

1 **CAPTIVE INSURANCE LAW AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: James A. Dunnigan**

6 **LONG TITLE**

7 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

12 ▶ eliminates the premium tax on a policy or contract written by a captive insurance
13 company and replaces it with a fee that is paid annually by a captive insurance
14 company to obtain or renew a certificate of authority;

15 ▶ requires the Insurance Commissioner to set the fee in accordance with statute and
16 after considering whether the fee amount is competitive with those in other states;

17 ▶ creates a dedicated credit funded by the fees received by the department from
18 captive insurance companies;

19 ▶ designates how monies from the dedicated credit shall be used by the department;
20 and

21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **31A-3-304**, as enacted by Chapter 251, Laws of Utah 2003

29

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

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

32 **31A-3-304. Annual fees -- Other taxes or fees prohibited.**

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

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

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

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

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

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

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

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

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

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

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

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

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

56 ~~[(ii) the intent of the parties to the transaction is to renew or maintain business with the~~
57 ~~captive insurance company.]~~

58 ~~[(3)] (1) (a) [If the aggregate taxes to be paid by a captive insurance company~~

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

62 (b) The commissioner shall:

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

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

66 ~~[(4)]~~ (2) A captive insurance company that fails to [make returns or to] pay [all taxes]
67 the fee required by this section is subject to the relevant sanctions of this title.

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

70 ~~[(6) In the case of a branch captive insurance company, as defined in Section~~
71 ~~31A-37-102, the tax provided for in this section applies only to the branch business of the~~
72 ~~company.]~~

73 ~~[(7)]~~ (3) (a) Except as provided in Subsection [(7)] (3)(b), the [tax] fee provided for in
74 this section constitutes [all taxes collectible] the sole tax or fee under the laws of this state
75 [from] that may be otherwise levied or assessed on a captive insurance company, and no other
76 occupation tax or other [taxes] tax or fee may be levied or collected from a captive insurance
77 company by the state or a county, city, or municipality within this state.

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

80 ~~[(8)]~~ (4) A captive insurance company shall pay [a tax] the fee imposed by this section
81 to the [State Tax Commission] department by March 31 of each year.

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

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

85 (ii) promote the captive insurance industry in Utah.

86 (b) At the end of each fiscal year, funds received by the department in excess of
87 \$250,000 shall be treated as free revenue in the General Fund.

Legislative Review Note

as of 1-7-05 8:55 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0191

Captive Insurance Law Amendments

18-Feb-05

10:24 AM

AMENDED NOTE

State Impact

This bill will generate \$10,000 in FY 05 and \$20,000 in FY 06.

Individual and Business Impact

Companies should save significantly on premium costs.

Office of the Legislative Fiscal Analyst