



General Assembly

Raised Bill No. 1133

January Session, 2019

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 Section 38a-91aa of the general statutes is repealed and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)

FIN *Joint Favorable*