

SB 287	Modifies Missouri's captive insurance law to allow for the formation of sponsored captive insurance companies and other ancillary matters
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Sponsor:	<u>Rupp</u>	
LR Number:	1373S.02T	<u>Fiscal Note available</u>
Committee:	Small Business, Insurance and Industry	
Last Action:	5/16/2013 - Signed by Governor	Journal Page: <u>S2329</u>
Title:	SCS SB 287	Calendar Position:
Effective Date:	August 28, 2013	
House Handler:	<u>Gosen</u>	

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Current Bill Summary

SCS/SB 287 - This act modifies Missouri's current captive insurance law to allow for the formation of sponsored captive insurance companies.

DEFINITIONS - The act modifies the definitions of the terms "association", "captive insurance company", and "industrial insured group" as used in Missouri's captive insurance law. The term "captive insurance company" is modified to include sponsored captive insurance companies (Section 379.1300).

CAPITAL AND SURPLUS REQUIREMENTS- Under the act, the unimpaired paid-in capital and surplus requirement for an association captive insurance company is lowered from \$750,000 to \$500,000. The act requires a sponsored captive insurance company to possess and maintain an unimpaired paid-in capital and surplus of not less than \$500,000 in order to be licensed (Section 379.1306).

HEARINGS - Under current law, the director may cancel a hearing regarding certain captive insurance transactions if no one requests a hearing. Under this act, this provision is modified so that if no one requests a hearing 10 days before the day set for the hearing, then the director may cancel the hearing (Section 379.1310).

MERGING OR CONSOLIDATING A LICENSED CAPTIVE INSURANCE COMPANY - This act allows the Director of the Department of Insurance, Financial Institutions and Professional Registration to issue a certificate of general good to permit the formation of a captive insurance company for the sole purpose of consolidating or merging with or assuming existing insurance or reinsurance business from an existing Missouri licensed captive insurance

company. The act allows the director to waive or modify certain captive insurance licensing requirements (description of the coverages, deductibles, coverage limits, rates, liquidity, etc.) if requested by the newly formed captive insurance company (Section 379.1310).

PREMIUM TAX - Under the act, the annual minimum aggregate tax to be paid by a sponsored captive insurance company shall be \$7,500 and shall apply to the sponsored captive insurance company as a whole and not to each protected cell.

The act sets forth a procedure for calculating the maximum tax to be paid for by a protected cell. The annual maximum tax to be remitted by a sponsored captive insurance company shall be the aggregate of the tax liabilities of each protected cell.

The act modifies the term "common ownership and control" for purposes of applying the reinsurance premium tax (Section 379.1326).

SPONSORED CAPTIVE INSURANCE COMPANIES - This act establishes a procedure for forming captive insurance companies under Sections 379.1300 to 379.1351. A sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

The act requires applicants for a sponsored captive insurance company to file certain items with the director. The applicant must file with the director the following:

- (1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the director, and how it will report such experience to the director;
- (2) A statement acknowledging that all financial records of the sponsored captive insurance company shall be made available for inspection or examination by the director;
- (3) All contracts or sample contracts between the sponsored captive insurance company and any participants; and
- (4) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

The act allows sponsored captive insurance companies to establish and maintain one or more protected cells to insure risks under certain conditions. The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors, provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the director. Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants, and other factors. The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct. The act prohibits the sale, exchange, transfer of assets, dividend or distribution by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells. No sale, exchange, transfer of assets, dividend or distribution may be made from a protected cell to a sponsor or participant

without the director's approval and in no event shall such approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell.

If a sponsored captive insurance company is being rehabilitated or liquidated, the assets and liabilities of a protected cell shall, to the extent the director determines they are separable, at all times be kept separate from and shall not be commingled with those of other protected cells and the sponsored captive insurance company.

The act requires each sponsored captive insurance company to annually file financial reports with the director. The financial reports shall include accounting statements detailing the financial experience of each protected cell. The act requires each sponsored captive insurance company shall be subject to certain examination and investigation powers of the department (Sections 374.190 and 374.202-374.209), the "Unfair Trade Practice Act", and the "Unfair Claims Settlement Practices Act".

The act requires each sponsored captive insurance company shall notify the director in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations.

Under the act, the director may require the business written by a sponsored captive, with respect to each cell, to be:

- (1) Fronted by an insurance company licensed under the laws of any state;
- (2) Reinsured by a reinsurer authorized or approved by the state of Missouri; or
- (3) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement.

Under the act, in the event of an insolvency of a sponsored captive insurance company where the director determines that one or more protected cells remain solvent, the director may separate such cells from the sponsored captive insurance company, and may allow, on application of the sponsor for the conversion of such protected cells into one or more new or existing sponsored captive insurance companies with a sponsor or sponsors, or one or more other captive insurance companies, under such plan or plans of operation as the director deems acceptable.

Under the terms of the act, a sponsor of a sponsored captive insurance company may be any person approved by the director in the exercise of the director's discretion, based on a determination that the approval of such person as sponsor is consistent with the purposes the captive insurance law. In evaluating the qualifications of a proposed sponsor, the director shall consider the type and structure of the proposed sponsor entity, its experience in financial operations, financial stability, and strength business reputation.

The act specifically prohibits a risk retention group from being either a sponsor or a participant of a sponsored captive insurance company.

STEPHEN WITTE