

Senate Bill 173

By: Senators Jones of the 25th, Harbison of the 15th, McKoon of the 29th, Harbin of the 16th, Kirk of the 13th and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 41 of Title 33 of the Official Code of Georgia Annotated, relating to captive insurance companies, so as to extensively revise certain provisions; to provide for change and revision of certain definitions; to provide for scope of provisions and lines of businesses a captive insurance company may engage to add an agency captive insurance company with certain restrictions; to change certificate of authority requirements; to provide for board of managers; to provide for captive corporate organization requirements making certain captives subject to Title 14; to provide for certain exemptions; to provide for exceptions, fees, and articles of incorporation requirements; to provide for powers and requirements by the Commissioner; to change certain provisions relating to business name providing for formation documents and remove requirement that the name of a captive insurance company shall include the words "captive insurance company"; to provide for changes to provision relating to the board of directors to eliminate certain citizenship requirements; to update certain language; to change certain provisions relating to fees and taxes on direct premiums; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 41 of Title 33 of the Official Code of Georgia Annotated, relating to captive insurance companies, is amended by revising Code Section 33-41-2, relating to definitions, as follows:

"33-41-2.

Terms not defined in this chapter shall have the same meaning ascribed to them in this title.

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

(1) 'Affiliate' means ~~an individual, partnership, corporation, limited liability company, trust, or estate that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with one or more of the shareholders or members of a captive insurance company.~~ Affiliates shall also include employees of any

~~shareholder or member, or any affiliate thereof, of a captive insurance company. For the purpose of the foregoing definition of affiliate, 'control' means: any person in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.~~

~~(A) Ownership of shares of a corporation possessing 50 percent or more of the total voting power of all classes of shares entitled to vote or possessing 50 percent or more of the total value of the outstanding shares of the corporation; and~~

~~(B) Ownership of 50 percent or more by value of the beneficial or membership interests in a partnership, trust, limited liability company, or estate.~~

(2) 'Agency captive insurance' company' means:

(A) ~~An~~ Any domestic insurance company granted a certificate of authority pursuant to this chapter that is owned or controlled by an insurance agency, brokerage, managing general agent, or reinsurance intermediary, or an affiliate thereof, or under common ownership or control with such agency, brokerage, managing general agent, or reinsurance intermediary, and that only reinsures the risk of insurance or annuity contracts placed by or through such agency, brokerage, managing general agent, or reinsurance intermediary; or

(B) ~~An~~ Any domestic insurance company granted a certificate of authority pursuant to this chapter that is owned or controlled by a marketer, producer, administrator, issuer, or provider of service contracts or warranties and that only reinsures the contractual liability arising out of such service contracts or warranties sold through such marketer, producer, administrator, issuer, or provider.

(3) 'Association' means any membership organization whose members consist of a group of individuals, corporations, partnerships, or other entities or associations who engage in similar or related professional, trade, or business activities and who collectively own, control, or hold with power to vote all of the outstanding voting interests of an association captive insurance company or of a person that is the sole shareholder of an association captive insurance company.

(4) 'Association captive insurance company' means any domestic insurance company granted a certificate of authority ~~under~~ pursuant to this chapter to insure or reinsure the similar or related risks of members and affiliates of members of its association.

(5) 'Captive insurance company' means any pure captive insurance company, association captive insurance company, agency captive insurance company, industrial insured captive insurance company, or risk retention group captive insurance company.

(6) 'Controlled unaffiliated business' means:

(A) ~~A~~ Any person:

(i) That is not ~~an affiliate of the parent~~ in the corporate system of a parent and its affiliated companies;

(ii) That has an existing contractual relationship with ~~an affiliate of the parent under which the affiliate bears a potential financial loss~~ a parent or one of its affiliated companies; and

(iii) ~~The risks of which are managed by a captive insurance company under an arrangement~~ Whose risks are managed by a pure captive insurance company in accordance with this chapter and approved by the Commissioner; or

(B) A reinsurance pooling arrangement with other captive insurance companies that is approved by the Commissioner.

(7) 'Formation documents' means articles of incorporation, if the captive insurance company or the prospective captive insurance company is a stock insurer or a mutual insurer, or articles of organization, if the captive insurance company or the prospective captive insurance company is a limited liability company, and any amendments or restatements of the same.

~~(7)~~(8) 'Industrial insured' means an insured:

(A) Who procures the insurance of any risk or risks through the use of the services of a full-time employee who acts as an insurance manager, risk manager, or insurance buyer or through the services of a person licensed as a property and casualty agent, broker, or counselor in such person's state of domicile;

(B) Whose aggregate annual premiums for insurance on all risks total at least \$25,000.00; and

(C) Who either:

(i) Has at least 25 full-time employees;

(ii) Has gross assets in excess of \$3 million; or

(iii) Has annual gross revenues in excess of \$5 million.

~~(8)~~(9) 'Industrial insured captive insurance company' means any domestic insurance company granted a certificate of authority ~~under~~ pursuant to this chapter to insure or reinsure the risks of industrial insureds and their affiliates and which has as its shareholders or members only industrial insureds that are insured or reinsured by the industrial insured captive insurance company or which has as its sole shareholder or sole member an entity whose only owners are industrial insureds that are insured or reinsured by the industrial insured captive insurance company.

(10) 'Mutual insurer' means an incorporated insurer without capital stock or shares that is owned and governed by its policyholders.

~~(9)~~(11) 'Parent' means an entity which directly or indirectly owns, controls, or holds with power to vote ~~shares representing~~ more than 50 percent of the total outstanding voting: power and value of a pure captive insurance company.

(A) Securities of a pure captive insurance company organized as a stock corporation;
or

(B) Membership interests of a pure captive insurance company organized as a limited liability company.

~~(10)~~(12) 'Pure captive insurance company' means any domestic insurance company granted a certificate of authority under this chapter to insure or reinsure the risks of its parent and affiliates of its parent, and controlled unaffiliated business.

~~(11)~~(13) 'Risk retention group captive insurance company' is any ~~captive~~ domestic insurance company which has been granted a certificate of authority ~~under~~ pursuant to this chapter and determined by the Commissioner to be established and maintained as a 'risk retention group' as defined under the federal Liability Risk Retention Act of 1986, as amended. A risk retention group may be chartered and licensed ~~either under~~ pursuant to this chapter or ~~under~~ pursuant to Chapter 40 of this title.

(14) 'Stock insurer' means an incorporated insurer with capital divided into shares and owned by its shareholders.

~~(12)~~(15) 'Transact,' as used in this chapter, shall not include the organizational activities associated with the preliminary formation, incorporation, petitioning for a certificate of authority, and initial capitalization of a captive insurance company."

SECTION 2.

Said chapter is further amended by revising Code Section 33-41-3, relating to scope of provisions and lines of business, as follows:

"33-41-3.

(a) Subject to the provisions of subsection (c) of this Code section and the other provisions of this chapter, a captive insurance company, where permitted by its ~~articles of incorporation~~ formation documents, may engage in the business of any of the following kinds of insurance or reinsurance:

(1) Casualty, as described in Code Section 33-7-3 but excluding accident and sickness insurance as defined in Code Section 33-7-2, except for a pure captive insurance company, which may engage in the business of accident and sickness insurance as defined in Code Section 33-7-2;

(2) Marine and transportation, as described in Code Section 33-7-5;

(3) Property, as described in Code Section 33-7-6; and

(4) Surety, as described in Code Section 33-7-7.

(b) Insurance policies and bonds issued by a captive insurance company for workers' compensation insurance and motor vehicle accident insurance shall be in conformity with all minimum requirements for coverages and coverage amounts established by ~~the~~ this state for such types of insurance. Such insurance policies and bonds issued by a captive insurance company shall constitute satisfactory proof that the motor vehicle owners or employers, as applicable, insured under such policies or bonds have satisfied the requirements for motor vehicle accident insurance prescribed by Code Section 33-34-4 and for workers' compensation insurance prescribed by Code Section 34-9-121.

(c) Except as otherwise provided in ~~subsection (d)~~ of this Code section:

(1) A captive insurance company shall not insure or reinsure any risks resulting from:

(A) Any personal, familial, or household responsibilities; or

(B) Activities other than risks resulting from responsibilities arising out of any business, whether profit or nonprofit; trade; product; services, including professional or fiduciary services; or commercial premises or commercial operations;

(2) A captive insurance company may only cede reinsurance as provided in Code Section 33-41-14;

(3) A pure captive insurance company may only insure or reinsure the risks of its parent, affiliates of its parent, and its controlled unaffiliated business;

(4) An association captive insurance company may only insure or reinsure the risks of the members of its association and their affiliates;

(5) An industrial insured captive insurance company may only insure or reinsure the risks of the industrial insureds, and their affiliates, that are its shareholders or shareholders of its sole shareholder; ~~and~~

(6) A risk retention group captive insurance company may only insure or reinsure the risks of its group members; and

(7) An agency captive insurance company may only reinsure:

(A) The risk of insurance or annuity contracts placed by or through the agency, brokerage, managing general agent, or reinsurance intermediary by which it is owned or controlled; or

(B) The contractual liability arising out of service contracts or warranties sold through a marketer, producer, administrator, issuer, or provider of service contracts or warranties by which it is owned or controlled.

(d) A captive insurance company may, with prior written approval from the commissioner, reinsure the risks insured or reinsured either directly or indirectly by:

(1) Any other captive insurance company; or

(2) Any foreign or alien insurance company which satisfies the ownership or membership requirements of a captive insurance company under this chapter; provided,

however, that the risks insured or reinsured from the foreign or alien insurance company are solely those of its owners or members or their affiliates."

SECTION 3.

Said chapter is further amended in Code Section 33-41-4, relating to certificate of authority required, by revising paragraph (4) as follows:

"(4) Its board of directors or board of managers holds at least one meeting each year in this state."

SECTION 4.

Said chapter is further amended by revising Code Section 33-41-5, relating to corporate organization, as follows:

"33-41-5.

(a)(1) A pure captive insurance company or an agency captive insurance company ~~must~~ may be incorporated as a stock insurer ~~with its capital divided into shares~~ or organized as a manager-managed limited liability company.

~~(b)(2)~~ An association captive insurance company, ~~or~~ an industrial insured captive insurance company, or a risk retention group captive insurance company ~~shall~~ may be incorporated:

~~(1)(A) Incorporated as~~ As a stock insurer with its capital divided into shares; or

~~(2)(B) Incorporated as~~ As a mutual insurer; or without capital stock, the governing body of which is elected by its members.

(C) Organized as a manager-managed limited liability company.

(b)(1) Captive insurance companies formed as corporations pursuant to this chapter shall be subject to the provisions of Chapter 2 of Title 14, other applicable statutes, and the applicable provisions of this chapter. Such captive insurance companies are also subject to regulations promulgated hereunder, which the Commissioner has the authority to establish regarding the formation, organization, operations, merger, and dissolution of captive insurance companies formed as corporations. In the event of any conflict between statutes or regulations of this state that are applicable to such captive insurance companies, the provisions of this chapter or regulations promulgated hereunder shall control.

(2) Captive insurance companies formed as limited liability companies pursuant to this chapter shall be subject to the provisions of Chapter 11 of Title 14, other applicable statutes, and the applicable provisions of this chapter. Such captive insurance companies are also subject to regulations promulgated hereunder, which the Commissioner has the authority to establish regarding the formation, organization, operations, merger, and

dissolution of captive insurance companies formed as limited liability companies. In the event of any conflict between statutes or regulations of this state that are applicable to such captive insurance companies, the provisions of this chapter or regulations promulgated hereunder shall control.

(3) Captive insurance companies shall be exempt from all applicable publishing and probate court certification requirements set forth in Title 14 or this title.

(4) The provisions of Chapter 14 of this title shall not apply to captive insurance companies except as specifically set forth herein or by the Commissioner through regulation.

~~(c)(1)(A) The applicable statutes of this state relating to the powers and procedures of domestic corporations shall apply to captive insurance companies, except where in conflict with the express provisions of this chapter or regulations promulgated hereunder; provided, however, that captive insurance companies are exempt from the requirements of subsection (b) of Code Section 33-14-5~~ To form a captive insurance company in this state, formation documents and a fee of \$100.00 shall be submitted to the Commissioner, who shall pay such fee into the state treasury. The Commissioner shall examine the formation documents to determine whether such documents will enable the captive insurance company to comply with the applicable insurance laws of this state; and, if the Commissioner finds that the formation documents, if approved, will enable the captive insurance company to do so, the Commissioner shall issue under his or her hand and official seal a certificate approving the formation documents and shall transmit a copy of such documents and the certificate of approval to the Secretary of State for recording.

(B) The articles of incorporation of a captive insurance company must be signed by the incorporator and shall contain the following:

(i) The name of the captive insurance company;

(ii) The number of shares the captive insurance company is authorized to issue, which must be greater than zero;

(iii) The street address and county of the initial registered office and the name of the initial registered agent at that office;

(iv) The name and address of each incorporator, of which there must be at least one;

(v) The street address of the captive insurance company's principal office;

(vi) The number of directors, which number shall not be less than three, who shall conduct the affairs of the captive insurance company; and

(vii) Such other provisions not inconsistent with law deemed appropriate by the incorporator.

(C) The articles of organization of a captive insurance company must be signed by the organizer and must contain the following:

(i) The name of the captive insurance company;

(ii) The street address and county of the initial registered office and the name of the initial registered agent at that office;

(iv) The name and address of each organizer, of which there must be at least one;

(v) The street address of the captive insurance company's principal office;

(vi) The number of managers, which number shall not be less than three, who shall conduct the affairs of the captive insurance company; and

(vii) Such other provisions not inconsistent with law deemed appropriate by the organizer.

(2) All corporate powers and privileges to captive insurance companies shall be issued and granted by the Secretary of State upon the terms, liabilities, and restrictions of and subject to this title and the laws and Constitution of this state. If for any reason the Secretary of State is disqualified or unable to issue or grant said powers, the duties required by this chapter, or regulations promulgated hereunder, to be performed by the Secretary of State shall be performed by the Commissioner.

(3) When the certificate of the Commissioner as to his or her approval of the formation documents have been received in the office of the Secretary of State, the Secretary of State shall issue to the captive insurance company under the seal of this state a certificate of incorporation or organization. The captive insurance company shall not transact business as an insurer until it has applied for and received from the Commissioner a certificate of authority as provided by this chapter.

~~(d)(1) The incorporation procedures of Code Sections 33-14-4 through 33-14-6, inclusive, and the amendment procedures of Code Section 33-14-8 shall apply to captive insurance companies; provided, however, that captive insurance companies are exempt from the publishing and probate court certification requirements of Code Sections 33-14-5 and 33-14-8. A captive insurance company may amend its formation documents for any lawful purpose in accordance with the provisions of Chapter 2 of Title 14 if it is a corporation or Chapter 11 of Title 14 if it is a limited liability company.~~

(2) The captive insurance company shall submit to the Commissioner any proposed amendment to its formation documents and a fee of \$50.00, which the Commissioner shall transmit into the state treasury.

(3) The Commissioner shall examine the proposed amendment to its formation documents to determine whether such documents will enable the captive insurance company to comply with the applicable insurance laws of this state; and, if the Commissioner finds that such documents, if approved, will enable the captive insurance

company to do so, the Commissioner shall issue under his or her hand and official seal a certificate approving amended formation documents and shall transmit a copy of such documents and the certificate of approval to the Secretary of State for recording.

(e)(1) A captive insurance company may merge with or into one or more business entities in accordance with the provisions of Chapter 2 of Title 14 if it is a corporation or Chapter 11 of Title 14 if it is a limited liability company, but shall submit to the Commissioner all required merger documents set forth therein.

(2) The Commissioner shall examine all required merger documents to determine whether such documents will enable the captive insurance company to comply with the applicable insurance laws of this state; and, if the Commissioner finds that such documents, if approved, will enable the captive insurance company to do so, the Commissioner shall issue under his or her hand and official seal a certificate approving the merger documents and shall transmit a copy of such documents and the certificate of approval to the Secretary of State for recording.

(f)(1) A captive insurance company that was formed as a stock corporation may elect to convert to a manager-managed limited liability company pursuant to Title 14, but shall submit to the Commissioner all required conversion documents set forth therein and a fee of \$100.00, which the Commissioner shall transmit to the state treasury.

(2) The Commissioner shall examine the required conversion documents to determine whether such documents will enable the captive insurance company to comply with the applicable laws of this state; and, if the Commissioner finds that such documents, if approved, will enable the captive insurance company to do so, the Commissioner shall issue under his or her hand and official seal a certificate approving the conversion documents and shall transmit a copy of such documents and the certificate of approval to the Secretary of State for recording.

(g)(1) A captive insurance company that was formed as a stock corporation may dissolve in accordance with the provisions of Chapter 2 of Title 14 if it is a corporation, or Chapter 11 of Title 14 if it is a limited liability company, but shall submit to the Commissioner all required dissolution documents set forth therein.

(2) The Commissioner shall examine the required dissolution documents to determine whether such documents will enable the captive insurance company to dissolve in compliance with the applicable insurance laws of this state; and, if the Commissioner finds that such documents, if approved, will enable the captive insurance company to do so, the Commissioner shall issue under his or her hand and official seal a certificate approving the dissolution and shall transmit a copy of such documents and the certificate of approval to the Secretary of State for recording."

SECTION 5.

Said chapter is further amended by revising Code Section 33-41-6, relating to business name, as follows:

"33-41-6.

(a) A captive insurance company shall not use any name which is either similar, misleading, or confusing with respect to any other name already in use by any other captive insurance company, domestic mutual or stock insurance company, corporation, or association organized or doing business in this state. The Commissioner shall not approve the ~~articles of incorporation~~ formation documents of an applicant attempting to use such a name nor shall the Commissioner approve an application for a certificate of authority from such applicant.

~~(b)(1) With the exception of risk retention group captive insurance companies, the name of a captive insurance company shall include the words 'captive insurance company.'~~

~~(2)~~ The name of a risk retention group captive insurance company shall include the words 'risk retention group captive insurance company.'

(c) If the captive insurance company is a mutual insurer, the word 'mutual' shall ~~also~~ be a part of ~~the~~ its name."

SECTION 6.

Said chapter is further amended by revising Code Section 33-41-7, relating to board of directors, as follows:

"33-41-7.

(a) The affairs of every captive insurance company shall be managed by not less than three directors or managers.

(b) At least one of the directors or managers of every captive insurance company shall be a resident of this state, ~~and a majority of the directors shall be citizens of the United States.~~

(c) Every captive insurance company shall report to the Commissioner within 30 days after any change in its directors or managers including in its report a statement of the business and professional background and affiliations of any new director or manager."

SECTION 7.

Said chapter is further amended in Code Section 33-41-10, relating to application for certificate of authority, by revising paragraph (1) of subsection (a) and subsections (b), (c), (d), and (e), as follows:

"(1) A copy of the captive insurance company's adopted or proposed articles of incorporation and bylaws; or articles of organization and operating agreement; and"

"(b) In determining whether to approve an application for an original or renewal certificate of authority to a captive insurance company, the Commissioner shall examine the applicable items submitted to him or her pursuant to subsections (a), (e), and (f) of this Code section. The Commissioner may rely upon and accept the reports of independent agents who may include licensed insurance counselors, brokers, agents, or adjusters discussed under Chapter 23 of this title, certified actuarial consultants, certified public accountants, risk managers, and examiners of insurance companies in order to facilitate his or her examination of the application for a certificate of authority by a captive insurance company. The expenses and charges of such independent agents shall be paid directly by the captive insurance company.

(c) Each captive insurance company shall pay to the Commissioner an amount equal to all costs of examining, investigating, and processing its application for an original or renewal certificate of authority. In addition, it shall pay a fee for the initial year of ~~registration~~ licensure and a renewal fee for each year thereafter in the amount periodically imposed under this title upon ~~other domestic~~ captive insurance companies.

(d) Pursuant to Code Section 33-3-15, if the Commissioner is satisfied that the documents and statements filed by the captive insurance company comply with the provisions of this chapter, ~~he shall notify the captive insurance company of his intention to issue a certificate of authority~~ the Commissioner shall promptly issue a certificate of authority authorizing the captive insurance company to transact insurance in this state until the thirtieth day of June thereafter.

~~(e) After the captive insurance company has been notified pursuant to subsection (d) of this Code section, the~~ The captive insurance company shall provide the Commissioner with the following documentation as soon as practicable:

(1) Evidence satisfactory to the Commissioner that the minimum capital or surplus required for the particular captive insurance company under Code Section 33-41-8 has been paid in and that the appropriate amount thereof has been deposited with the state; and

(2) A financial statement showing the assets and liabilities of the captive insurance company which is certified by its president and calculated in accordance with the accounting standards set ~~out~~ forth in Chapter 10 of this title, except as modified by this chapter.

~~Thereafter, the Commissioner shall promptly issue a certificate of authority authorizing the captive insurance company to transact insurance in this state until the thirtieth day of June thereafter.~~ Notwithstanding subsection (d) of this Code section, the Commissioner may require that the captive insurance company submit the documentation required by this subsection prior to issuing the captive insurance company a certificate of authority."

SECTION 8.

Said chapter is further amended in Code Section 33-41-22, relating to fees and taxes, by revising paragraphs (1) and (2) as follows:

"(1) A tax at the rate of 0.4 percent on the first \$20 million and 0.3 percent on each dollar thereafter on its direct premiums collected, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which must include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders. However, risk retention group captive insurance companies shall only be subject to such taxes on direct premiums collected for coverages within the State of Georgia;

(2) A tax at the rate of 0.225 percent on the first \$20 million of assumed reinsurance premium, and 0.150 percent on the next \$20 million and 0.050 percent on the next \$20 million, and 0.025 percent of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to this paragraph (1) ~~of this Code section~~. No reinsurance premium 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, provided that the Commissioner verifies that 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;"

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.