



SENATE BILL 347: Captive Insurance Amendments.

2021-2022 General Assembly

Committee:		Date:	July 27, 2022
Introduced by:		Prepared by:	Bill Patterson
Analysis of:	S.L. 2022-7		Staff Attorney*

OVERVIEW: *S.L. 2022-7 makes a number of technical and substantive changes to the laws governing captive insurance companies in the State. This act has various effective dates. Please see the full summary for more detail.*

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 can exceed the premiums collected. An inactive captive insurance company, defined as one that has ceased transacting the business of insurance and has no remaining liabilities associated with policies it has written or assumed, is not liable for payment of the gross premium excise tax.

BILL ANALYSIS:

Section 1 of the act requires the Commissioner of Insurance (Commissioner) 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 authorizes 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. Prior to this change only captive insurance companies having less than \$1.2 million in written premium were eligible for this exemption.

Section 3 authorizes 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 replaces the term "board of directors" with the term "governing board," defined as "the board of directors or officials possessing similar authority."

Section 5.(a) amends 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 company 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 more than 10 cells or series.

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Section 5.(b) provides 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 expires for taxable years beginning on or after January 1, 2024.

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

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

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

Section 9 provides that a captive insurance company is not entitled to claim a gross premium tax exemption as an inactive captive insurance company unless the Commissioner has declared the company to be inactive. The Commissioner can 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 will provide certainty for the Department of Revenue in identifying inactive captive insurance companies that are exempt from liability for the gross premium excise tax. This section also limits the tax exemption to any full year the captive insurance company is inactive.

Under current law, the Commissioner can waive or modify any provision under the Captive Insurance part of Chapter 58 if the waiver or modification is justified. This section prohibits waiver or modification of 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 will result in the company's inability to meet its insurance obligations.

EFFECTIVE DATE: Sections 5.(a) and 9 of the act are effective for taxable years beginning on or after January 1, 2022. Section 5.(b) of this act is effective for taxable years beginning on or after January 1, 2021. The remainder of the act became effective June 14, 2022.

** LAD Staff Attorney Cindy Avrette substantially contributed to this summary.*