



General Assembly

January Session, 2019

**Raised Bill No. 1133**

LCO No. 7199



Referred to Committee on FINANCE, REVENUE AND BONDING

Introduced by:  
(FIN)

**AN ACT CONCERNING FOREIGN BRANCH CAPTIVE INSURANCE COMPANIES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-91aa of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective July 1, 2019*):

3 As used in sections 38a-91aa to 38a-91tt, inclusive, and sections 38a-  
4 91ww and 38a-91xx:

5 (1) "Affiliated company" means any company in the same corporate  
6 system as a parent, an industrial insured or a member organization by  
7 virtue of common ownership, control, operation or management.

8 (2) "Agency captive insurance company" means a captive insurance  
9 company that:

10 (A) Is owned or directly or indirectly controlled by one or more  
11 insurance agents or insurance producers licensed in accordance with  
12 sections 38a-702a to 38a-702r, inclusive;

13 (B) Only insures against risks covered by insurance policies sold,  
14 solicited or negotiated through the insurance agents or insurance  
15 producers that own or control such captive insurance company; and

16 (C) Does not insure against risks covered by any health insurance  
17 policy or plan.

18 (3) "Alien captive insurance company" means any insurance  
19 company formed to write insurance business for its parent and  
20 affiliated companies and licensed pursuant to the laws of an alien  
21 jurisdiction that imposes statutory or regulatory standards on  
22 companies transacting the business of insurance in such jurisdiction  
23 that the commissioner deems to be acceptable.

24 (4) "Association" means any legal association of individuals,  
25 corporations, limited liability companies, partnerships, associations or  
26 other entities that has been in continuous existence for at least one  
27 year, where the association itself or some or all of the member  
28 organizations:

29 (A) Directly or indirectly own, control or hold with power to vote all  
30 of the outstanding voting securities or other voting interests of an  
31 association captive insurance company incorporated as a stock insurer;

32 (B) Have complete voting control over an association captive  
33 insurance company incorporated as a mutual corporation or formed as  
34 a limited liability company; or

35 (C) Constitute all of the subscribers of an association captive  
36 insurance company formed as a reciprocal insurer.

37 (5) "Association captive insurance company" means any company  
38 that insures risks of the member organizations of an association, and  
39 includes a company that also insures risks of such member  
40 organizations' affiliated companies or of the association.

41 (6) "Branch business" means any insurance business transacted in

42 this state by a branch captive insurance company.

43 (7) "Branch captive insurance company" means any alien captive  
44 insurance company or foreign captive insurance company licensed by  
45 the commissioner to transact the business of insurance in this state  
46 through a business unit with a principal place of business in this state.

47 (8) "Branch operations" means any business operations in this state  
48 of a branch captive insurance company.

49 (9) "Captive insurance company" means any (A) pure captive  
50 insurance company, agency captive insurance company, association  
51 captive insurance company, industrial insured captive insurance  
52 company, risk retention group, sponsored captive insurance company  
53 or special purpose financial captive insurance company that is  
54 domiciled in this state and formed or licensed under the provisions of  
55 sections 38a-91aa to 38a-91tt, inclusive, or (B) branch captive insurance  
56 company.

57 (10) "Ceding insurer" means an insurance company, approved by  
58 the commissioner and licensed or otherwise authorized to transact the  
59 business of insurance or reinsurance in its state or country of domicile,  
60 that cedes risk to a special purpose financial captive insurance  
61 company pursuant to a reinsurance contract.

62 (11) "Commissioner" means the Insurance Commissioner.

63 (12) "Controlled unaffiliated business" means any person:

64 (A) Who, (i) in the case of a pure captive insurance company, is not  
65 in the corporate system of a parent and the parent's affiliated  
66 companies, or (ii) in the case of an industrial insured captive insurance  
67 company, is not in the corporate system of an industrial insured and  
68 the industrial insured's affiliated companies;

69 (B) Who, (i) in the case of a pure captive insurance company, has an  
70 existing contractual relationship with a parent or one of the parent's

71 affiliated companies, or (ii) in the case of an industrial insured captive  
72 insurance company, has an existing contractual relationship with an  
73 industrial insured or one of the industrial insured's affiliated  
74 companies; and

75 (C) Whose risks are managed by a pure captive insurance company  
76 or an industrial insured captive insurance company, as applicable, in  
77 accordance with section 38a-91qq.

78 (13) "Excess workers' compensation insurance" means, in the case of  
79 an employer that has insured or self-insured its workers' compensation  
80 risks in accordance with applicable state or federal law, insurance in  
81 excess of a specified per-incident or aggregate limit established by the  
82 commissioner.

83 (14) "Foreign captive insurance company" means any insurance  
84 company formed to write insurance business for its parent and  
85 affiliated companies and licensed pursuant to the laws of a foreign  
86 jurisdiction that imposes statutory or regulatory standards on  
87 companies transacting the business of insurance in such jurisdiction  
88 that the commissioner deems to be acceptable.

89 ~~[(14)]~~ (15) "Incorporated protected cell" means a protected cell that is  
90 established as a corporation or a limited liability company, separate  
91 from the sponsored captive insurance company with which it has  
92 entered into a participant contract.

93 ~~[(15)]~~ (16) "Industrial insured" means an insured:

94 (A) Who procures the insurance of any risk or risks by use of the  
95 services of a full-time employee acting as an insurance manager or  
96 buyer;

97 (B) Whose aggregate annual premiums for insurance on all risks  
98 total at least twenty-five thousand dollars; and

99 (C) Who has at least twenty-five full-time employees.

100        [(16)] (17) "Industrial insured captive insurance company" means  
101 any company that insures risks of the industrial insureds that comprise  
102 an industrial insured group, and includes a company that also insures  
103 risks of such industrial insureds' affiliated companies.

104        [(17)] (18) "Industrial insured group" means any group of industrial  
105 insureds that collectively:

106        (A) Directly or indirectly own, control or hold with power to vote all  
107 of the outstanding voting securities or other voting interests of an  
108 industrial insured captive insurance company incorporated as a stock  
109 insurer;

110        (B) Have complete voting control over an industrial insured captive  
111 insurance company incorporated as a mutual corporation or formed as  
112 a limited liability company; or

113        (C) Constitute all of the subscribers of an industrial insured captive  
114 insurance company formed as a reciprocal insurer.

115        [(18)] (19) "Insurance securitization" or "securitization" means a  
116 transaction or a group of related transactions, which may include  
117 capital market offerings, that are effected through related risk transfer  
118 instruments and facilitating administrative agreements, in which all or  
119 part of the result of such transaction is used to fund a special purpose  
120 financial captive insurance company's obligations under a reinsurance  
121 contract with a ceding insurer and by which:

122        (A) A special purpose financial captive insurance company directly  
123 or indirectly obtains proceeds through the issuance of securities by  
124 such company or any other person; or

125        (B) A person provides, for the benefit of a special purpose financial  
126 captive insurance company, one or more letters of credit or other assets  
127 that the commissioner has authorized such company to treat as  
128 admitted assets for purposes of its annual report. "Insurance

129 securitization" or "securitization" does not include the issuance of a  
130 letter of credit for the benefit of the commissioner to satisfy all or part  
131 of a special purpose financial captive insurance company's capital and  
132 surplus requirements under section 38a-91dd.

133 [(19)] (20) "Member organization" means any individual,  
134 corporation, limited liability company, partnership, association or  
135 other entity that belongs to an association.

136 [(20)] (21) "Mutual corporation" means a corporation organized  
137 without stockholders and includes a nonprofit corporation with  
138 members.

139 [(21)] (22) "Parent" means any individual, corporation, limited  
140 liability company, partnership or other entity that directly or indirectly  
141 owns, controls or holds with power to vote more than fifty per cent of  
142 the outstanding voting:

143 (A) Securities of a pure captive insurance company organized as a  
144 stock insurer; or

145 (B) Membership interests of a pure captive insurance company  
146 organized as a nonprofit corporation or as a limited liability company.

147 [(22)] (23) "Participant" means any association, corporation, limited  
148 liability company, partnership, trust or other entity, and any affiliated  
149 company thereof, that is insured by a sponsored captive insurance  
150 company pursuant to a participant contract.

151 [(23)] (24) "Participant contract" means a contract entered into by a  
152 sponsored captive insurance company and a participant by which the  
153 sponsored captive insurance company insures the risks of the  
154 participant and limits the losses of each such participant to its pro rata  
155 share of the assets of one or more protected cells identified in such  
156 participant contract.

157 [(24)] (25) "Protected cell" means a separate account established by a

158 sponsored captive insurance company, in which assets are maintained  
159 for one or more participants in accordance with the terms of one or  
160 more participant contracts to fund the liability of the sponsored  
161 captive insurance company assumed on behalf of such participants as  
162 set forth in such participant contracts.

163 [(25)] (26) "Pure captive insurance company" means any company  
164 that insures risks of its parent and affiliated companies or controlled  
165 unaffiliated business.

166 [(26)] (27) "Reinsurance contract" means a contract entered into by a  
167 special purpose financial captive insurance company and a ceding  
168 insurer by which the special purpose financial captive insurance  
169 company agrees to provide reinsurance to the ceding insurer for risks  
170 associated with the ceding insurer's insurance or reinsurance business.

171 [(27)] (28) "Risk retention group" means a captive insurance  
172 company organized under the laws of this state pursuant to the federal  
173 Liability Risk Retention Act of 1986, 15 USC 3901 et seq., as amended  
174 from time to time, as a stock insurer or mutual corporation, a  
175 reciprocal or other limited liability entity.

176 [(28)] (29) "Security" has the same meaning as provided in section  
177 36b-3 and includes any form of debt obligation, equity, surplus  
178 certificate, surplus note, funding agreement, derivative or other  
179 financial instrument that the commissioner designates as a security for  
180 purposes of sections 38a-91aa to 38a-91tt, inclusive.

181 [(29)] (30) "Special purpose financial captive insurance company"  
182 means a company that is licensed by the commissioner in accordance  
183 with section 38a-91bb, as amended by this act.

184 [(30)] (31) "Special purpose financial captive insurance company  
185 security" means a security issued by (A) a special purpose financial  
186 captive insurance company, or (B) a third party, the proceeds of which  
187 are obtained directly or indirectly by a special purpose financial

188 captive insurance company.

189 [(31)] (32) "Sponsor" means any association, corporation, limited  
190 liability company, partnership, trust or other entity that is approved by  
191 the commissioner to organize and operate a sponsored captive  
192 insurance company and to provide all or part of the required  
193 unimpaired paid-in capital and surplus.

194 [(32)] (33) "Sponsored captive insurance company" means a captive  
195 insurance company:

196 (A) In which the minimum required unimpaired paid-in capital and  
197 surplus are provided by one or more sponsors;

198 (B) That insures risks of its participants only through separate  
199 participant contracts; and

200 (C) That funds its liability to each participant through one or more  
201 protected cells and segregates the assets of each protected cell from the  
202 assets of other protected cells and from the assets of the sponsored  
203 captive insurance company's general account.

204 [(33)] (34) "Surplus note" means an unsecured subordinated debt  
205 obligation possessing characteristics consistent with the National  
206 Association of Insurance Commissioners Statement of Statutory  
207 Accounting Principles No. 41, as amended from time to time, and as  
208 modified or supplemented by the commissioner.

209 Sec. 2. (NEW) (*Effective July 1, 2019*) (a) As used in this section, (1)  
210 "independently procured insurance" has the same meaning as  
211 provided in section 38a-277 of the general statutes, and (2) "branch  
212 captive insurance company" and "foreign captive insurance company"  
213 have the same meanings as provided in section 38a-91aa of the general  
214 statutes, as amended by this act.

215 (b) There is established a tax amnesty program for any insured that  
216 procures, continues or renews independently procured insurance,



217 where this state is an insured's home state, that is liable for the tax  
218 imposed under section 38a-277 of the general statutes for any taxable  
219 period ending prior to July 1, 2019, and has failed to pay such tax  
220 within the time stated in section 38a-277 of the general statutes.

221 (1) The tax amnesty program shall provide that amnesty shall be  
222 granted to such insured if such insured (A) establishes a branch  
223 captive insurance company in this state or transfers domicile of its  
224 alien captive insurance company or its foreign captive insurance  
225 company to this state in accordance with the provisions of section 38a-  
226 58a of the general statutes, as amended by this act, not later than July 1,  
227 2020, and (B) pays all taxes due to this state on and after July 1, 2019,  
228 under section 38a-277 of the general statutes.

229 (2) Upon such establishment or transfer, the Commissioner of  
230 Revenue Services shall waive payment of all such taxes, interest and  
231 penalties due and outstanding for such insured under section 38a-277  
232 of the general statutes for any taxable period ending prior to July 1,  
233 2019.

234 Sec. 3. Section 38a-58a of the general statutes is repealed and the  
235 following is substituted in lieu thereof (*Effective July 1, 2019*):

236 (a) (1) Any insurer that is organized under the laws of any other  
237 state and is admitted to do business in this state for the purpose of  
238 writing insurance may, upon approval of the commissioner in  
239 accordance with all applicable provisions of the general statutes,  
240 become a domestic insurer. Such insurer shall comply with all of the  
241 requirements of law relative to the organization and licensing of a  
242 domestic insurer of the same type, designate its principal place of  
243 business at a location in this state and provide to the commissioner  
244 such documents and information the commissioner may reasonably  
245 require. After such insurer demonstrates, to the satisfaction of the  
246 commissioner, that, upon becoming a domestic insurer, such insurer  
247 will be in compliance with all requirements of law and its business will

248 be consistent with the interests of prospective insureds and the public,  
249 the commissioner may, in accordance with section 38a-41, issue a new  
250 license to such insurer to reflect the change in such insurer's  
251 domiciliary state and such insurer shall be subject to the authority and  
252 jurisdiction of this state. The articles of incorporation of the domestic  
253 insurer may be amended to provide that the corporation is a  
254 continuation of the corporate existence of the original foreign  
255 corporation through adoption of this state as its corporate domicile  
256 and that the original date of incorporation in its original domiciliary  
257 state is the date of incorporation of the domestic insurer.

258 (2) Any alien captive insurance company or foreign captive  
259 insurance company, as both terms are defined in section 38a-91aa, as  
260 amended by this act, may become a domestic captive insurance  
261 company in the same manner as provided under this section.

262 (b) Any domestic insurer may, upon the approval of the Insurance  
263 Commissioner, transfer its domicile to any other state in which it is  
264 admitted to transact the business of insurance, and upon such a  
265 transfer shall cease to be a domestic insurer, and shall be admitted to  
266 this state, if qualified, as a foreign insurer. The Insurance  
267 Commissioner may approve the proposed transfer if he determines  
268 that the transfer is in the interest of the policyholders of this state or in  
269 the public interest.

270 (c) The certificate of authority, agents' appointments and licenses,  
271 rates and other criteria within the discretion of the Insurance  
272 Commissioner which are in existence at the time any insurer licensed  
273 to transact the business of insurance in this state transfers its corporate  
274 domicile to this state or any other state by merger, consolidation or any  
275 other lawful method shall continue in full force and effect upon the  
276 transfer if the insurer remains duly qualified to transact the business of  
277 insurance in this state. All outstanding policies of any transferring  
278 insurer shall be given full force and effect and need not be endorsed as  
279 to the new name of the company or its new location unless ordered by

280 the Insurance Commissioner. Each transferring insurer shall file new  
281 policy forms with the Insurance Commissioner on or before the  
282 effective date of the transfer, but may use existing policy forms with  
283 appropriate endorsements if allowed by, and under such conditions as  
284 approved by, the Insurance Commissioner. Each transferring insurer  
285 shall notify the Insurance Commissioner of the details of the proposed  
286 transfer and shall file promptly any resulting amendments to corporate  
287 documents filed or required to be filed with the Insurance Department.  
288 Each such insurer, upon the transfer of its domicile to this state, shall  
289 file with the Secretary of the State a true copy of its original articles of  
290 incorporation, duly certified by the proper official of the state and a  
291 certificate in such form as prescribed by the Secretary of the State and  
292 approved by the Insurance Commissioner.

293 Sec. 4. Subdivision (3) of subsection (e) of section 38a-91bb of the  
294 general statutes is repealed and the following is substituted in lieu  
295 thereof (*Effective July 1, 2019*):

296 (3) The commissioner shall not grant a license to a branch captive  
297 insurance company unless the alien captive insurance company or  
298 foreign captive insurance company, as applicable, grants the  
299 commissioner authority to examine the alien captive insurance  
300 company or foreign captive insurance company in the jurisdiction in  
301 which [the alien] such captive insurance company is formed.

302 Sec. 5. Subsection (h) of section 38a-91ff of the general statutes is  
303 repealed and the following is substituted in lieu thereof (*Effective July*  
304 *1, 2019*):

305 (h) In the case of a captive insurance company licensed as a branch  
306 captive insurance company, the alien captive insurance company or  
307 foreign captive insurance company, as applicable, shall petition the  
308 commissioner to issue a certificate setting forth the commissioner's  
309 finding that, after considering the character, reputation, financial  
310 responsibility, insurance experience, and business qualifications of the

311 officers and directors of [the alien] such captive insurance company,  
312 the licensing and maintenance of the branch operations will promote  
313 the general good of the state. The alien captive insurance company or  
314 foreign captive insurance company may register to do business in this  
315 state after the commissioner's certificate is issued.

316 Sec. 6. Subparagraph (B) of subdivision (1) of subsection (b) of  
317 section 38a-91gg of the general statutes is repealed and the following is  
318 substituted in lieu thereof (*Effective July 1, 2019*):

319 (B) In the case of branch captive insurance companies, prior to  
320 March first of each year, each such company shall submit to the  
321 commissioner a copy of all reports and statements required to be filed  
322 under the laws of the jurisdiction in which the alien captive insurance  
323 company or foreign captive insurance company is formed. Such  
324 reports and statements shall be verified by oath of two of its executive  
325 officers. If the commissioner is satisfied that the annual report filed by  
326 [the alien] such captive insurance company in its domiciliary  
327 jurisdiction provides adequate information concerning the financial  
328 condition of [the alien] such captive insurance company, the  
329 commissioner may waive the requirement for completion of the  
330 captive annual statement for business written in the alien or foreign  
331 jurisdiction.

332 Sec. 7. Subparagraph (A) of subdivision (2) of subsection (g) of  
333 section 38a-91ss of the general statutes is repealed and the following is  
334 substituted in lieu thereof (*Effective July 1, 2019*):

335 (A) Proceeds from a special purpose financial captive insurance  
336 company securitization or letters of credit or other assets described in  
337 subdivision [(18)] (19) of section 38a-91aa, as amended by this act;

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2019</i>	38a-91aa

Sec. 2	<i>July 1, 2019</i>	New section
Sec. 3	<i>July 1, 2019</i>	38a-58a
Sec. 4	<i>July 1, 2019</i>	38a-91bb(e)(3)
Sec. 5	<i>July 1, 2019</i>	38a-91ff(h)
Sec. 6	<i>July 1, 2019</i>	38a-91gg(b)(1)(B)
Sec. 7	<i>July 1, 2019</i>	38a-91ss(g)(2)(A)

**Statement of Purpose:**

To authorize foreign branch captive insurance companies and establish a tax amnesty program for any foreign captive insurance company that establishes a foreign branch captive insurance company in this state or transfers its domicile to this state.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*