

Part 5 Department Enforcement

31A-37-501 Reports to commissioner.

- (1) A captive insurance company is not required to make a report except those provided in this chapter.
- (2)
 - (a) Before March 1 of each year, a captive insurance company shall submit to the commissioner a report of the financial condition of the captive insurance company, verified by oath of one of the executive officers of the captive insurance company.
 - (b) Except as provided in Section 31A-37-204, a captive insurance company shall report:
 - (i) using generally accepted accounting principles, except to the extent that the commissioner requires, approves, or accepts the use of a statutory accounting principle;
 - (ii) using a useful or necessary modification or adaptation to an accounting principle that is required, approved, or accepted by the commissioner for the type of insurance and kind of insurer to be reported upon; and
 - (iii) supplemental or additional information required by the commissioner.
 - (c) Except as otherwise provided:
 - (i) a licensed captive insurance company shall file the report required by Section 31A-4-113; and
 - (ii) an industrial insured group shall comply with Section 31A-4-113.5.
- (3)
 - (a) A pure captive insurance company may make written application to file the required report on a fiscal year end that is consistent with the fiscal year of the parent company of the pure captive insurance company.
 - (b) If the commissioner grants an alternative reporting date for a pure captive insurance company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal year end.
- (4)
 - (a) Sixty days after the fiscal year end, a branch captive insurance company shall file with the commissioner a copy of the reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two of the alien captive insurance company's executive officers.
 - (b) If the commissioner is satisfied that the annual report filed by the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the annual statement required for a captive insurance company under this section with respect to business written in the alien or foreign jurisdiction.
 - (c) A waiver by the commissioner under Subsection (4)(b):
 - (i) shall be in writing; and
 - (ii) is subject to public inspection.
- (5) Before March 1 of each year, a sponsored cell captive insurance company shall submit to the commissioner a consolidated report of the financial condition of each individual protected cell, including a financial statement for each protected cell.

Amended by Chapter 138, 2016 General Session

31A-37-502 Examination.

- (1)
 - (a) As provided in this section, the commissioner, or a person appointed by the commissioner, shall examine each captive insurance company in each five-year period.
 - (b) The five-year period described in Subsection (1)(a) shall be determined on the basis of five full annual accounting periods of operation.
 - (c) The examination is to be made as of:
 - (i) December 31 of the full five-year period; or
 - (ii) the last day of the month of an annual accounting period authorized for a captive insurance company under this section.
 - (d) In addition to an examination required under this Subsection (1), the commissioner, or a person appointed by the commissioner may examine a captive insurance company whenever the commissioner determines it to be prudent.
- (2) During an examination under this section the commissioner, or a person appointed by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance company to ascertain:
 - (a) the financial condition of the captive insurance company;
 - (b) the ability of the captive insurance company to fulfill the obligations of the captive insurance company; and
 - (c) whether the captive insurance company has complied with this chapter.
- (3) The commissioner may accept a comprehensive annual independent audit in lieu of an examination:
 - (a) of a scope satisfactory to the commissioner; and
 - (b) performed by an independent auditor approved by the commissioner.
- (4) A captive insurance company that is inspected and examined under this section shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an inspection and examination.

Amended by Chapter 138, 2016 General Session

Amended by Chapter 348, 2016 General Session

31A-37-503 Classification and use of records.

- (1) The following shall be classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act:
 - (a) examination reports under this section;
 - (b) preliminary examination reports or results under this section;
 - (c) working papers for an examination conducted under this section;
 - (d) recorded information for an examination conducted under this section; and
 - (e) documents and copies of documents produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination conducted under this section.
- (2) This section does not prevent the commissioner from using the information provided under this section in furtherance of the commissioner's regulatory authority under this title.
- (3) Notwithstanding other provisions of this section, the commissioner may grant access to the information provided under this section to:
 - (a) public officers having jurisdiction over the regulation of insurance in any other state or country; or

- (b) law enforcement officers of this state or any other state or agency of the federal government, if the officers receiving the information agree in writing to hold the information in a manner consistent with this section.

Amended by Chapter 382, 2008 General Session

31A-37-504 Examinations for branch and alien captive insurance companies.

- (1) The examination for a branch captive insurance company shall be of branch business and branch operations only, if the branch captive insurance company:
 - (a) provides annually to the commissioner a certificate of compliance, or an equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed; and
 - (b) demonstrates to the commissioner's satisfaction that the branch captive insurance company is operating in sound financial condition in accordance with the applicable laws and regulations of the jurisdiction in which the branch captive insurance company is formed.
- (2) As a condition of obtaining a certificate of authority, an alien captive insurance company shall grant authority to the commissioner to examine the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

Amended by Chapter 284, 2011 General Session

31A-37-505 Suspension or revocation -- Grounds.

- (1) The commissioner may suspend or revoke the certificate of authority of a captive insurance company to conduct an insurance business in this state for:
 - (a) insolvency or impairment of capital or surplus;
 - (b) failure to meet the requirements of Section 31A-37-204;
 - (c) refusal or failure to submit:
 - (i) an annual report required by Section 31A-37-501; or
 - (ii) any other report or statement required by law or by lawful order of the commissioner;
 - (d) failure to comply with the charter, bylaws, or other organizational document of the captive insurance company;
 - (e) failure to submit to:
 - (i) an examination under Section 31A-37-502; or
 - (ii) any legal obligation relative to an examination under Section 31A-37-502;
 - (f) refusal or failure to pay the cost of examination under Section 31A-37-502;
 - (g) use of methods that, although not otherwise specifically prohibited by law, render:
 - (i) the operation of the captive insurance company detrimental to the public or the policyholders of the captive insurance company; or
 - (ii) the condition of the captive insurance company unsound with respect to the public or to the policyholders of the captive insurance company; or
 - (h) failure otherwise to comply with laws of this state.
- (2) Notwithstanding any other provision of this title, if the commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate of authority of the captive insurance company if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company to revoke the certificate of authority.

Amended by Chapter 244, 2015 General Session