



SPONSOR: Rep. B. Short & Sen. Bushweller
Reps. Baumbach, Carson, Q. Johnson, Keeley, Matthews;
Sens. Ennis, Lopez, McDowell

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 15

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

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

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

3 § 309 Delegation of powers; duties.

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

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

9 § 330. Immunity from liability.

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

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

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

19 (d) A person identified in subsection (a) of this section shall be entitled to an award of attorney's fees and costs if
20 they are the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of their
21 activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in

22 doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or in fact at
23 the time that it was initiated."

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

26 § 6902. Definitions.

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

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

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

34 ~~(7) (9) "Branch captive insurance company" has the meaning given such term in § 6972(e) of this title~~ means any
35 foreign captive insurance company or alien captive insurance company that has been issued a certificate of authority by the
36 Commissioner to transact the business of insurance in this State through a business unit with a principal place of business in
37 this State, and has not otherwise been issued a certificate of authority by the Commissioner to transact insurance under this
38 chapter.

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

40 ~~(9) (12)~~ "Captive insurance company" means any pure captive insurance company, association captive insurance
41 company, agency captive insurance company, sponsored captive insurance company, industrial insured captive insurance
42 company, special purpose captive insurance company, special purpose financial captive insurance company, series captive
43 insurance company, or risk retention group, whether domestic, foreign or alien, or branch captive insurance company,
44 licensed under the provisions of this chapter.

45 ~~(21) (24)~~ "Mutual insurer" has the meaning given such term in § 502 of this title. A captive insurance company
46 incorporated as a nonstock corporation, in which the policyholders are the members, is a mutual insurer.

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

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

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

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

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

58 (2) No association captive insurance company:

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

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

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

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

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

74 (3) No industrial insured captive insurance company:

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

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

- 81 1. The insurance lines for such other persons must be the same as are authorized by the
82 Commissioner to be written by the industrial insured captive insurance company for its
83 industrial insureds;
- 84 2. Such other persons conduct the same or a related or similar business as that of the
85 industrial insureds of the industrial insured captive insurance company; and
- 86 3. The maximum amount of premiums received in any year from all such other persons
87 cannot without the express written consent of the Commissioner exceed 50% of the
88 gross direct premiums received by the industrial insured captive insurance company
89 from its industrial insureds in its preceding financial year;
- 90 (4) No risk retention group may insure any risks other than risks that may be insured by a risk retention
91 group under Chapter 80 of this title;
- 92 (5) A special purpose captive insurance company may, in addition to the authority set forth in this section
93 for captive insurance companies, provide insurance or reinsurance, or both, for such other risks as
94 approved by the Commissioner;
- 95 (6) No captive insurance company may provide personal motor vehicle or homeowner's insurance
96 coverage or any component thereof;
- 97 (7) No captive insurance company may accept or cede reinsurance except as provided in § 6911 of this
98 title; ~~and~~
- 99 (8) Any captive insurance company may provide excess workers' compensation insurance to its parent
100 and affiliated companies, unless prohibited by federal law or laws of this State or any other state having
101 jurisdiction over the transaction, and any captive insurance company, unless prohibited by federal law,
102 may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated
103 companies; ~~and~~
- 104 (9) No series captive insurance company may provide insurance other than the kinds of insurance
105 permitted in subparagraphs (1) through (5) hereof. A series may elect to apply for a Certificate of
106 Authority as a pure, association, industrial insured or special purpose captive insurance company; or a
107 series may elect to be licensed as a series captive insurance company.

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

110 (d) Each applicant captive insurance company shall pay to the Commissioner a nonrefundable application fee of
111 ~~\$200~~ \$300 for reviewing its application to determine its completeness, and a nonrefundable processing fee of ~~\$3,000~~ \$3,200
112 for examining, investigating and processing its application for a certificate of authority, and the Commissioner is authorized
113 to retain legal, financial and examination services and other expert services from outside the Department, the reasonable
114 cost of which may be charged against the applicant. The provisions of § 330 of this title shall apply to reviews,
115 examinations, investigations, and processing conducted under the authority of this section. In addition, each captive
116 insurance company shall pay a nonrefundable license fee for the year of registration and a nonrefundable renewal fee for
117 each year thereafter of ~~\$300~~ \$400.

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

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

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

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

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

140 (6) In the case of a sponsored captive insurance company, not less than \$500,000;
141 (7) In the case of a special purpose captive insurance company, not less than \$250,000 or such other
142 amount determined by the Commissioner;
143 (8) In the case of a branch captive insurance company, not less than \$250,000 or such other amount
144 determined by the Commissioner; ~~and~~
145 (9) In the case of a special purpose financial captive insurance company that is also a sponsored captive
146 insurance company, not less than \$500,000, and in the case of a special purpose financial captive
147 insurance company that is not also a sponsored captive insurance company, not less than \$250,000; and
148 (10) In the case of a series captive insurance company, the minimum capital and surplus shall be an
149 amount as specified by the Commissioner.

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

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

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

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

161 § 6906. Formation of captive insurance companies.

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

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

168 (c) A special purpose captive insurance company or a special purpose financial captive insurance company or an
169 agency captive insurance company or a branch captive insurance company may be incorporated as a stock corporation or as

170 a nonstock corporation, may be formed as a limited liability company, partnership, limited partnership or statutory trust
171 (including a limited liability company, limited partnership or statutory trust having one or more series), or may be such
172 other person, other than a natural person in that natural person's individual capacity, approved by the Commissioner.

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

177 (e) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C.
178 § 3901 et seq., as amended.

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

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

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

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

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

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

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

198 (g) A captive insurance company incorporated, formed or organized under the laws of this State or under the laws
199 of another jurisdiction that is licensed under the provisions of this chapter shall have the privileges and be subject to the

200 provisions of the laws of this State or the laws of such other jurisdiction, as applicable, under which such captive insurance
201 company is incorporated, formed or organized as well as the applicable provisions contained in this chapter. In the event of
202 conflict between the provisions of the laws of this State or the laws of such other jurisdiction, as applicable, under which
203 such captive insurance company is incorporated, formed or organized, and the provisions of this chapter, the latter shall
204 control.

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

207 § 6908 Examinations and investigations.

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

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

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

219 § 6910. Legal investments; management of assets.

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

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

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

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

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

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

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

237 § 6914. Tax on premiums collected.

238 (a) Each captive insurance company, other than a sponsored captive insurance company (including a sponsored
239 captive insurance company that is also a special purpose financial captive insurance company), and each protected cell of a
240 sponsored captive insurance company shall pay to the Commissioner no later than March 1 of each year a tax at the rate of
241 2/10 of 1% on each dollar of direct premiums collected or contracted for, during the year ending December 31 next
242 preceding, on policies or contracts of insurance written by the captive insurance company, after deducting from the direct
243 premiums subject to the tax the amounts paid to policyholders as return premiums with respect to such preceding year only,
244 which amounts shall include only dividends or distributions of unabsorbed premiums or premium deposits returned or
245 credited to policyholders, up to a maximum tax for such year of ~~\$125,000~~ \$200,000; provided however, that no tax shall be
246 due or payable as to consideration received for annuity contracts.

247 (b) Each captive insurance company, other than a sponsored captive insurance company (including a sponsored
248 captive insurance company that is also a special purpose financial captive insurance company), and each protected cell of a
249 sponsored captive insurance company shall pay to the Commissioner no later than March 1 of each year a tax at the rate of
250 1/10 of 1% on each dollar of assumed reinsurance premiums collected or contracted for, during the year ending December
251 31 next preceding, on policies or contracts of insurance written by the captive insurance company, up to a maximum tax for
252 such year of ~~\$75,000~~ \$110,000; provided, however, that no such tax applies to premiums for risks or portions of risks which
253 are subject to taxation on a direct basis pursuant to subsection (a) of this section, and no such tax shall be payable in
254 connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer
255 under common ownership and control if such transaction is part of a plan to discontinue the operations of such other insurer
256 and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

257 (c) Except for a series captive insurance company, ~~the~~ annual minimum aggregate tax to be paid by a captive
258 insurance company or a protected cell of a sponsored captive insurance company under subsections (a) and (b) of this
259 section shall be \$5,000 and the annual maximum aggregate tax to be paid by a captive insurance company or a protected

260 cell of a sponsored captive insurance company under subsections (a) and (b) of this section shall be \$200,000, provided,
261 that the tax to be paid by a captive insurance company under subsections (a) and (b) of this section and this subsection is
262 subject to subsections (d), (e) and ~~(h)~~(f) of this section. Each series captive insurance company shall pay an annual minimum
263 aggregate tax of \$3,500. The aggregation of the tax paid by more than one series captive insurance company formed within
264 a limited liability company or statutory trust established under 6 Del. C. § 17-218(b), 6 Del. C. § 18-215(b), 12 Del. C. §
265 3804(a), or corresponding law of another state shall not be restricted by the annual maximum premium tax limitations
266 under subsections (a) and (b) of this section.

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

269 ~~(e) For all purposes of this section, "common ownership and control" means the direct or indirect ownership of~~
270 ~~80% or more of the outstanding voting securities or other voting interests of 2 or more captive insurance companies by the~~
271 ~~same person or persons.~~

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

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

279 ~~(h)~~(f) A captive insurance company that has 25 or more separate qualified individuals throughout a given tax year
280 and that otherwise would be liable under this section for tax for such year in an amount exceeding \$50,000 shall pay to the
281 Commissioner under this section a tax for such year in the amount of \$50,000. For purposes of this subsection, "qualified
282 individual" means a natural person employed in this State on a regular basis of 35 or more hours per week either by such
283 captive insurance company, or by a wholly-owned subsidiary of such captive insurance company that provides captive
284 insurance company management, operating, investment or related services exclusively to such captive insurance company.
285 For purposes of this subsection only, if at least one of two or more captive insurance companies under common ownership
286 and control has 25 qualified individuals, then all captive insurance companies under common ownership and control shall
287 be taxed as though they were a single captive insurance company. For purposes of this subsection only, "common
288 ownership and control" means the direct or indirect ownership of 80% or more of the outstanding voting securities or other
289 voting interests of two or more captive insurance companies by the same person or persons.

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

292 § 6916. Applicable laws.

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

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

296 (2) § 2716.

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

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

301 § 6974 Annual reports.

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

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

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

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

317 § 6975 Examination of branch captives.

318 (a) The examination of a branch captive insurance company pursuant to § 6908 of this title shall be of branch
319 business and branch operations only, so long as the branch captive insurance company provides annually to the

320 Commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the
321 domiciliary jurisdiction of the foreign captive insurance company or alien captive insurance company, and demonstrates to
322 the Commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and
323 regulations of such jurisdiction.

324 (b) Notwithstanding subsection (a) of this section, if the Commissioner elects to waive any of the requirements of
325 § 6973 of this title pursuant to § 6973(c) of this title, the Commissioner shall examine so much of the financial condition
326 and affairs of the foreign captive insurance company or alien captive insurance company as the Commissioner deems
327 appropriate.

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

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

334 § 6980. Federal Home Loan Bank Membership.

335 A captive insurance company may apply for and become a member of a Federal Home Loan Bank, as defined in
336 12 U.S.C. § 1422(1)(a). The Commissioner may issue such reasonable rules, regulations and orders as the Commissioner
337 may deem necessary or desirable to effectuate the purposes of this section, including setting standards for captive insurance
338 companies qualifying for, entering into, and reporting advance agreements with Federal Home Loan Banks.

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

SYNOPSIS

This bill will make captive insurance companies subject to additional sections in Title 18. These additional sections will allow the Commissioner greater regulatory authority and will also clarify that those acting on behalf of the Commissioner for captive insurance have the same level of liability protection as those who act for the Commissioner in the regulation of commercial insurance. The bill adds “foreign branch captive”. The bill adds definition of a “series captive insurance company.” The bill clarifies that the Commissioner may retain legal, financial, and examination services for conducting regulatory reviews, processing, investigations, and examinations and the reasonable expense may be charged to the captive insurance company. The bill adds a new definition and licensing category for series captive insurance company so that series as established in 6 Del. C. § 17-215(b), 6 Del. C. § 218(b), and 12 Del. C. § 3804(a) can be defined as captive insurance companies. The bill makes risk retention groups subject to Article 16A of Title 18 in order to satisfy a NAIC accreditation requirement. The bill increases the captive insurance application fee from \$200 to \$300. It increases the captive insurance processing fee from \$3,000 to \$3,200. It increases the annual captive insurance license renewal fee from \$300 to \$400. The bill makes the premium tax caps for direct business at \$200,000 and assumed business at \$110,000 and sets the aggregate cap to \$200,000. For each series captive insurance company, the bill adds an annual minimum aggregate tax of \$3,500. The bill removes the tax benefit for common ownership and control of a captive insurance company. The bill indicates the minimum capital and surplus for a series captive insurance company. The bill makes captives subject to Chapter 3 except for §§ 331, 332, and 333, and § 2716. The bill clarifies that captive insurance companies may become members of the Federal Home Loan Bank system.