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SENATE BILL DRS35137-NE-55

Short Title: Captive Insurance Amendments. (Public)

Sponsors: Senators Johnson, McInnis, and Edwards (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING STATUTES RELATING TO CAPTIVE INSURANCE.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. CAPTIVE INSURANCE LAW CONFIDENTIALITY CLARIFICATIONS**

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

7 "**§ 58-10-375. Dividends and distributions.**

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

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

16 "**§ 58-10-395. Plan of operation change.**

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

20 ...

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

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

23 "**§ 58-10-440. Investment requirements.**

24 ...

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

30"

31
32 **PART II. CAPTIVE INSURANCE LAW ANNUAL AUDIT EXEMPTION**

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

34 "**§ 58-10-415. Annual audit and statement of actuarial opinion.**

35 ...



1 (c) ~~Captive insurance companies with less than one million two hundred thousand dollars~~
2 ~~(\$1,200,000) in written premium may make a written request for exemption from the annual audit~~
3 ~~requirement. Upon written request by any captive insurance company, the Commissioner may~~
4 ~~grant an exemption from compliance with any or all provisions of this section if the~~
5 ~~Commissioner finds that compliance would cause the insurer a financial or organizational~~
6 ~~hardship. Such request must be made at least 90 days prior to the captive insurance company's~~
7 ~~fiscal year-end or as otherwise required by the Commissioner. Requests will be considered on a~~
8 ~~case-by-case basis and may be subject to the Commissioner receiving an annual audit of the~~
9 ~~captive insurance company's parent in lieu of the annual audit of the captive insurance company.~~
10"

12 PART III. CAPTIVE INSURANCE LAW FINANCIAL ANALYSIS

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

14 "**§ 58-10-430. ~~Audits.~~ Audits and Financial Analysis.**

15 ...

16 (a1) Whenever the Commissioner determines it to be prudent, the Commissioner shall
17 conduct a financial analysis of information submitted to or obtained by the Commissioner
18 pursuant to this Part. Except as otherwise provided in this Part, the captive insurance company is
19 not required to pay the expense and charges of the financial analysis.

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

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

34"

36 PART IV. CAPTIVE INSURANCE LAW "GOVERNING BOARD" DEFINITION

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

38 "**§ 58-10-340. Definitions.**

39 The following definitions apply in this Part:

40 ...

41 (16a) Governing board. – The board of directors or officials possessing similar
42 authority.

43"

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

45 "**§ 58-10-345. Licensing; authority; confidentiality.**

46 ...

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

49 ...

50 (2) ~~Its board of directors or committee of managers or, in the case of a reciprocal~~
51 ~~insurer, its subscribers' advisory committee governing board~~ holds at least one

1 meeting each year in this State. A captive insurance company will be exempt
2 from this board meeting requirement if the captive insurance company utilizes
3 the services of at least two of the following North Carolina-based service
4 providers:

5"

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

7 **"§ 58-10-380. Formation of captive insurance companies.**

8 ...

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

15 ...

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

20"

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

22 **"§ 58-10-385. Directors, Governing board members, officer, and employees.**

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

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

35"

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

37 **"§ 58-10-390. Conflict of interest.**

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

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

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

48 **"§ 58-10-420. Independent certified public accountants.**

49 ...

50 (b) A captive insurance company shall require its independent certified public accountant
51 to immediately notify in writing an officer and all members ~~of the board of directors or other~~

1 ~~governing body of the governing board~~ of the captive insurance company of any determination
2 by the independent certified public accountant that the captive insurance company has materially
3 misstated its financial condition in its report to the Commissioner as required in G.S. 58-10-405.
4 A captive insurance company receiving a notification pursuant to this subsection shall forward a
5 copy of the notification to the Commissioner within five business days after receipt of the
6 notification and shall provide the independent certified public accountant with proof that the
7 notification was forwarded to the Commissioner. If the independent certified public accountant
8 fails to receive the proof within the five-day period required by this subsection, the independent
9 certified public accountant shall within the next five business days submit a copy of the
10 notification to the Commissioner.

11"

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

13 **"§ 58-10-510. Establishment of protected cells.**

14 ...

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

20"

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

22 **"§ 58-10-512. Incorporated protected cells.**

23 ...

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

29"

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

31 **"§ 58-10-565. Application requirements.**

32 ...

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

34 ...

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

41 ...

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

43 ...

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

49"

50
51 **PART V. CAPTIVE INSURANCE COMPANY TAX CHANGES**

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

2 "**§ 105-228.4A. Tax on captive insurance companies.**

3 (a) Tax Levied. – A tax is levied in this section on a captive insurance company doing
4 business in this State. In the case of a branch captive insurance company, the tax levied in this
5 section applies only to the branch business of the company. Two or more captive insurance
6 companies under common ownership and ~~control~~ control, other than a protected cell captive
7 insurance company or a special purpose captive insurance company with a cell or series structure,
8 are taxed under this section as a single captive insurance company. The tax levied in this section
9 does not apply to a foreign captive insurance company.

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

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

23 "

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

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

33 34 **PART VI. CAPTIVE INSURANCE LAW APPROVAL OF CAPTIVE MANAGER**

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

36 "**§ 58-10-360. Designation of captive manager.**

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

43 44 **PART VII. CAPTIVE INSURANCE LAW NEW GROUNDS FOR SUSPENSION OR** 45 **REVOCAION OF LICENSE**

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

47 "**§ 58-10-435. License suspension or revocation.**

48 (a) The license of a captive insurance company may be suspended or revoked if the
49 Commissioner finds, upon audit, hearing, or other evidence, that a captive insurance company
50 has committed one or more of the violations described in subdivisions (1) through ~~(7)~~ (7a) of this
51 subsection, or met any of the criteria in subdivisions (8) through (10) of this subsection, and that

1 the suspension or revocation is in the best interest of the public and the policyholders of such
2 captive insurance company, notwithstanding any other provision of this Chapter:

3 ...

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

7 ...

8 (7a) Failure to operate in accordance with the plan of operation approved by the
9 Commissioner.

10"

11
12 **PART VIII. CAPTIVE INSURANCE LAW: PROHIBIT CAPTIVE BAIL BOND**
13 **SURETY COMPANIES**

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

15 "**§ 58-10-345. Licensing; authority; confidentiality.**

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

19 ...

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

23"

24
25 **PART IX. EFFECTIVE DATE**

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