

## Part 1 General Provisions

### **31A-37-101 Title.**

This chapter is known as the "Captive Insurance Companies Act."

Enacted by Chapter 251, 2003 General Session

### **31A-37-102 Definitions.**

As used in this chapter:

- (1) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate or limited liability company system as:
  - (a) a parent;
  - (b) an industrial insured; or
  - (c) a member organization.
- (2) "Alien captive insurance company" means an insurer:
  - (a) formed to write insurance business for a parent or affiliate of the insurer; and
  - (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes statutory or regulatory standards:
    - (i) on a business entity transacting the business of insurance in the alien jurisdiction; and
    - (ii) in a form acceptable to the commissioner.
- (3) "Association" means a legal association of two or more persons that has been in continuous existence for at least one year if:
  - (a) the association or its member organizations:
    - (i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or
    - (ii) have complete voting control over an association captive insurance company incorporated as a mutual insurer;
  - (b) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or
  - (c) the association or its member organizations have complete voting control over an association captive insurance company formed as a limited liability company.
- (4) "Association captive insurance company" means a business entity that insures risks of:
  - (a) a member organization of the association;
  - (b) an affiliate of a member organization of the association; and
  - (c) the association.
- (5) "Branch business" means an insurance business transacted by a branch captive insurance company in this state.
- (6) "Branch captive insurance company" means an alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a captive insurance company that is domiciled outside of this state.
- (7) "Branch operation" means a business operation of a branch captive insurance company in this state.
- (8) "Captive insurance company" means any of the following formed or holding a certificate of authority under this chapter:
  - (a) a branch captive insurance company;
  - (b) a pure captive insurance company;

- (c) an association captive insurance company;
  - (d) a sponsored captive insurance company;
  - (e) an industrial insured captive insurance company, including an industrial insured captive insurance company formed as a risk retention group captive in this state pursuant to the provisions of the Federal Liability Risk Retention Act of 1986;
  - (f) a special purpose captive insurance company; or
  - (g) a special purpose financial captive insurance company.
- (9) "Commissioner" means Utah's Insurance Commissioner or the commissioner's designee.
- (10) "Common ownership and control" means that two or more captive insurance companies are owned or controlled by the same person or group of persons as follows:
- (a) in the case of a captive insurance company that is a stock corporation, the direct or indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;
  - (b) in the case of a captive insurance company that is a mutual corporation, the direct or indirect ownership of 80% or more of the surplus and the voting power of the mutual corporation;
  - (c) in the case of a captive insurance company that is a limited liability company, the direct or indirect ownership by the same member or members of 80% or more of the membership interests in the limited liability company; or
  - (d) in the case of a sponsored captive insurance company, a protected cell is a separate captive insurance company owned and controlled by the protected cell's participant, only if:
    - (i) the participant is the only participant with respect to the protected cell; and
    - (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored captive insurance company through common ownership and control.
- (11) "Consolidated debt to total capital ratio" means the ratio of Subsection (11)(a) to (b).
- (a) This Subsection (11)(a) is an amount equal to the sum of all debts and hybrid capital instruments including:
- (i) all borrowings from depository institutions;
  - (ii) all senior debt;
  - (iii) all subordinated debts;
  - (iv) all trust preferred shares; and
  - (v) all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.
- (b) This Subsection (11)(b) is an amount equal to the sum of:
- (i) total capital consisting of all debts and hybrid capital instruments as described in Subsection (11)(a); and
  - (ii) shareholders' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.
- (12) "Consolidated GAAP net worth" means the consolidated shareholders' or members' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.
- (13) "Controlled unaffiliated business" means a business entity:
- (a)
    - (i) in the case of a pure captive insurance company, that is not in the corporate or limited liability company system of a parent or the parent's affiliate; or
    - (ii) in the case of an industrial insured captive insurance company, that is not in the corporate or limited liability company system of an industrial insured or an affiliated company of the industrial insured;
  - (b)

- (i) in the case of a pure captive insurance company, that has a contractual relationship with a parent or affiliate; or
- (ii) in the case of an industrial insured captive insurance company, that has a contractual relationship with an industrial insured or an affiliated company of the industrial insured; and
- (c) whose risks are managed by one of the following in accordance with Subsection 31A-37-106(1)(j):
  - (i) a pure captive insurance company; or
  - (ii) an industrial insured captive insurance company.
- (14) "Department" means the Insurance Department.
- (15) "Industrial insured" means an insured:
  - (a) that produces insurance:
    - (i) by the services of a full-time employee acting as a risk manager or insurance manager; or
    - (ii) using the services of a regularly and continuously qualified insurance consultant;
  - (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and
  - (c) that has at least 25 full-time employees.
- (16) "Industrial insured captive insurance company" means a business entity that:
  - (a) insures risks of the industrial insureds that comprise the industrial insured group; and
  - (b) may insure the risks of:
    - (i) an affiliated company of an industrial insured; or
    - (ii) a controlled unaffiliated business of:
      - (A) an industrial insured; or
      - (B) an affiliated company of an industrial insured.
- (17) "Industrial insured group" means:
  - (a) a group of industrial insureds that collectively:
    - (i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated or organized as a limited liability company as a stock insurer; or
    - (ii) have complete voting control over an industrial insured captive insurance company incorporated or organized as a limited liability company as a mutual insurer;
  - (b) a group that is:
    - (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and
    - (ii) taxable under this title as a:
      - (A) stock corporation; or
      - (B) mutual insurer; or
  - (c) a group that has complete voting control over an industrial captive insurance company formed as a limited liability company.
- (18) "Member organization" means a person that belongs to an association.
- (19) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50% of:
  - (a) the outstanding voting securities of a pure captive insurance company; or
  - (b) the pure captive insurance company, if the pure captive insurance company is formed as a limited liability company.
- (20) "Participant" means an entity that is insured by a sponsored captive insurance company:
  - (a) if the losses of the participant are limited through a participant contract to the assets of a protected cell; and
  - (b)
    - (i) the entity is permitted to be a participant under Section 31A-37-403; or

- (ii) the entity is an affiliate of an entity permitted to be a participant under Section 31A-37-403.
- (21) "Participant contract" means a contract by which a sponsored captive insurance company:
  - (a) insures the risks of a participant; and
  - (b) limits the losses of the participant to the assets of a protected cell.
- (22) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.
- (23) "Pure captive insurance company" means a business entity that insures risks of a parent or affiliate of the business entity.
- (24) "Special purpose financial captive insurance company" is as defined in Section 31A-37a-102.
- (25) "Sponsor" means an entity that:
  - (a) meets the requirements of Section 31A-37-402; and
  - (b) is approved by the commissioner to:
    - (i) provide all or part of the capital and surplus required by applicable law in an amount of not less than \$350,000, which amount the commissioner may increase by order if the commissioner considers it necessary; and
    - (ii) organize and operate a sponsored captive insurance company.
- (26) "Sponsored captive insurance company" means a captive insurance company:
  - (a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;
  - (b) that is formed or holding a certificate of authority under this chapter;
  - (c) that insures the risks of a separate participant through the contract; and
  - (d) that segregates each participant's liability through one or more protected cells.
- (27) "Treasury rates" means the United States Treasury strip asked yield as published in the Wall Street Journal as of a balance sheet date.

Amended by Chapter 138, 2016 General Session

**31A-37-103 Chapter exclusivity.**

- (1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter, a provision of this title other than this chapter does not apply to a captive insurance company.
- (2) To the extent that a provision of the following does not contradict this chapter, the provision applies to a captive insurance company that receives a certificate of authority under this chapter:
  - (a) Chapter 2, Administration of the Insurance Laws;
  - (b) Chapter 4, Insurers in General;
  - (c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
  - (d) Chapter 14, Foreign Insurers;
  - (e) Chapter 16, Insurance Holding Companies;
  - (f) Chapter 17, Determination of Financial Condition;
  - (g) Chapter 18, Investments;
  - (h) Chapter 19a, Utah Rate Regulation Act;
  - (i) Chapter 27, Delinquency Administrative Action Provisions; and
  - (j) Chapter 27a, Insurer Receivership Act.
- (3) In addition to this chapter, and subject to Section 31A-37a-103:
  - (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to a special purpose financial captive insurance company; and

- (b) for purposes of a special purpose financial captive insurance company, a reference in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial Captive Insurance Company Act.
- (4) In addition to this chapter, an industrial group captive insurance company formed as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to the extent that this chapter is silent regarding regulation of risk retention groups conducting business in the state.

Amended by Chapter 138, 2016 General Session

**31A-37-104 Applicability of reorganization, receivership, and injunction authority.**

- (1) Except as provided in Chapter 37a, Special Purpose Financial Captive Insurance Company Act, and Subsection (2), Chapter 27a, Insurer Receivership Act, applies to a captive insurance company formed or holding a certificate of authority under this chapter.
- (2) In the case of a sponsored captive insurance company:
  - (a) the assets of a protected cell may not be used to pay an expense or claim other than one attributable to the protected cell; and
  - (b) the capital and surplus of the sponsored captive insurance company:
    - (i) shall at all times be available to pay:
      - (A) an expense of the sponsored captive insurance company; or
      - (B) a claim against the sponsored captive insurance company; and
    - (ii) may not be used to pay an expense or claim attributable to a protected cell.

Amended by Chapter 302, 2008 General Session

**31A-37-105 Operation of a branch captive insurance company.**

Except as otherwise provided in this chapter, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner under Section 31A-37-106.

Amended by Chapter 297, 2011 General Session

**31A-37-106 Authority to make rules -- Authority to issue orders.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to:
  - (a) determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company;
  - (b) require a statement, document, or information that a captive insurance company shall provide to the commissioner to obtain a certificate of authority;
  - (c) determine a factor a captive insurance company shall provide evidence of under Subsection 31A-37-202(4)(c);
  - (d) prescribe one or more capital requirements for a captive insurance company in addition to those required under Section 31A-37-204 based on the type, volume, and nature of insurance business transacted by the captive insurance company;
  - (e) waive or modify a requirement for public notice and hearing for the following by a captive insurance company:
    - (i) merger;
    - (ii) consolidation;

- (iii) conversion;
- (iv) mutualization;
- (v) redomestication; or
- (vi) acquisition;
- (f) approve the use of one or more reliable methods of valuation and rating for:
  - (i) an association captive insurance company;
  - (ii) a sponsored captive insurance company; or
  - (iii) an industrial insured group;
- (g) prohibit or limit an investment that threatens the solvency or liquidity of:
  - (i) a pure captive insurance company; or
  - (ii) an industrial insured captive insurance company;
- (h) determine the financial reports a sponsored captive insurance company shall annually file with the commissioner;
- (i) prescribe the required forms and reports under Section 31A-37-501; and
- (j) establish one or more standards to ensure that:
  - (i) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by a pure captive insurance company:
    - (A) a parent; or
    - (B) an affiliated company of a parent; or
  - (ii) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by an industrial insured captive insurance company:
    - (A) an industrial insured; or
    - (B) an affiliated company of the industrial insured.
- (2) Notwithstanding Subsection (1)(j), until the commissioner adopts the rules authorized under Subsection (1)(j), the commissioner may by temporary order grant authority to insure risks to:
  - (a) a pure captive insurance company; or
  - (b) an industrial insured captive insurance company.
- (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a captive insurance company as necessary to enable the commissioner to secure compliance with this chapter.

Amended by Chapter 244, 2015 General Session