

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2022-7
SENATE BILL 347

AN ACT AMENDING STATUTES RELATING TO CAPTIVE INSURANCE.

The General Assembly of North Carolina enacts:

PART I. CAPTIVE INSURANCE LAW CONFIDENTIALITY CLARIFICATIONS

SECTION 1.(a) G.S. 58-10-375 reads as rewritten:

"§ 58-10-375. Dividends and distributions.

No captive insurance company shall pay a dividend or other distribution from capital or surplus without the prior approval of the Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the Commissioner. A captive insurance company may otherwise make such distributions as are in conformity with its purposes and approved by the Commissioner. G.S. 58-10-345(f) shall apply to all information filed pursuant to this section."

SECTION 1.(b) G.S. 58-10-395 reads as rewritten:

"§ 58-10-395. Plan of operation change.

(a) Any material change in a captive insurance company's ~~plan of operation~~ plan of operation that was filed with the Commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval from the Commissioner.

...

(c) G.S. 58-10-345(f) shall apply to all information filed pursuant to this section."

SECTION 1.(c) G.S. 58-10-440 reads as rewritten:

"§ 58-10-440. Investment requirements.

...

(c) No captive insurance company or protected cell shall make a loan to or an investment in an affiliate or a participant without prior written approval of the Commissioner, and any such loan or investment shall be evidenced by documentation approved by the Commissioner. Loans of minimum capital and surplus funds required by G.S. 58-10-370 are prohibited. G.S. 58-10-345(f) shall apply to all information filed pursuant to this section.

...."

PART II. CAPTIVE INSURANCE LAW ANNUAL AUDIT EXEMPTION

SECTION 2. G.S. 58-10-415 reads as rewritten:

"§ 58-10-415. Annual audit and statement of actuarial opinion.

...

(c) ~~Captive insurance companies with less than one million two hundred thousand dollars (\$1,200,000) in written premium may make a written request for exemption from the annual audit requirement.~~ Upon written request by any captive insurance company, the Commissioner may grant an exemption from compliance with any or all provisions of this section if the Commissioner finds that compliance would cause the insurer a financial or organizational hardship. Such request must be made at least 90 days prior to the captive insurance company's fiscal year-end or as otherwise required by the Commissioner. Requests will be considered on a



case-by-case basis and may be subject to the Commissioner receiving an annual audit of the captive insurance company's parent in lieu of the annual audit of the captive insurance company.
...."

PART III. CAPTIVE INSURANCE LAW FINANCIAL ANALYSIS

SECTION 3. G.S. 58-10-430 reads as rewritten:

"§ 58-10-430. ~~Audits.~~ Audits and Financial Analysis.

...

(a) Whenever the Commissioner determines it to be prudent, the Commissioner shall conduct a financial analysis of information submitted to or obtained by the Commissioner pursuant to this Part. Except as otherwise provided in this Part, the captive insurance company is not required to pay the expense and charges of the financial analysis.

(b) G.S. 58-2-160 shall apply to audits and financial analyses conducted under this section.

(c) All audit reports, preliminary audit reports or results, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an audit or financial analysis made under this section are confidential, are not subject to subpoena, and may not be made public by the Commissioner or an employee or agent of the Commissioner. Nothing in this subsection shall prevent the Commissioner from using such information in furtherance of the Commissioner's regulatory authority under this Chapter. The Commissioner shall have the discretion to grant access to such information to public officials having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this State or any other state or agency of the federal government at any time only if the officials receiving the information agree in writing to maintain the confidentiality of the information in a manner consistent with this subsection.

...."

PART IV. CAPTIVE INSURANCE LAW "GOVERNING BOARD" DEFINITION

SECTION 4.(a) G.S. 58-10-340 reads as rewritten:

"§ 58-10-340. Definitions.

The following definitions apply in this Part:

...

(16a) Governing board. – The board of directors or officials possessing similar authority.

...."

SECTION 4.(b) G.S. 58-10-345 reads as rewritten:

"§ 58-10-345. Licensing; authority; confidentiality.

...

(b) No captive insurance company shall transact any insurance business in this State unless:

...

(2) ~~Its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee governing board~~ holds at least one meeting each year in this State. A captive insurance company will be exempt from this board meeting requirement if the captive insurance company utilizes the services of at least two of the following North Carolina-based service providers:

...."

SECTION 4.(c) G.S. 58-10-380 reads as rewritten:

"§ 58-10-380. Formation of captive insurance companies.

...

(e) ~~In the case of a captive insurance company formed as a corporation, at least one of the members member of the board of directors governing board shall be a resident of this State. In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this State. In the case of a captive insurance company formed as a limited liability company, at least one of the managers shall be a resident of this State.~~

...

(i) ~~The articles of incorporation or bylaws organizational documents of a captive insurance company formed as a corporation may authorize a quorum of its board of directors governing board to consist of no fewer than one-third of the fixed or prescribed number of directors board members.~~

...."

SECTION 4.(d) G.S. 58-10-385 reads as rewritten:

"§ 58-10-385. Directors.Governing board members, officers, and employees.

(a) Every captive insurance company shall report to the Commissioner within 30 days after any change in its executive officers or ~~directors, governing board members,~~ including in its report a biographical affidavit for each new executive officer or director, governing board member. The change shall be deemed approved unless it is disapproved within 30 days from the completion of the Commissioner's review of the biographical affidavit.

(b) No ~~director, governing board member,~~ officer, or employee of a captive insurance company shall, except on behalf of the captive insurance company, accept or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the captive insurance company unless otherwise approved in advance by the Commissioner, but such person may receive reasonable compensation for necessary services rendered to the captive insurance company in his or her usual private, professional, or business capacity.

...."

SECTION 4.(e) G.S. 58-10-390 reads as rewritten:

"§ 58-10-390. Conflict of interest.

(a) Each captive insurance company licensed in this State is required to adopt a conflict of interest statement for officers, ~~directors, governing board members,~~ and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him or her from his or her duty to further the interests of the captive insurance company he or she represents, but this shall not preclude such person from being a ~~director governing board member~~ or officer in more than one insurance company.

(b) Each officer, ~~director, governing board member,~~ and key employee shall file such disclosure with the ~~board of directors or other governing body governing board~~ of the captive insurance company annually."

SECTION 4.(f) G.S. 58-10-420 reads as rewritten:

"§ 58-10-420. Independent certified public accountants.

...

(b) A captive insurance company shall require its independent certified public accountant to immediately notify in writing an officer and all members ~~of the board of directors or other governing body of the governing board~~ of the captive insurance company of any determination by the independent certified public accountant that the captive insurance company has materially misstated its financial condition in its report to the Commissioner as required in G.S. 58-10-405. A captive insurance company receiving a notification pursuant to this subsection shall forward a copy of the notification to the Commissioner within five business days after receipt of the notification and shall provide the independent certified public accountant with proof that the notification was forwarded to the Commissioner. If the independent certified public accountant

fails to receive the proof within the five-day period required by this subsection, the independent certified public accountant shall within the next five business days submit a copy of the notification to the Commissioner.

...."

SECTION 4.(g) G.S. 58-10-510 reads as rewritten:

"§ 58-10-510. Establishment of protected cells.

...

(d) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify (i) the one or more protected cells of the protected cell captive insurance company and (ii) the assets and liabilities attributable to each protected cell. The ~~directors governing board~~ of a protected cell captive insurance company shall keep protected cell assets and liabilities:

...."

SECTION 4.(h) G.S. 58-10-512 reads as rewritten:

"§ 58-10-512. Incorporated protected cells.

...

(c) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner. Unless otherwise permitted by the organizational documents of a protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance company must have the same ~~directors, governing board members,~~ secretary, and registered office as the protected cell captive insurance company.

...."

SECTION 4.(i) G.S. 58-10-565 reads as rewritten:

"§ 58-10-565. Application requirements.

...

(b) To transact business in this State, an SPFC shall:

...

(3) Hold at least one management meeting each year in this State. For the purposes of this section, management is defined as the ~~board of directors, managing board, governing board~~ or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC.

...

(c) A complete SPFC application shall include the following:

...

(4) Biographical affidavits in NAIC format of all of the prospective SPFC's officers and ~~directors, governing board members,~~ providing the officers' and ~~directors' governing board members'~~ legal names, any names under which they have or are conducting their affairs, and any other biographical information as the Commissioner may request.

...."

PART V. CAPTIVE INSURANCE COMPANY TAX CHANGES

SECTION 5.(a) G.S. 105-228.4A reads as rewritten:

"§ 105-228.4A. Tax on captive insurance companies.

(a) Tax Levied. – A tax is levied in this section on a captive insurance company doing business in this State. In the case of a branch captive insurance company, the tax levied in this section applies only to the branch business of the company. Two or more captive insurance companies under common ownership and ~~control~~ control, other than a protected cell captive insurance company or a special purpose captive insurance company with a cell or series structure,

are taxed under this section as a single captive insurance company. The tax levied in this section does not apply to a foreign captive insurance company.

...
(f) Total Tax Liability. – The aggregate amount of tax payable under this section by a protected cell captive insurance company with more than 10 cells or a special purpose captive insurance company with a cell or series structure with more than 10 cells or series may not be less than ten thousand dollars (\$10,000) and may not exceed the lesser of (i) one hundred thousand dollars (\$100,000) plus five thousand dollars (\$5,000) multiplied by the number of cells or series over 10 and (ii) two hundred thousand dollars (\$200,000). The aggregate amount of tax payable under this section for any other captive insurance company may not be less than five thousand dollars (\$5,000) and may not exceed one hundred thousand dollars (\$100,000).

If a captive insurance company is a special purpose financial captive and if the special purpose financial captive is under common ownership and control with one or more other captive insurance companies, the following provisions apply to the consolidated group of companies that are taxed as a single captive insurance company pursuant to subsection (a) of this section:

...."

SECTION 5.(b) G.S. 105-228.4A is amended by adding a new subsection to read:

"(g) A captive insurance company formed and licensed under the laws of a jurisdiction other than North Carolina that (i) obtains the approval of the North Carolina Commissioner of Insurance to redomesticate to North Carolina pursuant to G.S. 58-10-380(g) to operate as a North Carolina-domiciled captive insurance company and (ii) redomesticates to North Carolina on or before December 31, 2022, is exempted from premium taxes imposed by this section for the year in which the redomestication occurs and the premium taxes imposed by this section for the calendar year following the redomestication. This subsection expires for taxable years beginning on or after January 1, 2024."

PART VI. CAPTIVE INSURANCE LAW APPROVAL OF CAPTIVE MANAGER

SECTION 6. G.S. 58-10-360 reads as rewritten:

"§ 58-10-360. Designation of captive manager.

Before licensing, the applicant business entity shall report in writing to the Commissioner the name and address of ~~any~~the captive manager designated to manage the captive insurance company. The Commissioner shall approve the captive manager and may require the submission of additional information regarding the proposed captive manager in a form and manner as the Commissioner may designate. All licensed captive insurance companies shall, at all times, be managed by a captive manager approved by the Commissioner."

PART VII. CAPTIVE INSURANCE LAW NEW GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE

SECTION 7. G.S. 58-10-435 reads as rewritten:

"§ 58-10-435. License suspension or revocation.

(a) The license of a captive insurance company may be suspended or revoked if the Commissioner finds, upon audit, hearing, or other evidence, that a captive insurance company has committed one or more of the violations described in subdivisions (1) through ~~(7)~~(7a) of this subsection, or met any of the criteria in subdivisions (8) through (10) of this subsection, and that the suspension or revocation is in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this Chapter:

...

(3) Refusal or failure to submit an ~~annual report~~, annual report or audit report, as required by this Part, or any other report or statement required by law or by lawful order of the Commissioner.

...

(7a) Failure to operate in accordance with the plan of operation approved by the Commissioner.
...."

PART VIII. CAPTIVE INSURANCE LAW: PROHIBIT CAPTIVE BAIL BOND SURETY COMPANIES

SECTION 8. G.S. 58-10-345 reads as rewritten:

"§ 58-10-345. Licensing; authority; confidentiality.

(a) Any business entity, when permitted by its organizational documents, may apply to the Commissioner for a license to do any insurance comprised in G.S. 58-7-15; provided, however, that:

...
(11) No captive insurance company shall provide fidelity and surety insurance for the purpose of becoming surety on or guaranteeing the performance of bail bonds, as defined in G.S. 58-71-1(2).

...."

PART IX. INACTIVE CAPTIVE INSURANCE COMPANY CLARIFICATIONS

SECTION 9. G.S. 58-10-490 reads as rewritten:

"§ 58-10-490. Inactive captive insurance companies.

(a) As used in this section, unless the context requires otherwise, "inactive captive insurance company" means a captive insurance company which meets ~~both~~all of the following criteria:

...
(3) The Commissioner declares the company inactive.

(b) The Commissioner may declare a captive insurance company, other than a risk retention group, an inactive captive insurance company, if such captive insurance company meets the criteria of ~~subsection (a)~~subdivisions (a)(1) and (a)(2) of this section.

...
(d) An inactive captive insurance company shall not be subject to or liable for the payment of any tax under Article 8B of Chapter 105 of the General ~~Statutes~~Statutes for any full year the captive insurance company is inactive.

...
(f) G.S. 58-10-496 is inapplicable to subsection (a) of this section unless the captive insurance company has been placed into supervision, receivership, or liquidation pursuant to Article 30 of Chapter 58 of the General Statutes and the Commissioner has determined that the payment of the minimum tax required by G.S. 105-228.4A(f) will result in the captive insurance company's inability to meet its insurance obligations."

PART X. EFFECTIVE DATE

SECTION 10. Section 5(a) and Section 9 of this act are effective for premium taxes imposed for taxable years beginning on or after January 1, 2022. Section 5(b) of this act is effective for premium taxes imposed for taxable years beginning on or after January 1, 2021. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of June, 2022.

s/ Mark Robinson
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 9:03 a.m. this 14th day of June, 2022