

## Chapter 37 Captive Insurance Companies Act

### 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

## **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

### **Part 3 Requirements**

#### **31A-37-301 Incorporation -- Organization.**

- (1) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:
  - (a) divided into shares; and
  - (b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.
- (2) A pure captive insurance company or a sponsored captive insurance company formed as a limited liability company shall be organized as a members' interest insurer with the capital of the pure captive insurance company or sponsored captive insurance company:
  - (a) divided into interests; and
  - (b) held by the members of the pure captive insurance company or sponsored captive insurance company.
- (3) An association captive insurance company or an industrial insured captive insurance company may be:
  - (a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:
    - (i) divided into shares; and
    - (ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;
  - (b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or
  - (c) organized as a reciprocal.
- (4) A captive insurance company formed as a corporation may not have fewer than three incorporators of whom one shall be a resident of this state.
- (5) A captive insurance company formed as a limited liability company may not have fewer than three organizers of whom one shall be a resident of this state.

- (6)
  - (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.
  - (b) In considering a request for a certificate under Subsection (6)(a), the commissioner shall consider:
    - (i) the character, reputation, financial standing, and purposes of the incorporators;
    - (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
    - (iii) any information in:
      - (A) the application for a certificate of authority; or
      - (B) the department's files; and
    - (iv) other aspects that the commissioner considers advisable.
- (7)
  - (a) Before a captive insurance company formed as a limited liability company files the limited liability company's certificate of organization with the Division of Corporations and Commercial Code, the limited liability company shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed limited liability company will promote the general good of the state.
  - (b) In considering a request for a certificate under Subsection (7)(a), the commissioner shall consider:
    - (i) the character, reputation, financial standing, and purposes of the organizers;
    - (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the managers;
    - (iii) any information in:
      - (A) the application for a certificate of authority; or
      - (B) the department's files; and
    - (iv) other aspects that the commissioner considers advisable.
- (8)
  - (a) A captive insurance company formed as a corporation shall file with the Division of Corporations and Commercial Code:
    - (i) the captive insurance company's articles of incorporation;
    - (ii) the certificate issued pursuant to Subsection (6); and
    - (iii) the fees required by the Division of Corporations and Commercial Code.
  - (b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection (6) for a captive insurance company that complies with this section.
- (9)
  - (a) A captive insurance company formed as a limited liability company shall file with the Division of Corporations and Commercial Code:
    - (i) the captive insurance company's certificate of organization;
    - (ii) the certificate issued pursuant to Subsection (7); and
    - (iii) the fees required by the Division of Corporations and Commercial Code.
  - (b) The Division of Corporations and Commercial Code shall file both the certificate of organization and the certificate described in Subsection (7) for a captive insurance company that complies with this section.
- (10)

- (a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.
  - (b) In considering a request for a certificate under Subsection (10)(a), the commissioner shall consider:
    - (i) the character, reputation, financial standing, and purposes of the incorporators;
    - (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
    - (iii) any information in:
      - (A) the application for a certificate of authority; or
      - (B) the department's files; and
    - (iv) other aspects that the commissioner considers advisable.
- (11)
- (a) An alien captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:
    - (i) the home state of the alien captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that state; and
    - (ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.
  - (b) After the commissioner issues a certificate under Subsection (11)(a) to an alien captive insurance company, the alien captive insurance company may register to do business in this state.
- (12) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.
- (13) At least one of the managers of a limited liability company shall be a resident of this state.
- (14) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.
- (15)
- (a) A captive insurance company formed as a corporation under this chapter has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.
  - (b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.
  - (c) Except as provided in Subsection (15)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.
  - (d) Notwithstanding Subsection (15)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.
  - (e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.
- (16)
- (a) A captive insurance company formed as a limited liability company under this chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act,

or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405, as well as the applicable provisions in this chapter.

- (b) If a conflict exists between a provision of the limited liability company law and a provision of this chapter, this chapter controls.
  - (c) The provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.
  - (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.
  - (e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.
- (17)
- (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.
  - (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.
  - (c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.
  - (d) In addition to the provisions of this Subsection (17), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.

- (18)
- (a) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may not authorize a quorum of a board of directors to consist of fewer than one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.
  - (b) The certificate of organization of a captive insurance company formed as a limited liability company may not authorize a quorum of a board of managers to consist of fewer than one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

Amended by Chapter 348, 2016 General Session

**31A-37-302 Investment requirements.**

- (1)
- (a) Except as provided in Subsection (1)(b), an association captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in this title.
  - (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating under Section 31A-37-106 for:
    - (i) an association captive insurance company;
    - (ii) a sponsored captive insurance company; or
    - (iii) an industrial insured group.
- (2)
- (a) Except as provided in Subsection (2)(b), a pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in this title.

- (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section 31A-37-106, 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.
- (3)
  - (a)
    - (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may not make loans to:
      - (A) the parent company of the captive insurance company; or
      - (B) an affiliate of the captive insurance company.
    - (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make loans to:
      - (A) the parent company of the pure captive insurance company; or
      - (B) an affiliate of the pure captive insurance company.
  - (b) A loan under Subsection (3)(a):
    - (i) may be made only on the prior written approval of the commissioner; and
    - (ii) shall be evidenced by a note in a form approved by the commissioner.
  - (c) A pure captive insurance company may not make a loan from the paid-in capital required under Subsection 31A-37-204(1).

Amended by Chapter 244, 2015 General Session

**31A-37-303 Reinsurance.**

- (1) A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.
- (2)
  - (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or if the captive insurance company complies with other requirements as the commissioner may establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) Unless the reinsurer is in compliance with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or a rule adopted under Subsection (2)(a), a captive insurance company may not take credit for:
    - (i) reserves on risks ceded to a reinsurer; or
    - (ii) portions of risks ceded to a reinsurer.

Amended by Chapter 138, 2016 General Session

**31A-37-304 Rating organization.**

A captive insurance company is not required to join a rating organization.

Enacted by Chapter 251, 2003 General Session

**31A-37-305 Contributions to guaranty or insolvency fund prohibited.**

- (1) A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may not join or contribute financially to any of the following in this state:
  - (a) a plan;

- (b) a pool;
  - (c) an association;
  - (d) a guaranty fund; or
  - (e) an insolvency fund.
- (2) A captive insurance company, the insured of a captive insurance company, the parent of a captive insurance company, an affiliate of a captive insurance company, a member organization of an association captive insurance company, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the captive insurance company, may not receive a benefit from:
- (a) a plan;
  - (b) a pool;
  - (c) an association;
  - (d) a guaranty fund for claims arising out of the operations of the captive insurance company; or
  - (e) an insolvency fund for claims arising out of the operations of the captive insurance company.

Enacted by Chapter 251, 2003 General Session

**31A-37-306 Conversion or merger.**

- (1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be:
- (a) converted to a reciprocal insurer in accordance with a plan and this section; or
  - (b) merged with and into a reciprocal insurer in accordance with a plan and this section.
- (2) An association captive insurance company or industrial group formed as a limited liability company may be:
- (a) converted to a reciprocal insurer in accordance with a plan and this section; or
  - (b) merged with and into a reciprocal insurer in accordance with a plan and this section.
- (3) A plan for a conversion or merger under this section:
- (a) shall be fair and equitable to:
    - (i) the shareholders, in the case of a stock insurer;
    - (ii) the policyholders, in the case of a mutual insurer; and
    - (iii) the members, in the case of a limited liability company insurer; and
  - (b) shall provide for the purchase of:
    - (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting shareholder; or
    - (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting policyholder.
- (4) In the case of a conversion authorized under Subsection (1) or (2):
- (a) the conversion shall be accomplished under a reasonable plan and procedure that are approved by the commissioner;
  - (b) the commissioner may not approve the plan of conversion under this section unless the plan:
    - (i) satisfies Subsections (3) and (7);
    - (ii) provides for the conversion of existing stockholder, policyholder, or member interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder, policyholder, or member interests in the stock or mutual insurer or limited liability company; and
    - (iii) is approved:

- (A) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
  - (B) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or
  - (C) in the case of a limited liability company insurer, by a majority of the voting managers represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
- (c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under Section 31A-37-301;
  - (d) if the commissioner approves a plan of conversion, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;
  - (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and
  - (f) upon the effectiveness of the conversion:
    - (i) the corporate existence of the converting insurer shall cease; and
    - (ii) the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.
- (5) A merger authorized under Subsection (1) or (2) shall be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:
- (a) the plan or merger shall satisfy Subsection (3);
  - (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;
  - (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;
  - (d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;
  - (e) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with the standards under Section 31A-37-301;
  - (f) notwithstanding Section 31A-37-204, the commissioner may permit the formation, without capital and surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and
  - (g) an alien insurer may be a party to a merger authorized under Subsection (1) or (2) if:
    - (i) the requirements for the merger between a domestic and a foreign insurer under Chapter 16, Insurance Holding Companies, are applied to the merger; and
    - (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding Companies.
- (6) If the commissioner approves the articles of merger under this section:
- (a) the commissioner shall endorse the commissioner's approval on the articles; and

- (b) the surviving insurer shall present the name to the Division of Corporations and Commercial Code.
- (7)
- (a) Except as provided in Subsection (7)(b), a conversion authorized under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.
  - (b) Notwithstanding Subsection (7)(a), the commissioner may waive or modify the requirements for the hearing.
  - (c) If a notice of hearing is required, but no hearing is requested, after notice has been given under Subsection (7)(a), the commissioner may cancel the hearing.

Amended by Chapter 244, 2015 General Session

## **Part 4**

### **Sponsored Captive Insurance Companies**

#### **31A-37-401 Sponsored captive insurance companies -- Formation.**

- (1) One or more sponsors may form a sponsored captive insurance company under this chapter.
- (2) A sponsored captive insurance company formed under this chapter may establish and maintain a protected cell to insure risks of a participant if:
  - (a) the shareholders of a sponsored captive insurance company are limited to:
    - (i) the participants of the sponsored captive insurance company; and
    - (ii) the sponsors of the sponsored captive insurance company;
  - (b) each protected cell is accounted for separately on the books and records of the sponsored cell captive insurance company to reflect:
    - (i) the financial condition of each individual protected cell;
    - (ii) the results of operations of each individual protected cell;
    - (iii) the net income or loss of each individual protected cell;
    - (iv) the dividends or other distributions to participants of each individual protected cell; and
    - (v) other factors that may be:
      - (A) provided in the participant contract; or
      - (B) required by the commissioner;
  - (c) the assets of a protected cell are not chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
  - (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive insurance company between or among any of the protected cells of the sponsored captive insurance company without the consent of the protected cells;
  - (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a protected cell to a sponsor or participant without the commissioner's approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
  - (f) a sponsored captive insurance company annually files with the commissioner financial reports the commissioner requires under Section 31A-37-106, including accounting statements detailing the financial experience of each protected cell;

- (g) a sponsored captive insurance company notifies the commissioner in writing within 10 business days of a protected cell that is insolvent or otherwise unable to meet the claim or expense obligations of the protected cell;
- (h) a participant contract does not take effect without the commissioner's prior written approval;
- (i) the addition of each new protected cell and withdrawal of a participant of any existing protected cell does not take effect without the commissioner's prior written approval; and
- (j)
  - (i) a protected cell 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:
    - (A) a fee for examining, investigating, and processing by a department employee of an application for a certificate of authority made by a protected cell captive insurance company;
    - (B) a fee for obtaining a certificate of authority for the year the protected cell captive insurance company is issued a certificate of authority by the department; and
    - (C) a certificate of authority renewal fee; and
  - (ii) a protected cell may be created by the sponsor or the sponsor may create a pooling insurance arrangement to provide for pooling of risks to allow for risk distribution upon written approval from every protected cell under the sponsor and written approval of the commissioner.

Amended by Chapter 244, 2015 General Session

**31A-37-402 Sponsored captive insurance companies -- Certificate of authority mandatory.**

- (1) A sponsor of a sponsored captive insurance company shall be:
  - (a) an insurer authorized or approved under the laws of a state;
  - (b) a reinsurer authorized or approved under the laws of a state;
  - (c) a captive insurance company holding a certificate of authority under this chapter;
  - (d) an insurance holding company that:
    - (i) controls an insurer licensed pursuant to the laws of a state; and
    - (ii) is subject to registration pursuant to the holding company system of laws of the state of domicile of the insurer described in Subsection (1)(d)(i);
  - (e) an approved captive management firm in Utah or its affiliates; or
  - (f) another person approved by the commissioner after finding that the approval of the person as a sponsor is not inconsistent with the purposes of this chapter.
- (2)
  - (a) The business written by a sponsored captive insurance company with respect to a protected cell shall be fronted by the sponsor insurance company through a controlled unaffiliated contract or an insurer that is:
    - (i) authorized or approved:
      - (A) under the laws of a state; or
      - (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of a state;
    - (ii) reinsured by a reinsurer authorized or approved by this state; or
    - (iii) subject to Subsection (2)(b), secured by a trust fund:
      - (A) in the United States;
      - (B) for the benefit of policyholders and claimants;

- (C) funded by an irrevocable letter of credit or other asset acceptable to the commissioner;  
and
  - (D) held by the sponsor as provided in Subsection 31A-17-404(1).
- (b)
- (i) The amount of security provided by the trust fund described in Subsection (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund, including:
    - (A) reserves for losses;
    - (B) allocated loss adjustment expenses;
    - (C) incurred but unreported losses; and
    - (D) unearned premiums for business written through the participant's protected cell.
  - (ii) The commissioner may require the sponsored captive insurance company to increase the funding of a trust established pursuant to this Subsection (2).
  - (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of credit, the letter of credit shall be established, issued, or confirmed by a bank that is:
    - (A) chartered in this state;
    - (B) a member of the federal reserve system; or
    - (C) chartered by another state if that state-chartered bank is acceptable to the commissioner.
  - (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a form and upon terms approved by the commissioner.
- (3) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Amended by Chapter 244, 2015 General Session

**31A-37-403 Participants in sponsored captive insurance companies.**

- (1) Any of the following may be a participant in a sponsored captive insurance company holding a certificate of authority under this chapter:
- (a) an association;
  - (b) a corporation that is for profit or nonprofit;
  - (c) a limited liability company;
  - (d) a partnership;
  - (e) a trust; or
  - (f) any other business entity.
- (2) A sponsor may be a participant in a sponsored captive insurance company.
- (3) A participant need not be:
- (a) a shareholder of the sponsored captive insurance company; or
  - (b) an affiliate of the sponsored captive insurance company.
- (4) A participant shall insure only the participant's own risks through a sponsored captive insurance company unless otherwise approved by the commissioner.

Amended by Chapter 244, 2015 General Session

**31A-37-404 Discounting of loss and loss adjustment expense reserves.**

- (1) A sponsored captive insurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.
- (2)

- (a) A sponsored captive insurance company shall annually file with the department an actuarial opinion provided by an independent actuary on loss and loss adjustment expense reserves.
- (b) The independent actuary described in Subsection (2)(a) may not be an employee of:
  - (i) the company filing the actuarial opinion; or
  - (ii) an affiliate of the company filing the actuarial opinion.
- (3) The commissioner may disallow the discounting of reserves by a sponsored captive insurance company if the sponsored captive insurance company violates this title.

Amended by Chapter 244, 2015 General Session

## **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