

CAPTIVE INSURANCE LAW AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends the Insurance Code by modifying provisions related to captive insurance companies.

Highlighted Provisions:

This bill:

- ▶ eliminates the premium tax on a policy or contract written by a captive insurance company and replaces it with a fee that is paid annually by a captive insurance company to obtain or renew a certificate of authority;
 - ▶ requires the Insurance Commissioner to set the fee in accordance with statute and after considering whether the fee amount is competitive with those in other states;
 - ▶ creates a dedicated credit funded by the fees received by the department from captive insurance companies;
 - ▶ designates how monies from the dedicated credit shall be used by the department;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation to January 1, 2005.

Utah Code Sections Affected:

AMENDS:

31A-3-304, as enacted by Chapter 251, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-3-304** is amended to read:

31A-3-304. Annual fees -- Other taxes or fees prohibited.

~~[(1) A captive insurance company, as defined in Section 31A-37-102, is subject to a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders, at the rate of:]~~

~~[(a) .4% on the first \$20,000,000;]~~

~~[(b) .3% on the next \$20,000,000;]~~

~~[(c) .2% on the next \$20,000,000; and]~~

~~[(d) .075% on each dollar thereafter.]~~

~~[(2) (a) A captive insurance company is subject to a tax on assumed reinsurance premium at the rate of:]~~

~~[(i) .225% on the first \$20,000,000 of assumed reinsurance premium;]~~

~~[(ii) .15% on the next \$20,000,000 of assumed reinsurance premium;]~~

~~[(iii) .050% on the next \$20,000,000 of assumed reinsurance premium; and]~~

~~[(iv) .025% of each dollar thereafter of assumed reinsurance premium.]~~

~~[(b) Notwithstanding Subsection (2)(a), reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis under Subsection (1).]~~

~~[(c) A premium tax under this section is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if:]~~

~~[(i) the transaction is part of a plan to discontinue the operations of the other insurer; and]~~

~~[(ii) the intent of the parties to the transaction is to renew or maintain business with the~~

~~captive insurance company.]~~

~~[(3)] (1) (a) [If the aggregate taxes to be paid by a captive insurance company calculated under Subsections (1) and (2) amount to less than \$5,000 in any year, the] A captive insurance company shall pay [a tax of \$5,000 for that year] an annual fee imposed under this section to obtain or renew a certificate of authority.~~

~~(b) The commissioner shall:~~

~~(i) determine the annual fee pursuant to Sections 31A-3-103 and 63-38-3.2; and~~

~~(ii) consider whether the annual fee is competitive with fees imposed by other states on captive insurance companies.~~

~~[(4)] (2) A captive insurance company that fails to [make returns or to] pay [all taxes] the fee required by this section is subject to the relevant sanctions of this title.~~

~~[(5)] Two or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurance company.]~~

~~[(6)] In the case of a branch captive insurance company, as defined in Section 31A-37-102, the tax provided for in this section applies only to the branch business of the company.]~~

~~[(7)] (3) (a) Except as provided in Subsection [(7)] (3)(b), the [tax] fee provided for in this section constitutes [all taxes collectible] the sole tax or fee under the laws of this state [from] that may be otherwise levied or assessed on a captive insurance company, and no other occupation tax or other [taxes] tax or fee may be levied or collected from a captive insurance company by the state or a county, city, or municipality within this state.~~

~~(b) Notwithstanding Subsection [(7)] (3)(a), a captive insurance company is subject to real and personal property taxes.~~

~~[(8)] (4) A captive insurance company shall pay [a tax] the fee imposed by this section to the [State Tax Commission] department by March 31 of each year.~~

~~(5) (a) The funds received pursuant to Subsection (2) shall be deposited into the General Fund as a dedicated credit to be used by the department to:~~

~~(i) administer and enforce Chapter 37, Captive Insurance Companies Act; and~~

(ii) promote the captive insurance industry in Utah.

(b) At the end of each fiscal year, funds received by the department in excess of \$250,000 shall be treated as free revenue in the General Fund.

Section 2. Retrospective operation.

This bill has retrospective operation to January 1, 2005.