



SPONSOR: Rep. Stone & Sen. Blevins

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 218
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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:

Section 1. Amend Chapter 69 of Title 18 of the Delaware Code by striking Chapter 69 in its entirety and by substituting in lieu thereof the following:

"CHAPTER 69. CAPTIVE INSURANCE COMPANIES

Subchapter 1. General Provisions.

§6901. Finding; purpose.

(a) It is determined and declared as a matter of legislative finding that captive insurance companies can serve a valuable risk management function, and that their responsible utilization and the growth of the captive insurance industry in the State of Delaware are in the best interests of this State;

(b) It is further determined and declared that the purpose and policy of this chapter shall be:

- (1) to provide for the regulation of captive insurance companies consistent with their nature and purpose;
- (2) to provide flexibility and opportunity to captive insurance companies and to persons utilizing them;
- and
- (3) to foster economic development in this State through the growth of the captive insurance industry.

§6902. Definitions.

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

(a) 'Affiliated company' means any person (other than a natural person in his or her individual capacity) in the same corporate system as a parent, an industrial insured, or an association member by virtue of common ownership, control, operation, or management.

(b) 'Alien' means formed under the laws of any country or jurisdiction other than the United States of America or any of its states, districts, commonwealths and possessions.

(c) 'Association' means any legal association of persons that has been in continuous existence for at least one year or such lesser period of time approved by the Commissioner, the association members of which, or which does itself, whether or not in conjunction with some or all of the association members:

- (1) directly or indirectly, own, control, or hold with power to vote all of the outstanding voting securities or other voting interests of, or have complete voting control over, an association captive insurance company; or
- (2) constitute all of the subscribers of an association captive insurance company organized as a reciprocal insurer.

(d) 'Association captive insurance company' means any captive insurance company that insures risks of the association members of the association and any of their affiliated companies.

(e) 'Association member' means any person that belongs to an association.

(f) '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 §6907(b) of this chapter.

(g) 'Captive insurance company' means any pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company, special purpose captive insurance company, or risk retention group, whether domestic, foreign or alien, licensed under the provisions of this chapter.

(h) 'Commissioner' means the Insurance Commissioner of this State.

(i) 'Controlled unaffiliated business' means any person (other than a natural person in his or her individual capacity):

- (1) that is not in the corporate system of a parent and its affiliated companies;
- (2) that has an existing contractual relationship with such parent or any such affiliated company; and
- (3) whose risks are managed by a pure captive insurance company in accordance with §6919 of this chapter.

(j) 'Department' has the meaning given such term in §102(5) of this title.

(k) 'Domestic' means formed under the laws of this State.

(l) 'Excess workers' compensation insurance' means, in the case of an employer that has insured its workers' compensation risks in accordance with applicable law, insurance in excess of a specified per-incident or aggregate limit

established by the Commissioner. Notwithstanding the foregoing, the per-incident and aggregate limit to be utilized by the Commissioner in establishing the excess workers compensation threshold for employers that are authorized under applicable law to self insure their workers compensation risks shall be \$0.00.

(m) 'Foreign' means formed under the laws of any state.

(n) 'Industrial insured' means an insured:

- (1) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;
- (2) whose aggregate annual premiums for insurance on all risks total at least \$25,000.00; and
- (3) who has at least 25 full-time employees.

(o) 'Industrial insured captive insurance company' means any captive insurance company that insures risks of the industrial insureds that comprise the industrial insured group and any of their affiliated companies.

(p) 'Industrial insured group' means any group of industrial insureds that collectively:

- (1) directly or indirectly, own, control, or hold with power to vote all of the outstanding voting securities or other voting interests of, or have complete voting control over, an industrial insured captive insurance company; or
- (2) constitute all of the subscribers of an industrial insured captive insurance company organized as a reciprocal insurer.

(q) 'Insurance' has the meaning given such term in §102(2) of this title.

(r) 'Insurer' has the meaning given such term in §102(3) of this title.

(s) 'Mutual insurer' has the meaning given such term in §502 of this title.

(t) 'Parent' means a person that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting securities or other voting interests of a pure captive insurance company.

(u) 'Person' means a natural person, partnership (whether general or limited), trust, estate, association, corporation, limited liability company, statutory trust, business trust, custodian, nominee or any other individual or entity in its own or any representative capacity, in each case whether domestic, foreign, or alien.

(v) 'Protected cell' has the meaning given such term in §6932(c) of this chapter.

(w) 'Pure captive insurance company' means any captive insurance company that insures risks of its parent and any of such parent's affiliated companies and any controlled unaffiliated business.

(x) 'Reciprocal insurer' has the meaning given such term in §503 of this title.

(y) 'Risk retention group' means a risk retention group formed pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. §3901 et seq., as amended.

(z) 'Special purpose captive insurance company' means any person that is licensed under this chapter and designated as a special purpose captive insurance company by the Commissioner.

(aa) 'Sponsored captive insurance company' has the meaning given such term in §6932(e) of this chapter.

(bb) 'State' means the State of Delaware, and 'state' means any other state, district, commonwealth or possession of the United States of America.

(cc) 'Transacting insurance' has the meaning given such term in §103 of this title.

§6903. License application; certificate of authority.

(a) Any person complying with §6906 of this chapter may apply to the Commissioner for a certificate of authority to do any and all insurance business comprised in §§ 902, 903, 904, 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:
 - (i) 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;
 - (ii) 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
 - (iii) 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 percent 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:
 - (i) 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;
 - (ii) 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
 - (iii) 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 percent 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 chapter; 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.

- (b) No captive insurance company shall do any insurance business in this State unless:
 - (1) it first obtains from the Commissioner a certificate of authority authorizing it to do insurance business in this State;
 - (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 one meeting each year in this State, provided that this requirement shall not apply to a captive insurance company that has 5 or more full-time employees each of whom has his or her principal place of employment in this State;
 - (3) it maintains its principal place of business in this State; and
 - (4) it identifies in its application for a certificate of authority its registered office in this State and its registered agent located at such office to accept service of process on its behalf and to otherwise act as its registered agent in this State, provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Commissioner shall be an agent of such captive insurance company upon whom any process, notice or demand may be served.
- (c)
 - (1) Before receiving a certificate of authority, an applicant captive insurance company shall file with the Commissioner a certified copy of its organizational documents, a statement under oath of its president or other authorized person showing its financial condition, and any other statements or documents required by the Commissioner.
 - (2) Each applicant captive insurance company shall also file with the Commissioner evidence of the following:
 - (A) the amount and liquidity of its assets relative to the risks to be assumed;
 - (B) the adequacy of the expertise, experience, and character of the person or persons who will manage it;
 - (C) the overall soundness of its plan of operation;
 - (D) the adequacy of the loss prevention programs of its insureds; and

(E) such other factors deemed relevant by the Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) Each applicant captive insurance company shall pay to the Commissioner a nonrefundable application fee of \$200.00 for reviewing its application to determine its completeness, and a nonrefundable processing fee of \$3,000.00 for examining, investigating and processing its application for a certificate of authority, and the Commissioner is authorized to retain legal, financial and examination 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 \$300.00.

(e) Two or more captive insurance companies under common ownership and control shall pay the \$200.00 application fee, the \$300.00 license fee and the \$300.00 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 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 (e), 'common ownership and control' has the meaning set forth in §6914(e) of this chapter.

(f) If the Commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this chapter, the Commissioner may grant a certificate of authority authorizing it to do insurance business in this State until April 1 thereafter, which certificate of authority may be renewed.

§6904. Company name.

No captive insurance company shall adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this State.

§6905. Minimum capital and surplus; letter of credit.

(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 \$250,000.00;
- (2) in the case of an association captive insurance company, not less than \$750,000.00;
- (3) in the case of an industrial insured captive insurance company, not less than \$500,000.00;
- (4) in the case of a risk retention group, not less than \$1,000,000.00;
- (5) in the case of a sponsored captive insurance company, not less than \$500,000.00; and

(6) in the case of a special purpose captive insurance company, not less than \$250,000.00 or such other amount determined 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 subsections (a)(1) through (a)(6) 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.

§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 or statutory trust.

(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 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 his or her individual capacity) approved by the Commissioner.

(d) A sponsored 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.

(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:

- (1) formed as a corporation, at least one of the members of the board of directors or other governing body shall be a resident of, or have his or her principal place of business in, this State;
- (2) formed as a reciprocal insurer, at least one 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 one 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 one 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 one 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 one 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.

§6907. Annual reports.

(a) Captive insurance companies shall not be required to make any annual report to the Commissioner except as provided in this chapter.

(b) Prior to March 1 of each year, each captive insurance company shall submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers or other authorized persons. Each captive insurance company shall report using generally accepted accounting principles, unless the Commissioner approves the use of statutory accounting principles or international accounting standards, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the Commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner. Any captive insurance company whose use of statutory accounting principles is approved by the Commissioner may make such modifications and adaptations thereof as are necessary (1) to record, as 'admitted,' the full value of all investments by such captive insurance company

permitted under this chapter, and (2) subject to the Commissioner's approval, to make its reports under this section consistent with the purposes of this chapter. The Commissioner shall by rule propose the forms in which captive insurance companies shall report.

(c) Any captive insurance company may make written application to the Commissioner for filing the required report on a fiscal year-end. If an alternative reporting date is granted by the Commissioner:

- (1) the annual report is due 60 days after the fiscal year-end; and
- (2) in order to provide sufficient detail to support the premium tax return, the captive insurance company shall file prior to March 1 of each year for each calendar year-end such form or information as the Commissioner shall by rule prescribe, verified by oath of two of its executive officers or other authorized persons.

§6908. Examinations and investigations.

(a) At least once in three 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 three-year period to five 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, 319, 320, 321 (other than subsection (g)), 322 and 330 of this title shall apply to examinations conducted under this section.

§6909. Suspension or revocation of certificate of authority.

(a) A captive insurance company's certificate of authority to do an insurance business in this State may be suspended or revoked by the Commissioner for any of the following reasons:

- (1) Insolvency;
- (2) Failure to meet the requirements of §6905 of this chapter;
- (3) Refusal or failure to submit an annual report, as required by §6907 of this chapter, or any other report or statement required by law or by lawful order of the Commissioner;
- (4) Failure to comply with the provisions of its own organizational documents;

- (5) Failure to pay any tax or fee, or to submit to or pay the cost of examination or any legal obligation relative thereto, as required by this chapter;
- (6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or its policyholders; or
- (7) Failure otherwise to comply with the laws of this State.

(b) If the Commissioner finds, upon examination, hearing or other evidence, that any captive insurance company has committed any of the acts specified in subsection (a) of this section, the Commissioner may suspend or revoke such company's certificate of authority if the Commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

(c) Although issued and delivered to the captive insurance company, the certificate of authority at all times shall be the property of this State. Upon any expiration, suspension or termination thereof, the captive insurance company shall promptly deliver the certificate of authority to the Commissioner.

§6910. Legal investments; management of assets.

(a) Association captive insurance companies, special purpose 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 or industrial insured 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 chapter are prohibited.

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

§6911. Reinsurance.

(a) Any captive insurance company may provide reinsurance, on risks ceded by any other insurer, in accordance with §910 of this title.

(b) Any captive insurance company may take credit or a reduction from liability for the reinsurance of risks or portions of risks ceded to reinsurers in accordance with subchapter III of chapter 9 of this title, or as otherwise approved by the Commissioner.

§6912. Rating organization membership.

No captive insurance company shall be required to join a rating organization.

§6913. Prohibited associations.

No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

§6914. Tax on premiums collected.

(a) Each captive insurance company, other than a sponsored 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 tenths of one percent 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; 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, 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 tenth of one percent 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; 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) 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 \$5,000.00 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 \$200,000.00, provided, that the tax to be paid by a captive

insurance company under subsections (a) and (b) of this section and this subsection (c) is subject to subsections (d), (e) and (h) of this section.

(d) For all purposes of this section, two 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 percent or more of the outstanding voting securities or other voting interests of two or more captive insurance companies by the same person or persons.

(f) 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) 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) 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 \$50,000.00 shall pay to the Commissioner under this section a tax for such year in the amount of \$50,000.00. For purposes of this subsection (h), '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.

§6915. Rules and regulations - In General.

The Commissioner may establish and from time to time amend such rules and regulations relating to captive insurance companies as are necessary to enable the Commissioner to carry out the provisions of this chapter.

§6915A. Exemption from rules and regulations - Special Purpose Captive Insurance Companies.

The Commissioner, on a case by case basis, may by order exempt a special purpose captive insurance company from the provisions of this chapter and any rule or regulation established by the Commissioner pursuant to §6915 of this chapter that, as reasonably determined by the Commissioner based on such factors deemed relevant by the Commissioner consistent with the purposes of this chapter, are inappropriate to apply to such special purpose captive insurance company.

§6916. Applicable laws.

No provisions of this title, other than those contained in this chapter or specifically referenced in this chapter, shall apply to captive insurance companies.

§6917. Captive insurance regulatory and supervision fund.

(a) There is hereby created a fund to be known as the captive insurance regulatory and supervision fund for the purpose of providing the financial means for the Commissioner to administer this chapter. All of the tax under §6914 of this chapter and all other amounts received by the Department pursuant to this chapter shall be credited to this fund.

(b) At the end of each fiscal year, the balance in the captive insurance regulatory and supervision fund, in excess of such amount reasonably necessary to finance the Commissioner's administration of this chapter during the upcoming fiscal year, shall be transferred to the General Fund.

(c) Within 30 days after the end of each fiscal year, the Commissioner shall submit to the Secretary of Finance of this State a written report stating:

- (1) the total amount of taxes and other amounts paid to the Department pursuant to this chapter during such fiscal year, and the total amount of the Commissioner's costs and expenses to administer this chapter during such fiscal year; and
- (2) the Commissioner's estimate of the total amount of the Commissioner's costs and expenses to administer this chapter during the current fiscal year.

§6918. Delinquency.

To the extent not inconsistent with this chapter, the provisions of chapter 59 of this title shall apply to captive insurance companies licensed under this chapter (including for this purpose individual protected cells of sponsored captive insurance companies as set forth in §6938 of this chapter).

§6919. Rules for controlled unaffiliated business.

The Commissioner may adopt rules establishing standards to ensure that a pure captive insurance company's parent or any of its affiliated companies is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company; provided, however, that, until such time as rules under this section are adopted, the Commissioner may approve the coverage of such risks by a pure captive insurance company, on a case by case basis.

§6920. Confidentiality.

All portions of license applications reasonably designated confidential by the applicable applicant 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 related to an examination pursuant to this chapter shall, 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, shall not be 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 (1) to the insurance department of any state or of any country or jurisdiction other than the United States of America, or (2) to a law enforcement official or agency of this State, any other state or the United States of America so long as such official or agency agrees in writing to hold it confidential and in a manner consistent with this section.

§6921. Material changes in information; continued licensure.

In the event of any material change in the financial condition or management of a captive insurance company, the captive insurance company shall notify the Commissioner in writing promptly of any such change and in any event within 10 business days thereof.

§6922. Material transactions; prior notice.

No captive insurance company shall voluntarily take any of the following actions without providing the Commissioner at least 30 days prior written notice or receiving the Commissioner's approval of any such action within such 30 day period:

- (a) The dissolution of the captive insurance company;
- (b) Any sale, exchange, lease, mortgage, assignment, pledge or other transfer of, or granting of a security interest in, all or substantially all of the assets of the captive insurance company;
- (c) Any incurrence of material indebtedness by the captive insurance company;
- (d) Any making of a material loan or other material extension of credit by the captive insurance company;
- (e) Any material payment out of capital and surplus;
- (f) Any merger or consolidation to which the captive insurance company is a constituent party;
- (g) Any conversion of the captive insurance company to another business form;
- (h) Any transfer to or domestication in any jurisdiction by the captive insurance company; or
- (i) Any material amendment of the organizational documents of the captive insurance company.

Subchapter 2. Sponsored Captive Insurance Companies.

§6931. General.

In addition to the provisions of subchapter 1 of this chapter, the provisions of this subchapter shall apply to sponsored captive insurance companies, and §6922 of this chapter shall apply to each protected cell of a sponsored captive insurance company.

§6932. Definitions.

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

(a) 'Participant' means any person that is insured by a sponsored captive insurance company, where the losses of such participant are limited through a participant contract to such participant's pro rata share of the assets of one or more protected cells identified in such participant contract.

(b) 'Participant contract' means a contract by which a sponsored captive insurance company insures the risks of one or more participants, and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

(c) '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 chapter, are accounted for and recorded for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of such participants as set forth in such participant contracts.

(d) 'Sponsor' means any person qualifying as a sponsor under §6935 of this chapter.

(e) 'Sponsored captive insurance company' means any captive insurance company:

- (1) of which the minimum capital and surplus required by this chapter is provided by one or more sponsors;
- (2) that is licensed under the provisions of this chapter;
- (3) that insures the risks of its participants only, through separate participant contracts; and
- (4) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.

§6933. Supplemental license application materials.

In addition to the information required by §6903(c) of this chapter, each applicant sponsored captive insurance company shall file with the Commissioner the following:

- (a) materials demonstrating to the satisfaction of the Commissioner how the applicant will report to the

Commissioner on, and account for, the loss and expense experience of each protected cell;

(b) a statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, shall be made available for inspection or examination by the Commissioner or the Commissioner's designated agent;

(c) all contracts or sample contracts between the sponsored captive insurance company and any participants; and

(d) evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

§6934. Protected cells.

A sponsored captive insurance company may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(a) the owners of a sponsored captive insurance company shall be limited to its participants and sponsors, provided that a sponsored captive insurance company may issue nonvoting securities or interests to other persons on terms approved by the Commissioner;

(b) the assets of each protected cell shall be held and 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 of such protected cell, dividends or other distributions to participants of such protected cell, and such other factors regarding such protected cell as may be provided in the applicable participant contract or required by the Commissioner;

(c) the assets of a protected cell shall not be chargeable with liabilities of any other protected cell or, unless otherwise agreed in the applicable participant contract, of the sponsored captive insurance company generally;

(d) no sale, exchange, or transfer of assets, or dividend or other distribution, may be made with respect to a protected cell by such sponsored captive insurance company without the consent of the participants of each affected protected cell;

(e) no sale, exchange, or transfer of assets, or dividend or other distribution (other than a payment to a sponsor in accordance with the applicable participant contract), may be made with respect to a protected cell to a sponsor or a participant without the Commissioner's approval;

(f) each sponsored captive insurance company shall annually file with the Commissioner such financial reports as the Commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

(g) each sponsored captive insurance company shall notify the Commissioner in writing promptly and in any event within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

(h) no participant contract shall take effect without the Commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the plan of operation of the sponsored captive insurance company requiring the Commissioner's prior written approval; and

(i) the business written by a sponsored captive insurance company, with respect to each protected cell, shall be:

- (1) fronted by an insurance company licensed under the laws of this State or any other state;
- (2) reinsured by a reinsurer authorized or approved by this State; or
- (3) secured by a trust fund in this State for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the Commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through such protected cell. The Commissioner may require the sponsored captive insurance company to increase the funding of any security arrangement established under this subsection (i). If the form of security is a letter of credit, the letter of credit must be established, issued or confirmed 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. A trust maintained pursuant to this subsection (i) shall be established in a form and upon such terms approved by the Commissioner.

§6935. Qualification of sponsors.

A sponsor of a sponsored captive insurance company shall be an insurer (including a reinsurer) licensed under the laws of this State or any other state, a captive insurance company licensed under this chapter, or any other person approved by the Commissioner. A risk retention group shall not be a sponsor of a sponsored captive insurance company, and a risk retention group may be a participant of a sponsored captive insurance company only to the extent that it is the sole participant of one or more protected cells.

§6936. Participants in sponsored captive insurance companies.

(a) Any person may be a participant in any sponsored captive insurance company.

- (b) A sponsor may be a participant in a sponsored captive insurance company.
- (c) A participant need not be an owner of the sponsored captive insurance company or any affiliate thereof.
- (d) Except as otherwise approved by the Commissioner, a participant may insure through a sponsored captive insurance company only its own risks and the risks of its affiliates who are participants.

§6937. Investments by sponsored captive insurance companies.

Notwithstanding the provisions of §6934 of this chapter, a sponsored captive insurance company may combine the assets of two or more protected cells for purposes of investing such assets, and such combination shall not be construed as defeating the segregation of such assets for purposes of §6934 and §6938 of this chapter or for accounting or other purposes. Sponsored captive insurance companies 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 sponsored captive insurance company; provided, however, that compliance with such investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to §6911 of this chapter or to the extent otherwise deemed reasonable and appropriate by the Commissioner.

§6938. Delinquency of sponsored captive insurance companies.

The provisions of §6918 of this chapter shall apply to a sponsored captive insurance company and to each protected cell of the sponsored captive insurance company, provided:

- (a) the assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and
- (b) the minimum capital and surplus of the sponsored captive insurance company shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company or any protected cell thereof.

Subchapter 3. Miscellaneous.

§6961. Repeals; effective date; applicability.

- (a) Except as provided in subsection (b) of this section, this chapter shall apply to all captive insurance companies.
- (b) Chapter 69 of this title as in effect prior to the enactment of this chapter is hereby repealed, except as set forth in the next sentence. Chapter 69 of this title as in effect on the date immediately prior to the enactment of this chapter shall apply to any captive insurance company licensed under such chapter as of such date that has not submitted a written notice to the Commissioner under subsection (c) of this section.

- (c) Any captive insurance company licensed in this State as of the date immediately prior to the enactment of this

chapter that otherwise would be subject to the application of chapter 69 of this title as in effect on such date may elect to become subject to the application of this chapter instead by submitting to the Commissioner a written notice to that effect.

§6962. Reserved power of this State to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed.

§6963. Short title.

This chapter may be cited as the "Delaware Revised Captive Insurance Company Act."