SENATE BILL 347:
Captive Insurance Amendments.

2021-2022 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	April 28, 2021
Introduced by:	Sens. Johnson, McInnis, Edwards	**Prepared by:**	Cindy Avrette Staff Attorney
Analysis of:	PCS to First Edition S347-CSBAf-15		

OVERVIEW: Senate Bill 347 would make various technical and substantive changes to the laws governing captive insurance companies in the State.

CURRENT LAW: Captive insurance companies form and operate in North Carolina under the North Carolina Captive Insurance Act, enacted in 2013. Captive insurance companies are insurance companies that are established solely to insure the risks of a specific company or group. The captive insurance company is a wholly owned subsidiary of a parent company or an industry association. The parent company pays premiums to the captive insurance company, who covers any claims against the parent company. Unlike traditional insurance, when the captive insurance company profits, the parent company does as well. Captive insurance companies are typically used to self-insure against predictable risks, such as workers' compensation and malpractice. Captive insurance companies can purchase reinsurance to cover any claims that may exceed the premiums collected.

BILL ANALYSIS:

Section 1 of the bill would require the Commissioner of Insurance to maintain the confidentiality of information filed by a captive insurance company when it seeks approval of a distribution from capital or surplus, a change to its plan of operation, or a loan to an affiliate.

Section 2 would authorize the Commissioner, upon written request, to exempt any captive insurance company from compliance with audit requirements if such compliance would cause it financial or organizational hardship. Under current law only captive insurance companies having less than $1.2 million in written premium are eligible for this exemption.

Section 3 would authorize the Commissioner to conduct a financial analysis of information obtained from a captive insurance company whenever the Commissioner deems it prudent to do so.

Section 4 would replace the term "board of directors" with the term "governing board," defined as "the board of directors or officials possessing similar authority."

Section 5.(a) would amend G.S. 105-228.4A to:

- Provide that two or more captive insurance companies under common ownership and control will be taxed as separate companies if they are either a protected cell captive insurance company or a special purpose captive insurance companies with a cell or series structure.
- Specify the aggregate amount of tax payable by a special purpose captive insurance company with a cell or series structure with 10 or more cells or series.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Section 5.(b) would provide that if a licensed captive insurance company formed and licensed in another jurisdiction redomesticates to North Carolina with the approval of the Commissioner prior to December 31, 2022, it is exempted from premium taxes otherwise due for the remainder of the year in which redomestication occurs and for the calendar year following its redomestication. This provision would expire for taxable years beginning on or after January 1, 2024.

Section 6 would require captive insurance companies to be managed by a captive manager approved by the Commissioner.

Section 7 would subject a captive insurance company to license suspension or revocation for failing to operate in accordance with its approved plan of operation.

Section 8 would prohibit a captive insurance company from becoming a surety on bail bonds or guaranteeing their performance.

Section 9 would require the Commissioner to declare a captive insurance to be inactive. The Commissioner could make this declaration if the captive insurance company has ceased transacting the business of insurance and has no remaining liabilities associated with policies written or assumed by the company. The declaration would provide certainty for the Department of Revenue to know whether a captive insurance company is inactive and the Department of Revenue needs this information because an inactive captive insurance company is not subject to or liable for payment of the gross premium excise tax.

Under current law the Commission may waive or modify any provision under the Captive Insurance part of Chapter 58 if the wavier or modification is justified. This section would provide that the Commissioner could not waive or modify the conditions for declaring a company inactive unless the captive insurance company has been placed into supervision, receivership or liquidation and the Commissioner determines that payment of the minimum amount of tax required would result in the company's inability to meet its insurance obligations.

EFFECTIVE DATE: Sections 5.(a) and 9 of the act would be effective for taxable years beginning on or after January 1, 2022. Section 5.(b) of this act would be effective for taxable years beginning on or after January 1, 2021. The remainder of the act would be effective when it becomes law.

Bill Patterson substantially contributed to this summary.