



SPONSOR: Rep. Stone & Sen. Blevins

HOUSE OF REPRESENTATIVES
144th GENERAL ASSEMBLY

HOUSE BILL NO. 214

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §6902, Title 18 of the Delaware Code by renumbering §6902 (27) through (29) as §6902 (28)
2 through (30) respectively and by adding a new §6902 (27) as follows:

3 "(27) 'Special purpose financial captive insurance company' means a captive insurance company that is granted a
4 certificate of authority under Subchapter III of this chapter."

5 Section 2. Amend §6903(d) and (e), Title 18 of the Delaware Code by inserting the phrase "and other expert
6 services" immediately after the phrase "financial and examination services" where it appears once in each subsection.

7 Section 3. Amend §6903(e), Title 18 of the Delaware Code by deleting the phrase ", the \$300 license fee".

8 Section 4. Amend §6905(a), Title 18 of the Delaware Code by deleting the word "and" at the end of paragraph
9 (5); by deleting the period (".") at the end of paragraph (6) and inserting in lieu thereof "; and"; and by adding a new
10 paragraph to read:

11 "(7) In the case of a special purpose financial captive insurance company that is also a sponsored captive
12 insurance company, not less than \$500,000, and in the case of a special purpose financial captive insurance company that is
13 not also a sponsored captive insurance company, not less than \$250,000."

14 Section 5. Amend §6905(c), Title 18 of the Delaware Code by deleting the phrase "(a)(6) of this section" and by
15 substituting in lieu thereof "(a)(7) of this section".

16 Section 6. Amend §6906 (c) and (d), Title 18 of the Delaware Code by deleting subsections (c) and (d) and by
17 substituting in lieu thereof the following:

18 "(c) A special purpose captive insurance company or a special purpose financial captive insurance company
19 may be incorporated as a stock corporation or as a nonstock corporation, may be formed as a limited liability company,
20 partnership, limited partnership, or statutory trust, or may be such other person, other than a natural person in that natural
21 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."

Section 7. Amend §6909, Title 18 of the Delaware Code by adding three new subsections to read:

"(d) Suspension of a captive insurance company's certificate of authority shall be for such period as the Commissioner specifies in the order of suspension. During the suspension period the Commissioner may rescind or shorten the suspension by further order.

(e) During the suspension period the captive insurance company may not solicit or write any new business but must file annual statements, pay fees and taxes as required under this chapter, and, unless otherwise provided in the order of suspension, may service its business already in force as if the certificate of authority had continued in full force.

(f) If the certificate of authority has not terminated within the suspension period, then upon expiration of the suspension period, the captive insurance company's certificate of authority shall automatically be reinstated, unless the Commissioner finds that one or more causes of the suspension are continuing or that the captive insurance company is otherwise not in compliance with the requirements of this chapter, of which finding the Commissioner shall give the captive insurance company notice not less than 30 days in advance of expiration of the suspension period. If not automatically reinstated, and if not already terminated, the certificate of authority terminates at the end of the suspension period."

Section 8. Amend §6910(b), Title 18 of the Delaware Code by deleting the phrase "No pure captive insurance company or industrial insured captive insurance company" and by substituting in lieu thereof the following: "No pure captive insurance company, industrial insured captive insurance company, or special purpose financial captive insurance company".

Section 9. Amend §6914(a) and (b), Title 18 of the Delaware Code by adding the phrase "(including a sponsored captive insurance company that is also a special purpose financial captive insurance company)" immediately after the phrase "sponsored captive insurance company" each time it appears in the first line of each subsection.

Section 10. Amend §6920, Title 18 of the Delaware Code by deleting the first full undesignated paragraph thereof (but not deleting paragraphs (1) and (2)), and by substituting in lieu thereof the following:

"All portions of license applications reasonably designated confidential by or on behalf of an applicant captive insurance company, all information and documents, and any copies of the foregoing, produced or obtained by or submitted or disclosed to the Commissioner pursuant to Subchapter III of this chapter that are reasonably designated confidential by or on behalf of a special purpose financial captive insurance company, and all examination reports, preliminary

examination reports, working papers, recorded information, other documents, and any copies of any of the foregoing, produced or obtained by or submitted or disclosed to the Commissioner that are related to an examination pursuant to this chapter must, unless the prior written consent (which may be given on a case-by-case basis) of the captive insurance company to which it pertains has been obtained, be given confidential treatment, are not subject to subpoena, may not be made public by the Commissioner, and may not be provided or disclosed to any other person at any time except:".

Section 11. Amend Subchapter I, Title 18 of the Delaware Code by adding a new section to read:

"§6923. Books and records.

(a) Unless otherwise approved by the Commissioner, a captive insurance company shall maintain its books, records, documents, accounts, vouchers, and agreements in this State. A captive insurance company shall make its books, records, documents, accounts, vouchers, and agreements available for inspection by the Commissioner at any time. A captive insurance company shall keep its books, records, documents, accounts, vouchers, and agreements in such manner that its financial condition, affairs, and operations can be readily ascertained and in such manner that the Commissioner may readily verify its financial statements and determine its compliance with this chapter."

(b) Unless otherwise approved by the Commissioner, all original books, records, documents, accounts, vouchers, and agreements of a captive insurance company must be preserved and kept available in this State for the purpose of examination and inspection until the Commissioner approves the destruction or other disposition of the books, records, documents, accounts, vouchers, and agreements. If the Commissioner approves the preservation and keeping of the foregoing outside this State, the captive insurance company shall maintain a complete and true copy of each such original in the State. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically."

Section 12. Amend §6932, Title 18 of the Delaware Code by deleting §6932 and by substituting in lieu thereof the following:

"§6932. Definitions.

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

(1) 'Participant' means any person, including any counterparty as defined in §6952(1) of this title, that is insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to the participant's pro rata share of the assets of 1 or more protected cells identified in the participant contract.

(2) 'Participant contract' means a contract by which a sponsored captive insurance company insures the risks of 1 or more participants, and limits the losses of each participant to its pro rata share of the assets of 1 or more protected cells identified in the participant contract, including an SPFC contract as defined in §6952 of this title.

(3) 'Protected cell' means a separate and distinct account established and maintained by or on behalf of a sponsored captive insurance company in which assets, including assets invested pursuant to §6937 of this title, are accounted for and recorded for 1 or more participants in accordance with the terms of 1 or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts.

(4) 'Sponsor' means a person qualifying as a sponsor under §6935 of this title.

(5) 'Sponsored captive insurance company' means a captive insurance company, including a special purpose financial captive insurance company as defined in §6952 of this title:

- a. of which the minimum capital and surplus required by this chapter is provided by 1 or more sponsors;
- b. that is licensed under the provisions of this chapter;
- c. that insures the risks of its participants only, through separate participant contracts; and
- d. that funds its liability to each participant through 1 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."

Section 13. Amend §6937, Title 18 of the Delaware Code by deleting §6937 and by substituting in lieu thereof the following:

"§6937. Investments by sponsored captive insurance companies.

(a) Notwithstanding the provisions of §6934 of this title, a sponsored captive insurance company may combine the assets of 2 or more protected cells for purposes of investing those assets. Such a combination of assets may not be construed as defeating the segregation of assets for purposes of §§6934 and 6938 of this title, or for accounting or other purposes. Sponsored captive insurance companies must comply with:

- (1) the investment requirements contained in Chapter 13 of this title, as applicable; or
- (2) investment requirements as may be approved by the Commissioner upon application by a sponsored captive insurance company; or

(3) in the case of a sponsored captive insurance company that is also a special purpose financial captive insurance company, the investment requirements contained in §6910(b) of this title.

(b) Compliance with the investment requirements set forth in paragraphs (1) and (2) of section (a) of this section must be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is

111 allowed pursuant to §6911 of this chapter or to the extent otherwise considered reasonable and appropriate by the
112 Commissioner.".

113 Section 14. Amend Title 18 of the Delaware Code by redesignating Subchapter III thereof as Subchapter IV and
114 by renumbering §§6961, 6962, and 6963 as §§6971, 6972, and 6973 respectively.

115 Section 15. Amend Title 18 of the Delaware Code by inserting a new subchapter to read:

116 "Subchapter III. Special Purpose Financial Captive Insurance Companies

117 §6951. Purpose.

118 This subchapter provides for the authorization of special purpose financial captive insurance companies
119 empowered to issue securities and otherwise access financial markets and alternative sources of capital through
120 securitizations and other transactions. The intent of this subchapter is to provide for an authorization process for special
121 purpose financial captive insurance companies that is both thorough and swift, and for the ongoing regulation of such
122 companies that recognizes and accommodates the special purpose nature of such entities.

123 §6952. Definitions.

124 As used in this subchapter, unless the context requires otherwise:

125 (1) 'Counterparty' means a person, other than a natural person, which may but need not be the parent or an
126 affiliate of the special purpose financial captive insurance company, that enters into an SPFC contract with a special
127 purpose financial captive insurance company.

128 (2) 'Insolvency' or 'insolvent' means:

- 129 a. a person's inability to pay its obligations when they are due, unless those obligations are the
130 subject of a bona fide dispute; or
131 b. the liabilities of a person exceed the value of all of the assets of the person. In the case of a
132 special purpose financial captive insurance company, liabilities and assets are determined under
133 the method of accounting used by the special purpose financial captive insurance company in
134 accordance with §6962 of this title.

135 (3) 'Organizational document' means the certificate of incorporation, articles of organization, bylaws, limited
136 liability company agreement, or other documents pursuant to which a special purpose financial captive insurance company
137 or a special purpose financial captive insurance company applicant, as the case may be, is formed.

138 (4) 'Permitted investments' means those investments that meet the qualifications set forth in §6910(b) of this
139 chapter.

(5) 'Securities' has the same meaning as defined in 6 Del. C. §7302(17), and also includes any form of debt obligation, equity, surplus certificate, surplus note, funding agreement, derivative, or other financial instrument that the Commissioner designates, by rule or order, as 'securities' for purposes of this subchapter.

(6) a. 'Special purpose financing transaction' means:

1. a transaction or a group of related transactions, which may include but are not limited to capital market offerings and securitizations, by which:

(i) proceeds are obtained by a special purpose financial captive insurance company through the issuance of securities by the special purpose financial captive insurance company or by any other person, and all or any part of such proceeds are used to fund the special purpose financial captive insurance company's obligations under one or more SPFC contracts; or

(ii) a person provides one or more letters of credit or other assets to or for the benefit of the special purpose financial captive insurance company, which the Commissioner authorizes the special purpose financial captive insurance company to treat as admitted assets for purposes of the special purpose financial captive insurance company's annual report, and all or any part of those letters of credit or other assets, as applicable, are used to fund the special purpose financial captive insurance company's obligations under one or more SPFC contracts; or

2. other financing arrangements as the Commissioner may approve.

b. 'Special purpose financing transaction' does not include the issuance of a letter of credit to satisfy all or part of the special purpose financial captive's minimum capital and surplus requirements under §6905 of this chapter.

(7) 'Special purpose financial captive insurance company' means a captive insurance company that is granted a certificate of authority under this subchapter.

(8) 'SPFC contract' means a contract or group of related contracts between a special purpose financial captive insurance company and a counterparty or counterparties pursuant to which insurance risk is transferred by the counterparty or counterparties to the special purpose financial captive insurance company. An SPFC contract may include one or more other parties.

(9) 'Surplus note' means an unsecured subordinated debt obligation treated as surplus and not debt in accordance with §6956 of this subchapter.

§6953. Application of subchapter.

(a) Except as otherwise provided, Subchapters I, II, and IV apply under this subchapter to special purpose financial captive insurance companies.

(b) The Commissioner, by rule or order, at the Commissioner's discretion and on a case-by-case basis, may exempt a special purpose financial captive insurance company, or one or more protected cells of a special purpose financial captive insurance company that is also a sponsored captive insurance company, from one or more of the provisions of this chapter.

(c) This subchapter is not intended to limit the transactions in which a captive insurance company other than a special purpose financial captive insurance company may engage, and this subchapter does not apply to any such other captive insurance company.

§6954. Application requirements.

(a) In addition to the items required under §6903 and, as applicable, under §6933, a special purpose financial captive insurance company's plan of operation must include the following:

(1) a description of the contemplated special purpose financing transaction and the SPFC contract;

(2) copies, or, at the discretion of the Commissioner, a written summary, of all material agreements, instruments, or documents, including, without limitation, opinions of Delaware legal counsel regarding compliance of the SPFC contract and the special purpose financing transaction with the requirements of this chapter, that are to be entered into or required to effectuate the SPFC contract and the special purpose financing transaction, which must include:

(a) the name of the counterparty;

(b) the nature of the risks being assumed;

(c) the proposed use of protected cells, if any; and

(d) the amounts, purpose, nature, and interrelationships of the various transactions required to effectuate the SPFC contract and the special purpose financing transaction;

(3) the proposed investment policy of the special purpose financial captive insurance company and a description of its proposed investment strategy;

(4) a description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are to be reported, accounted for, and settled; and

(5) pro forma balance sheets, income statements, and other financial projections demonstrating the performance of the special purpose financial captive insurance company pursuant to the SPFC contract under such stress case scenarios as may be required by the Commissioner.

199 §6955. Certificate of authority and order.

200 (a) Upon a determination by the Commissioner that the requirements in §6954 have been met, the
201 Commissioner may grant a certificate of authority and, at the discretion of the Commissioner, an order imposing the
202 conditions, limitations, or other terms that the Commissioner considers appropriate.

203 (b) As soon as reasonably practicable after the closing of each SPFC contract or special purpose financing
204 transaction, and, in any event, within thirty days after such closing, the special purpose financial captive insurance company
205 shall provide to the Commissioner a final executed copy of all material agreements, instruments, or documents, including,
206 without limitation, opinions of Delaware legal counsel regarding compliance of the SPFC contract and the special purpose
207 financing transaction with the requirements of this chapter, that have been entered into or that have been required to
208 effectuate the SPFC contract or the special purpose financing transaction.

209 (c) Any material change of the special purpose financial captive insurance company's plan of operation
210 requires prior approval of the Commissioner. The following are not considered material changes:

211 (1) If approved in the plan of operation, securities subsequently issued or entered into to continue the
212 activities of the special purpose financial captive insurance company either before or after expiration, redemption, or
213 satisfaction of part or all of the securities issued or entered into pursuant to the initial special purpose financing transaction;
214 and

215 (2) If a swap transaction has been approved in the plan of operation, a change or substitution of a
216 swap counterparty, if, at the time of the change or substitution, the replacement swap counterparty carries the same or a
217 higher rating than its predecessor from two or more nationally recognized rating agencies.

218 (d) Upon termination or cancellation of all of the SPFC contracts and all related special purpose financing
219 transactions set forth in a plan of operation, unless otherwise approved by the Commissioner, the certificate of authority
220 granted by the Commissioner terminates, and the special purpose financial captive insurance company may not enter into
221 any further or additional SPFC contracts or special purpose financing transactions.

222 (e) In the case of a special purpose financial captive insurance company organized as a sponsored captive
223 insurance company, upon termination or cancellation of all of the SPFC contracts and all related special purpose financing
224 transactions set forth in the plan of operation with respect to a protected cell, unless otherwise approved by the
225 Commissioner, the authority granted by the Commissioner with respect to that particular cell terminates, and the protected
226 cell may not enter into any further or additional SPFC contracts or special purpose financing transactions.

(f) A special purpose financial captive insurance company that is organized as a sponsored captive insurance company may add or eliminate one or more protected cells under a single certificate of authority upon approval by the Commissioner of a plan of operation specific to the protected cells.

(g) At the request of a special purpose financial captive insurance company, a certificate of authority or an order granted under this section, or both, may be amended by the Commissioner.

§6956. Securities of special purpose financial captive insurance companies.

(a) A special purpose financial captive insurance company may:

(1) subject to the approval of the Commissioner, account for the proceeds of surplus notes issued by the special purpose financial captive insurance company as surplus and not as debt for purposes of statutory accounting; and

(2) submit to the Commissioner periodic written requests for the advance approval by the Commissioner of the special purpose financial captive insurance company's making payments of interest on and repayments of principal of surplus notes.

(b) The Commissioner may approve, in advance, ongoing interest payments or principal repayments, or both, by the special purpose financial captive insurance company, provided that the interest payments or principal repayments, or both, are made in accordance with the plan of operation and formulas contained in the plan of operation.

(c) Notwithstanding the provisions of subsection (b) of this section, payment of interest or repayment of principal may not be made without the approval of the Commissioner if the operation or financial condition of the special purpose financial captive insurance company deviates from the formula approved by the Commissioner pursuant to subsection (b) of this section or if the payment of interest or repayment of principal threatens the solvency or liquidity of the special purpose financial captive insurance company.

(d) A security issued by a special purpose financial captive insurance company is not subject to regulation as an insurance contract. An investor in these securities or a holder of these securities is not considered to be transacting the business of insurance in this State solely by reason of having an interest in these securities. The underwriter's placement or selling agents and their partners, commissioners, officers, members, managers, employees, agents, representatives, and advisors involved in a special purpose financing transaction by a special purpose financial captive insurance company are not considered to be insurance producers or to be conducting business as an insurance company or as an insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of their underwriting activities in connection with the special purpose financing transaction.

§6957. Authorized contracts and activities.

(a) A special purpose financial captive insurance company may insure only the risks of a counterparty. A special purpose financial captive insurance company may cede risks assumed through an SPFC contract to third party reinsurers through the purchase of reinsurance or retrocession protection as set forth in the plan of operation.

(b) A special purpose financial captive insurance company may enter into agreements with affiliated companies and third parties and conduct other commercial activities related or incidental to, or necessary to fulfill, the purposes of an SPFC contract and special purpose financing transaction contemplated by the plan of operation approved by the Commissioner. The agreements may include management and administrative services agreements and other allocation, including tax allocation, and cost-sharing agreements.

(c) A special purpose financial captive insurance company may enter into asset management agreements as provided for in a plan of operation. These agreements may include, but are not limited to, swap agreements, hedge agreements, guarantee agreements, guaranteed investment contracts, or other investment contracts.

(d) An SPFC contract must:

(1) obligate the special purpose financial captive insurance company to indemnify the counterparty for losses or otherwise to make payments to the counterparty with respect to the insurance risk transferred thereunder; and

(2) make provision satisfactory to the Commissioner for payment of obligations of the special purpose financial captive insurance company under the SPFC contract.

(e) Without limiting the means by which the requirements of subsection (d)(2) of this section may be satisfied, an SPFC contract is considered to satisfy those requirements if it:

(1) requires the special purpose financial captive insurance company to:

a. to enter into a trust agreement that meets the criteria set forth in this section and in any regulations issued by the Commissioner applicable to this subsection and that specifies the recoverables or reserves, or both, to be covered; and

b. to establish a trust account for the benefit of the counterparty;

(2) stipulates that assets deposited in the trust account are valued according to their current fair value and consist only of permitted investments;

(3) requires the special purpose financial captive insurance company, before depositing assets with the trustee, to execute assignments or endorsements in blank, or both, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the

counterparty, may transfer the assets whenever necessary without consent or signature from the special purpose financial captive insurance company or another entity;

(4) requires that all settlements of account between the counterparty and the special purpose financial captive insurance company, unless otherwise approved by the Commissioner, be made in cash or its equivalent; and

(5) stipulates that the special purpose financial captive insurance company and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the SPFC contract:

a. may be withdrawn by the counterparty at any time, notwithstanding any other provisions in the SPFC contract; and

b. must be used and applied by the counterparty or any successor by operation of law of the counterparty, including any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurance company, only for the following purposes:

1. to transfer all of the assets into one or more trust accounts for the benefit of the counterparty pursuant to and in accordance with the terms of the SPFC contract and in compliance with the provisions of this title; and
2. to pay any other incurred and paid amounts that the counterparty claims are due pursuant to and under the terms of the SPFC contract and in compliance with this title.

(f) An SPFC contract may allow the special purpose financial captive insurance company to seek approval from the counterparty to withdraw all or part of the assets supporting payment of obligations of the special purpose financial captive insurance company under the SPFC contract, or income from them, and to transfer the assets to the special purpose financial captive insurance company; provided, that,

(1) at the time of the withdrawal, the special purpose financial captive insurance company replaces the withdrawn assets, excluding any income withdrawn, with other permitted investments having a fair value equal to the fair value of the assets withdrawn;

(2) after giving effect to the withdrawal and replacement, the fair value of the assets supporting payment of obligations of the special purpose financial captive insurance company under the SPFC contract satisfies the requirements of subsection (d)(2) of this section; and

(3) the approval of the counterparty is received, which approval may not be unreasonably or arbitrarily withheld.

(g) The assets of a special purpose financial captive insurance company must be preserved and administered by or on behalf of the special purpose financial captive insurance company to satisfy the liabilities and obligations of the special purpose financial captive insurance company incident to the SPFC contract and the special purpose financing transaction.

(h) Unless otherwise permitted by this subchapter or approved by the Commissioner, a special purpose financial captive insurance company may not:

- (1) issue or administer primary insurance policies;
- (2) enter into an SPFC contract with a counterparty that is an insurer if the insurer is required to be, but is not, licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;
- (3) assume or retain exposure to insurance or reinsurance losses for its own account that is not funded or to be funded, in whole or in part, by proceeds from a special purpose financing transaction that complies with the provisions of this subchapter;
- (4) have any direct obligation to policyholders or reinsureds of a counterparty; or
- (5) lend to, receive a capital contribution from, invest, or place in custody, trust, or under management any of its assets with, or receive a loan or advance from, other than by issuance of the securities pursuant to a special purpose financing transaction, anyone convicted of a felony, or anyone convicted of a criminal offense or found civilly liable for an offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

§6958. Dividends and distributions.

(a) A special purpose financial captive insurance company may declare and pay dividends or other distributions to equity holders if the dividends or other distributions do not violate the provisions of this chapter, or jeopardize the fulfillment of the obligations of the special purpose financial captive insurance company pursuant to the special purpose financing transaction or the SPFC contract, or threaten the solvency or liquidity of the special purpose financial captive insurance company.

(b) A special purpose financial captive insurance company may not declare or pay any dividend or other distribution to equity holders if the dividend or distribution violates the terms of the special purpose financing transaction, and may not declare or pay any dividend or other distribution to equity holders which decreases the capital and surplus of the special purpose financial captive insurance company below the minimum amount required under §6905 of this chapter.

(c) The Commissioner may approve, in advance, a special purpose financial captive insurance company's declaring and paying, on an ongoing basis, dividends or other distributions, or both, to equity holders, provided that each dividend or other distribution is made in accordance with the plan of operation and formulas contained in the plan.

§6959. Delinquency.

(a) Sections 6918 and 6938 of this title apply to any special purpose financial captive insurance company except as otherwise provided in this section.

(b) Any delinquency proceeding pursuant to Chapter 59 of this title, or any temporary restraining order or injunction issued pursuant thereto with respect to a counterparty, may not prohibit the transaction of business by a special purpose financial captive insurance company, including its performance of its obligations under a special purpose financing transaction, or any action or proceeding against a special purpose financial captive insurance company or its assets.

(c) The commencement of a summary proceeding with respect to a special purpose financial captive insurance company, and any order issued by the court in such a summary proceeding, may not prohibit payments by the special purpose financial captive insurance company or any action required to make the payment, provided that the payments (1) are made pursuant to a special purpose financing transaction or an SPFC contract, and (2) are consistent with the special purpose financial captive insurance company's plan of operation, its certificate of authority, and any order issued in connection therewith, as they may be amended from time to time.

(d) Notwithstanding any other provisions of this title or other laws of this State:

(1) a receiver of a counterparty may not take action seeking to void, and has no authority to void, a non-fraudulent transfer by a counterparty to a special purpose financial captive insurance company of money or other property made pursuant to an SPFC contract; and

(2) a receiver of a special purpose financial captive insurance company may not take action seeking to void, and has no authority to void, a non-fraudulent transfer by the special purpose financial captive insurance company of money or other property made to a counterparty pursuant to an SPFC contract or made pursuant to a special purpose financing transaction.

(e) Notwithstanding any other provision of this title or other laws of this State, the assets of a special purpose financial captive insurance company, including assets held in trust for the benefit of the counterparty, may not be consolidated with or included in the estate of a counterparty in any bankruptcy, insolvency, delinquency, or similar proceeding against the counterparty.

§6960. Discount on reserves; report on reserves.

(a) A special purpose financial captive insurance company shall file annually with the Commissioner an actuarial opinion on reserves provided by an approved independent actuary.

(b) A special purpose financial captive insurance company may discount its reserves in accordance with the actuarial opinion filed under this section, subject to review by the Commissioner.

§6961. Certain actions by the Commissioner.

Other than under §6959 of this chapter, the Commissioner shall notify a special purpose financial captive insurance company not less than thirty (30) days before suspending, revoking, amending, or modifying its certificate of authority or any order issued in connection therewith. The notice must state the basis for the suspension, revocation, amendment, or modification. The special purpose financial captive insurance company must be afforded the opportunity for a hearing and all rights provided pursuant to the provisions of the Administrative Procedures Act, Chapter 101 of Title 29.

§6962. Books and records.

Notwithstanding §6907 of this chapter, a special purpose financial captive insurance company shall calculate reserves and otherwise report using statutory accounting principles, unless the Commissioner requires, approves, or accepts the use of generally accepted accounting principles or international accounting standards, in either case with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the Commissioner, and as supplemented by additional information required by the Commissioner."

SYNOPSIS

Section 1 adds the definition of a special purpose financial captive insurance company to the chapter.

Section 2 requires that the costs for experts retained by the Commissioner are paid for by the insurer.

Section 3 removes a duplicate license fee that is unnecessary.

Section 4 adds new minimum surplus requirements for special purpose financial captive insurance companies.

Section 5 provides for the renumbering of a subsection required by other amendments.

Section 6 allows a special purpose captive insurance company or a special purpose financial captive insurance company to use certain business organization forms permitted by Delaware law.

Section 7 amends §6909 relating to activities of captive insurers under suspension.

Section 8 makes the investment restrictions applicable to special purpose financial captive insurance companies.

Section 9 amends §6914 to add special purpose financial captive insurance companies.

Section 10 amends the confidentiality provisions based on the addition of new subchapter III.

Section 11 adds new § 6923 governing the management and location of an insurer's books and records.

Section 12 rewrites §6932 based on the addition of new subchapter III.

Section 13 rewrites §6937 based on the addition of new subchapter III.

Section 14 redesignates subchapter III as subchapter IV and renumbers the sections of the subchapter accordingly.

Section 15 adds new subchapter III to provide for special purpose financial captive insurance companies as part of the chapter. Special purpose financial captive insurance companies are specialized captive insurers typically designed to act as special reinsurance vehicles for life or property and casualty insurers whereby insurance business transferred to such special purpose captive insurance companies can be funded through capital markets offerings. Significant growth in the number of these captive insurance companies has occurred in other jurisdictions; however, Delaware's position as the domicile of choice for business entities makes Delaware an ideal domicile for special purpose financial captive insurance

companies. Delaware corporate entity law has been used as the basis for forming many of the special purpose financial captive insurance companies in these other jurisdictions. This is a key consideration for the market participants because the agreements are written for terms up to 30 years. This legislation will permit the transfer of insurance risk and associated premium to a special purpose captive insurance company, which will be authorized to fund its obligations with respect to such risk by means of appropriately structured capital markets transactions. This legislation will further provide a detailed description of the requirements for application and approval for a special purpose financial captive insurance company and will provide certainty as to the treatment for accounting and regulatory purposes of certain assets involved in the special purpose captive insurance company's insurance securitization transaction. Accordingly, this legislation will enhance Delaware's position as a captive insurance domicile by aligning its existing financial services capabilities to meet insurance market needs while providing appropriate regulatory oversight.