waive any of the requirements of § 6973 of this title pursuant to § 6973(c) of this title, the Commissioner shall examine so much of

the financial condition and affairs of the foreign captive insurance company or alien captive insurance company as the Commissioner deems appropriate.

(c) As a condition of the issuance of a certificate of authority under this chapter, the foreign captive insurance company or alien captive insurance company shall grant authority to the Commissioner for examination of the affairs of such foreign captive insurance company or alien captive insurance company in the jurisdictions in which the foreign captive insurance company or alien captive insurance company is formed, operates or maintains books and records.

Section 14. Amend Chapter 69, Title 18 of the Delaware Code by inserting a new § 6980 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6980. Federal Home Loan Bank Membership.

A captive insurance company may apply for and become a member of a Federal Home Loan Bank, as defined in 12 U.S.C. § 1422(1)(a). The Commissioner may issue such reasonable rules, regulations and orders as the Commissioner may deem necessary or desirable to effectuate the purposes of this section, including setting standards for captive insurance companies qualifying for, entering into, and reporting advance agreements with Federal Home Loan Banks.

Section 15. This Act shall take effect immediately upon its enactment.

Approved June 24, 2015