



SPONSOR: Rep. B. Short & Sen. Blevins  
Rep. Bennett; Sens. Henry, Sokola

HOUSE OF REPRESENTATIVES  
145th GENERAL ASSEMBLY

HOUSE BILL NO. 314

AN ACT TO AMEND TITLE 18 RELATING TO CAPTIVE INSURANCE COMPANIES.

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

Section 1. Amend § 6902, Title 18 of the Delaware Code by renumbering § 6902(2) through (5) thereof as § 6902(3) through (6) respectively and by adding a new § 6902(2) as follows:

“(2) “Agency captive insurance company” shall mean an insurance company described in subparagraphs a. and b. of this subsection (2):

a. An insurance company that is owned or controlled by an insurance agency, brokerage or reinsurance intermediary, or an affiliate thereof, or under common ownership or control with such agency, brokerage or reinsurance intermediary, and that only insures the risks of insurance or annuity contracts placed by or through such agency, brokerage or reinsurance intermediary; or

b. An insurance company that is owned or controlled by a marketer or producer of service contracts and/or warranties, and that only insures or reinsures the contractual liability arising out of such service contracts or warranties sold through such marketer or producer.

c. For the purposes of this subsection (2), “common ownership or control” shall mean ownership of 10% or more of the voting securities of a person or such other form of ownership or control as the Commissioner may approve.”.

Section 2. Amend § 6902, Title 18 of the Delaware Code by renumbering § 6902(6) as § 6902(8) and by adding a new § 6902(7) as follows:

“(7) “Branch captive insurance company” has the meaning given such term in § 6972(c) of this Chapter 60.”.

Section 3. Amend § 6902(8) as renumbered by removing it in its entirety and replacing same with the following:

“(8) “Capital and surplus” means the amount by which the value of all of the assets of the captive insurance company exceeds all of the liabilities of the captive insurance company, as determined under the method of accounting utilized by the captive insurance company in accordance with the applicable provisions of this Chapter 69.”.

Section 4. Amend § 6902, Title 18 of the Delaware Code by renumbering § 6902(7) through (30) thereof as § 6902(9)

through (32) respectively and by replacing former § 6902(7) with the following:

“(9) "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 or risk retention group, whether domestic, foreign or alien, or branch captive insurance company, licensed under the provisions of this chapter.”.

Section 5. Amend § 6903, Title 18 of the Delaware Code by deleting paragraphs (2) and (3) of subsection (b) thereof in their entirety and replacing same with:

“(2) Its board of directors, members, partners, managers, committee of managers or other governing body, or in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least 1 meeting each year in this State, provided that this requirement shall not apply to: (i) a branch captive insurance company, or (ii) a captive insurance company that has 5 or more full-time employees each of whom has that employee's principal place of employment in this State;

(3) It maintains its principal place of business in this State or, in the case of a branch captive insurance company, it maintains in this State a principal place of business in accordance with the provisions of section 6972(c) of this Chapter 69; and”.

Section 6. Amend § 6905, Title 18 of the Delaware Code by renumbering § 6905(a)(4) through § 6905(a)(6) thereof as § 6905(a)(5) through § 6905(a)(7) respectively, and adding a new § 6905(a)(4) as follows:

“(4) In the case of an agency captive insurance company, not less than \$250,000;”.

Section 7. Amend § 6905, Title 18 of the Delaware Code by renumbering § 6905(a)(7) as § 6905(a)(9) and by adding a new paragraph (8) to § 6905(a) as follows:

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

Section 8. Amend § 6906, Title 18 of the Delaware Code by deleting subsection (c) thereof and replacing same as follows:

“(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, or may be such other person, other than a natural person in that natural person's individual capacity, approved by the Commissioner.”.

Section 9. Amend § 6906, Title 18 of the Delaware Code by adding the phrase “other than a branch captive insurance company” to the end of the first line of subsection (f) thereof.

Section 10. Amend § 6907, Title 18 of the Delaware Code by deleting the first sentence of subsection (b) thereof and by replacing same with:

“Prior to March 1 of each year, each captive insurance company other than a branch captive insurance company for

which the Commissioner has waived any of the requirements of this section 6907 pursuant to section 6974 of this chapter, shall submit to the Commissioner a report of its financial condition, verified by oath of two (2) of its executive officers or other authorized persons.”.

Section 11. Amend § 6910, Title 18 of the Delaware Code by deleting subsection (b) thereof in its entirety and by replacing same with:

“(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.”

Section 12. Amend § 6938, Title 18 of the Delaware Code by deleting the phrase “or any protected cell thereof” from the end of paragraph (2) thereof.

Section 13. Amend Chapter 69, Title 18 of the Delaware Code by renumbering “Subchapter IV. Miscellaneous” as “Subchapter V. Miscellaneous,” by renumbering § 6971 through § 6973 as § 6981 through § 6983, and by adding a new subchapter IV as follows:

“Subchapter IV. Branch Captive Insurance Companies.

§ 6971. Establishment of a Branch Captive.

(a) A branch captive may be established in this State in accordance with the provisions of this chapter to write any line of business for which captive insurance companies are authorized under § 6903(a) of this chapter. In addition to the general provisions of this chapter, the provisions of this subchapter shall apply to branch captive insurance companies.

§ 6972. Definitions.

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

(a) “Alien captive insurance company” means any insurance company formed to write insurance business of a nature that the Commissioner determines is otherwise permissible under this chapter 69 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.

(b) “Branch business” means any insurance business transacted by a branch captive insurance company in this State.

(c) “Branch captive insurance company” means any 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 69.

(d) “Branch operations” means any business operations of a branch captive insurance company in this State.

§ 6973. Security Required.

(a) No branch captive insurance company shall be issued a license unless it shall possess and thereafter maintain, as security for the payment of liabilities attributable to the branch operations:

(1) Minimum capital and surplus as set forth in section 6905 of this chapter; and

(2) 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; provided, however, the Commissioner may permit a branch captive insurance company to credit against any such reserve requirement either of the following:

a. Assets belonging to the branch captive insurance company that are in trust for, or otherwise segregated and controlled by, a ceding company, that secure the reinsurance obligations of the branch captive insurance company to such ceding company; or

b. Assets belonging to a reinsurer if held in trust for, or otherwise under the control of the branch captive insurance company and that secure the obligations of such reinsurer to the branch captive insurance company.

(b) Subject to the prior approval of the Commissioner, the amounts required in subsections (a)(1) and (2) of this section may be held in the form of:

(1) A trust formed under a trust agreement and funded by assets acceptable to the Commissioner;

(2) An irrevocable letter of credit issued or confirmed by a bank approved by the Commissioner; or

(3) Any combination thereof.

(c) The Commissioner may, on a case by case basis, exempt a branch captive insurance company from any or all of the requirements of this section 6973.

§ 6974. Annual Reports.

(a) Notwithstanding section 6907 of this chapter, 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 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 alien captive insurance company.

(b) If the Commissioner is satisfied that the annual report filed in accordance with subsection (a) hereof 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 section 6907 of this chapter. If the Commissioner is not satisfied with the reports and statements filed pursuant to subsection (a) hereof, a report that meets the requirements of section 6907 of this chapter shall be filed with the Commissioner at such date as the Commissioner shall establish.

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

§ 6975. Examination of branch captives.

(a) The examination of a branch captive insurance company pursuant to section 6908 of this chapter 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 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 6975, if the Commissioner elects to waive any of the requirements of section 6973 of this chapter pursuant to subsection 6973(c) thereof, the Commissioner shall examine so much of the financial condition and affairs of the 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 alien captive insurance company shall grant authority to the Commissioner for examination of the affairs of such alien captive insurance company in the jurisdictions in which the alien captive insurance company is formed, operates or maintains books and records.

§ 6976. Taxation of branch captives.

In the case of a branch captive insurance company, the tax provided for in section 6914 of this title shall apply only to the branch business of such company.”.

Section 14. This Act shall become effective thirty (30) days after it is signed into law.

SYNOPSIS

This legislation amends chapter 69 of title 18 of the Delaware Code by adding two types of captive insurance companies to those that can currently be licensed in Delaware. The two new forms of captive insurance companies are “agency captive insurance companies” and “branch captive insurance companies.” Agency captive insurance companies are reinsurance companies owned by insurance agents or brokers who underwrite and place insurance policies for conventional insurance companies. In an agency captive structure, the insurance risk on some of these policies is reinsured to the agency captive, thereby allowing the agents or brokers that placed the policies to share in the profits or losses attributable to these policies. Branch captive insurance companies are divisions of offshore captives that establish a business unit onshore. Many U.S. based companies have captive insurers organized in offshore jurisdictions such as Bermuda. In recent years, it has become attractive to issue certain coverages through the offshore captive insurers owned by these employers yet have these coverages regulated by an onshore insurance regulator. The solution is to bring an operating division of the captive – the branch – to the onshore jurisdiction and regulate this division in many respects as if it were a standalone entity. By adding agency and branch captive insurance companies to the list of captive insurance companies authorized in Delaware, this legislation will enhance the economic development potential of Delaware's captive insurance laws.

Section 11 of this legislation makes a technical change to the delinquency provisions applicable to sponsored captive insurance companies.