

Part 2 Certificate of Authority

31A-37-201 Certificate of authority.

The commissioner may issue a certificate of authority to act as an insurer in this state to a captive insurance company that meets the requirements of this chapter.

Enacted by Chapter 251, 2003 General Session

31A-37-202 Permissive areas of insurance.

- (1)
- (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation, certificate of organization, or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.
 - (b) Notwithstanding Subsection (1)(a):
 - (i) a pure captive insurance company may not insure a risk other than a risk of:
 - (A) its parent or affiliate;
 - (B) a controlled unaffiliated business; or
 - (C) a combination of Subsections (1)(b)(i)(A) and (B);
 - (ii) an association captive insurance company may not insure a risk other than a risk of:
 - (A) an affiliate;
 - (B) a member organization of its association; and
 - (C) an affiliate of a member organization of its association;
 - (iii) an industrial insured captive insurance company may not insure a risk other than a risk of:
 - (A) an industrial insured that is part of the industrial insured group;
 - (B) an affiliate of an industrial insured that is part of the industrial insured group; and
 - (C) a controlled unaffiliated business of:
 - (I) an industrial insured that is part of the industrial insured group; or
 - (II) an affiliate of an industrial insured that is part of the industrial insured group;
 - (iv) a special purpose captive insurance company may only insure a risk of its parent;
 - (v) a captive insurance company may not provide:
 - (A) personal motor vehicle insurance coverage;
 - (B) homeowner's insurance coverage; or
 - (C) a component of a coverage described in this Subsection (1)(b)(v); and
 - (vi) a captive insurance company may not accept or cede reinsurance except as provided in Section 31A-37-303.
 - (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a special purpose captive insurance company may provide:
 - (i) insurance;
 - (ii) reinsurance; or
 - (iii) both insurance and reinsurance.
- (2) To conduct insurance business in this state a captive insurance company shall:
- (a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state;
 - (b) hold at least once each year in this state:
 - (i) a board of directors meeting;

- (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or
- (iii) in the case of a limited liability company, a meeting of the managers;
- (c) maintain in this state:
 - (i) the principal place of business of the captive insurance company; or
 - (ii) in the case of a branch captive insurance company, the principal place of business for the branch operations of the branch captive insurance company; and
- (d) except as provided in Subsection (3), appoint a resident registered agent to accept service of process and to otherwise act on behalf of the captive insurance company in this state.
- (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner is the agent of the captive insurance company upon whom process, notice, or demand may be served.
- (4)
 - (a) Before receiving a certificate of authority, a captive insurance company:
 - (i) formed as a corporation shall file with the commissioner:
 - (A) a certified copy of:
 - (I) articles of incorporation or the charter of the corporation; and
 - (II) bylaws of the corporation;
 - (B) a statement under oath of the president and secretary of the corporation showing the financial condition of the corporation; and
 - (C) any other statement or document required by the commissioner under Section 31A-37-106;
 - (ii) formed as a reciprocal shall:
 - (A) file with the commissioner:
 - (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;
 - (II) a certified copy of the subscribers' agreement of the reciprocal;
 - (III) a statement under oath of the attorney-in-fact of the reciprocal showing the financial condition of the reciprocal; and
 - (IV) any other statement or document required by the commissioner under Section 31A-37-106; and
 - (B) submit to the commissioner for approval a description of the:
 - (I) coverages;
 - (II) deductibles;
 - (III) coverage limits;
 - (IV) rates; and
 - (V) any other information the commissioner requires under Section 31A-37-106; and
 - (iii) formed as a limited liability company shall file with the commissioner:
 - (A) a certified copy of the certificate of organization and the operating agreement of the organization;
 - (B) a statement under oath of the president and secretary of the organization showing the financial condition of the organization;
 - (C) evidence that the limited liability company is manager-managed; and
 - (D) any other statement or document required by the commissioner under Section 31A-37-106.
 - (b)
 - (i) If there is a subsequent material change in an item in the description required under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive

- insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).
- (ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner approves a revision of the description.
 - (iii) A reciprocal captive insurance company shall inform the commissioner of a material change in a rate within 30 days of the adoption of the change.
- (c) In addition to the information required by Subsection (4)(a), an applicant captive insurance company shall file with the commissioner evidence of:
- (i) the amount and liquidity of the assets of the applicant captive insurance company relative to the risks to be assumed by the applicant captive insurance company;
 - (ii) the adequacy of the expertise, experience, and character of the person who will manage the applicant captive insurance company;
 - (iii) the overall soundness of the plan of operation of the applicant captive insurance company;
 - (iv) the adequacy of the loss prevention programs for the following of the applicant captive insurance company:
 - (A) a parent;
 - (B) a member organization; or
 - (C) an industrial insured; and
 - (v) any other factor the commissioner:
 - (A) adopts by rule under Section 31A-37-106; and
 - (B) considers relevant in ascertaining whether the applicant captive insurance company will be able to meet the policy obligations of the applicant captive insurance company.
- (d) In addition to the information required by Subsections (4)(a), (b), and (c), an applicant sponsored captive insurance company shall file with the commissioner:
- (i) a business plan at the level of detail required by the commissioner under Section 31A-37-106 demonstrating:
 - (A) the manner in which the applicant sponsored captive insurance company will account for the losses and expenses of each protected cell; and
 - (B) the manner in which the applicant sponsored captive insurance company will report to the commissioner the financial history, including losses and expenses, of each protected cell;
 - (ii) a statement acknowledging that the applicant sponsored captive insurance company will make all financial records of the applicant sponsored captive insurance company, including records pertaining to a protected cell, available for inspection or examination by the commissioner;
 - (iii) a contract or sample contract between the applicant sponsored captive insurance company and a participant; and
 - (iv) evidence that expenses will be allocated to each protected cell in an equitable manner.
- (5)
- (a) Information submitted pursuant to Subsection (4) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
 - (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner may disclose information submitted pursuant to Subsection (4) to a public official having jurisdiction over the regulation of insurance in another state if:
 - (i) the public official receiving the information agrees in writing to maintain the confidentiality of the information; and
 - (ii) the laws of the state in which the public official serves require the information to be confidential.

- (c) This Subsection (5) does not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.
- (6)
 - (a) A captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and 63J-1-504:
 - (i) a fee for examining, investigating, and processing, by a department employee, of an application for a certificate of authority made by a captive insurance company;
 - (ii) a fee for obtaining a certificate of authority for the year the captive insurance company is issued a certificate of authority by the department; and
 - (iii) a certificate of authority renewal fee.
 - (b) The commissioner may:
 - (i) assign a department employee or retain legal, financial, and examination services from outside the department to perform the services described in:
 - (A) Subsection (6)(a); and
 - (B) Section 31A-37-502; and
 - (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the applicant captive insurance company.
- (7) If the commissioner is satisfied that the documents and statements filed by the applicant captive insurance company comply with this chapter, the commissioner may grant a certificate of authority authorizing the company to do insurance business in this state.
- (8) A certificate of authority granted under this section expires annually and shall be renewed by July 1 of each year.

Amended by Chapter 244, 2015 General Session

31A-37-203 Deceptive name prohibited.

A captive insurance company may not adopt a name that is:

- (1) the same as any other existing business name registered in this state;
- (2) deceptively similar to any other existing business name registered in this state; or
- (3) likely to be:
 - (a) confused with any other existing business name registered in this state; or
 - (b) mistaken for any other existing business name registered in this state.

Enacted by Chapter 251, 2003 General Session

31A-37-204 Paid-in capital -- Other capital.

- (1)
 - (a) The commissioner may not issue a certificate of authority to a company described in Subsection (1)(c) unless the company possesses and thereafter maintains unimpaired paid-in capital and unimpaired paid-in surplus of:
 - (i) in the case of a pure captive insurance company, not less than \$250,000;
 - (ii) in the case of an association captive insurance company incorporated as a stock insurer, not less than \$750,000;
 - (iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than \$700,000;
 - (iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of which a minimum of \$350,000 is provided by the sponsor; or

- (v) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.
 - (b) The paid-in capital and surplus required under this Subsection (1) may be in the form of:
 - (i)
 - (A) cash; or
 - (B) cash equivalent;
 - (ii) an irrevocable letter of credit:
 - (A) issued by:
 - (I) a bank chartered by this state; or
 - (II) a member bank of the Federal Reserve System; and
 - (B) approved by the commissioner; or
 - (iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).
 - (c) This Subsection (1) applies to:
 - (i) a pure captive insurance company;
 - (ii) a sponsored captive insurance company;
 - (iii) a special purpose captive insurance company;
 - (iv) an association captive insurance company incorporated as a stock insurer; or
 - (v) an industrial insured captive insurance company incorporated as a stock insurer.
- (2)
- (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.
 - (b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:
 - (i) cash;
 - (ii) an irrevocable letter of credit issued by:
 - (A) a bank chartered by this state; or
 - (B) a member bank of the Federal Reserve System; or
 - (iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).
- (3)
- (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:
 - (i) funded by an irrevocable letter of credit or other acceptable asset; and
 - (ii) in the United States for the benefit of:
 - (A) United States policyholders; and
 - (B) United States ceding insurers under:
 - (I) insurance policies issued; or
 - (II) reinsurance contracts issued or assumed.
 - (b) The amount of the security required under this Subsection (3) shall be no less than:
 - (i) the capital and surplus required by this chapter; and
 - (ii) the reserves on the insurance policies or reinsurance contracts, including:
 - (A) reserves for losses;
 - (B) allocated loss adjustment expenses;
 - (C) incurred but not reported losses; and
 - (D) unearned premiums with regard to business written through branch operations.
 - (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this

section by the same amount as the security posted if the security remains posted with the reinsurer.

- (4)
 - (a) A captive insurance company may not pay the following without the prior approval of the commissioner:
 - (i) a dividend out of capital or surplus in excess of the limits under Section 16-10a-640; or
 - (ii) a distribution with respect to capital or surplus in excess of the limits under Section 16-10a-640.
 - (b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital or surplus in excess of:
 - (i) amounts specified by the commissioner under Section 31A-37-106; or
 - (ii) determined in accordance with formulas approved by the commissioner under Section 31A-37-106.
- (5) Notwithstanding Subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a certificate of authority unless the captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.
- (6)
 - (a) The commissioner may prescribe additional unimpaired paid-in surplus based upon the type, volume, and nature of the insurance business transacted.
 - (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the form of an irrevocable letter of credit issued by:
 - (i) a bank chartered by this state; or
 - (ii) a member bank of the Federal Reserve System.

Amended by Chapter 138, 2016 General Session