

Senate Bill 192

By: Senator Jones of the 25th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to  
2 extensively revise Chapter 41, relating to captive insurance companies; to provide for  
3 definitions; to provide for the use of a registered agent to receive service of process; to  
4 provide for sponsored captive insurance companies; to provide for letters of credit; to provide  
5 for filings and notifications to the Commissioner; to provide for effective dates; to provide  
6 for establishment and maintenance of protected cells; to provide for certain protected cell  
7 requirements at the discretion of the Commissioner; to provide for authority; to provide for  
8 conservation, rehabilitation, or liquidation requirements and exceptions; to provide for  
9 applicability of the Special Insurance Fraud Fund; to provide for related matters; to repeal  
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
14 designating the existing provisions of Chapter 41, relating to captive insurance companies,  
15 as Article 1.

16 style="text-align:center">**SECTION 2.**

17 Said title is further amended by revising Code Section 33-41-2, relating to definitions, as  
18 follows:

19 "33-41-2.

20 Terms not defined in this chapter shall have the same meaning ascribed to them in this title.

21 As used in this chapter, unless the context otherwise requires, the term:

22 (1) 'Affiliate' means any person in the same corporate system as a parent, an industrial  
23 insured, or a member organization by virtue of common ownership, control, operation,  
24 or management.

25 (2) 'Agency captive insurance company' means:

26 (A) Any domestic insurance company granted a certificate of authority pursuant to this  
 27 chapter that is owned or controlled by an insurance agency, brokerage, managing  
 28 general agent, or reinsurance intermediary, or an affiliate thereof, or under common  
 29 ownership or control with such agency, brokerage, managing general agent, or  
 30 reinsurance intermediary, and that only reinsures the risk of insurance or annuity  
 31 contracts placed by or through such agency, brokerage, managing general agent, or  
 32 reinsurance intermediary; or

33 (B) Any domestic insurance company granted a certificate of authority pursuant to this  
 34 chapter that is owned or controlled by a marketer, producer, administrator, issuer, or  
 35 provider of service contracts or warranties and that only reinsures the contractual  
 36 liability arising out of such service contracts or warranties sold through such marketer,  
 37 producer, administrator, issuer, or provider.

38 (3) 'Association' means any membership organization whose members consist of a group  
 39 of individuals, corporations, partnerships, or other entities or associations who engage in  
 40 similar or related professional, trade, or business activities and who collectively own,  
 41 control, or hold with power to vote all of the outstanding voting interests of an association  
 42 captive insurance company or of a person that is the sole shareholder of an association  
 43 captive insurance company.

44 (4) 'Association captive insurance company' means any domestic insurance company  
 45 granted a certificate of authority pursuant to this chapter to insure or reinsure the similar  
 46 or related risks of members and affiliates of members of its association.

47 (5) 'Captive insurance company' means any pure captive insurance company, association  
 48 captive insurance company, agency captive insurance company, industrial insured captive  
 49 insurance company, sponsored captive insurance company, or risk retention group captive  
 50 insurance company.

51 (6) 'Controlled unaffiliated business' means:

52 (A) Any person:

53 (i) That is not in the corporate system of a parent and its affiliated companies;

54 (ii) That has an existing contractual relationship with a parent or one of its affiliated  
 55 companies; and

56 (iii) Whose risks are managed by a ~~pure~~ captive insurance company in accordance  
 57 with this chapter and approved by the Commissioner; or

58 (B) A reinsurance ~~pooling~~ arrangement with other captive insurance companies that  
 59 is approved by the Commissioner.

60 (7) 'Dormant captive insurance company' means a captive insurance company that:

61 (A) Has ceased transacting the business of insurance, including the issuance of  
 62 insurance policies; and

63 (B) Has no remaining liabilities associated with insurance business transactions, or  
 64 insurance policies issued prior to the filing of its application for a certificate of  
 65 dormancy pursuant to this chapter.

66 ~~(7)~~(8) 'Formation documents' means articles of incorporation, if the captive insurance  
 67 company or the prospective captive insurance company is a stock insurer, stock  
 68 corporation, or a mutual insurer, or articles of organization, if the captive insurance  
 69 company or the prospective captive insurance company is a limited liability company,  
 70 and any amendments or restatements of the same. For purposes of this term, an  
 71 incorporated protected cell, as defined in Article 2 of this chapter, shall be included in the  
 72 definition of 'captive insurance company.'

73 ~~(8)~~(9) 'Industrial insured' means an insured:

74 (A) Who procures the insurance of any risk or risks through the use of the services of  
 75 a full-time employee who acts as an insurance manager, risk manager, or insurance  
 76 buyer or through the services of a person licensed as a property and casualty agent,  
 77 broker, or counselor in such person's state of domicile;

78 (B) Whose aggregate annual premiums for insurance on all risks total at least  
 79 \$25,000.00; and

80 (C) Who either:

81 (i) Has at least 25 full-time employees;

82 (ii) Has gross assets in excess of \$3 million; or

83 (iii) Has annual gross revenues in excess of \$5 million.

84 ~~(9)~~(10) 'Industrial insured captive insurance company' means any domestic insurance  
 85 company granted a certificate of authority pursuant to this chapter to insure or reinsure  
 86 the risks of industrial insureds and their affiliates and which has as its shareholders or  
 87 members only industrial insureds that are insured or reinsured by the industrial insured  
 88 captive insurance company or which has as its sole shareholder or sole member an entity  
 89 whose only owners are industrial insureds that are insured or reinsured by the industrial  
 90 insured captive insurance company.

91 ~~(10)~~(11) 'Mutual insurer' means an incorporated insurer without capital stock or shares  
 92 that is owned and governed by its policyholders.

93 ~~(11)~~(12) 'Parent' means an entity which directly or indirectly owns, controls, or holds  
 94 with power to vote more than 50 percent of the total outstanding voting:

95 (A) Securities of a pure captive insurance company organized as a stock corporation;  
 96 or

97 (B) Membership interests of a pure captive insurance company organized as a limited  
 98 liability company.

99 ~~(12)~~(13) 'Pure captive insurance company' means any domestic insurance company  
 100 granted a certificate of authority under this chapter to insure or reinsure the risks of its  
 101 parent and affiliates of its parent, and controlled unaffiliated business.

102 ~~(13)~~(14) 'Risk retention group captive insurance company' is any domestic insurance  
 103 company ~~which has been~~ granted a certificate of authority pursuant to this chapter and  
 104 determined by the Commissioner to be established and maintained as a 'risk retention  
 105 group' as defined under the federal Liability Risk Retention Act of 1986, as amended.  
 106 ~~A risk retention group may be chartered and licensed pursuant to this chapter or pursuant~~  
 107 ~~to Chapter 40 of this title.~~

108 ~~(14)~~(15) 'Stock insurer' means an incorporated insurer with capital divided into shares  
 109 and owned by its shareholders.

110 ~~(15)~~(16) 'Transact,' as used in this chapter, shall not include the organizational activities  
 111 associated with the preliminary formation, incorporation, petitioning for a certificate of  
 112 authority, and initial capitalization of a captive insurance company."

### 113 SECTION 3.

114 Said title is further amended in subsection (c) of Code Section 33-41-3, relating to  
 115 permissible business and limitations, by revising paragraph (1) as follows:

116 "(1) A captive insurance company shall not insure ~~or reinsure~~ any risks resulting from:  
 117 (A) Any personal, familial, or household responsibilities; or  
 118 (B) Activities other than risks resulting from responsibilities arising out of any  
 119 business, whether profit or nonprofit; trade; product; services, including professional  
 120 or fiduciary services; or commercial premises or commercial operations;"

### 121 SECTION 4.

122 Said title is further amended in Code Section 33-41-4, relating to prerequisites to transacting  
 123 insurance, by revising paragraphs (3) and (4) and adding a new paragraph to read as follows:

124 "(3) Any organization providing the principal administrative or management services to  
 125 such captive insurance company shall be approved by the Commissioner; ~~and~~  
 126 (4) Its board of directors or board of managers holds at least one meeting each year in  
 127 this state; and  
 128 (5) It appoints a registered agent to accept service of process in this state, provided that,  
 129 whenever such registered agent cannot with reasonable diligence be found at the  
 130 registered office of the captive insurance company, the Commissioner shall be an agent  
 131 of such captive insurance company upon whom any process, notice, or demand may be  
 132 served."

133 **SECTION 5.**

134 Said title is further amended in Code Section 33-41-5, relating to incorporation, by revising  
 135 subsection (a) and by adding new subsections to read as follows:

136 "(a) For purposes of this Code section, an incorporated protected cell, as defined in Article  
 137 2 of this chapter, shall be included in the definition of 'captive insurance company.'

138 ~~(a)(a.1)~~(1) A pure captive insurance company or an agency captive insurance company  
 139 may be incorporated as a stock insurer or organized as a manager-managed limited  
 140 liability company.

141 (2) An association captive insurance company, an industrial insured captive insurance  
 142 company, a sponsored captive insurance company, or a risk retention group captive  
 143 insurance company may be incorporated as a stock insurer, incorporated as a mutual  
 144 insurer, or organized as a manager-managed limited liability company.:

145 ~~(A) Incorporated as a stock insurer;~~

146 ~~(B) Incorporated as a mutual insurer; or~~

147 ~~(C) Organized as a manager-managed limited liability company."~~

148 "(h) The effective date of each document set forth in this Code section, including but not  
 149 limited to formation documents, amendments to formation documents, merger documents,  
 150 conversion documents, and dissolution documents shall be:

151 (1) The date on which the document is filed with the Commissioner; or

152 (2) A date specified by the Commissioner, which shall not precede the date on which the  
 153 document was filed with the Commissioner."

154 **SECTION 6.**

155 Said title is further amended by revising subsections (a) through (c) of Code Section 33-41-8,  
 156 relating to amount of capital or surplus, as follows:

157 "(a) The amount of minimum capital or surplus required for each captive insurance  
 158 company shall be determined on an individual basis, however:

159 (1) A pure captive insurance company shall maintain at least \$250,000.00 in surplus;

160 (2) An association captive insurance company shall maintain at least \$500,000.00 in  
 161 surplus;

162 (3) An agency captive insurance company shall maintain at least \$250,000.00 in surplus;

163 (4) An industrial insured captive insurance company shall maintain at least \$500,000.00  
 164 in surplus; ~~and~~

165 (5) A risk retention group shall maintain at least \$500,000.00 in surplus; ~~and~~

166 (6) A sponsored captive insurance company shall maintain at least \$250,000.00 in  
 167 surplus.

168 The Commissioner may require additional capital or surplus of any captive insurance  
 169 company in an amount he or she deems appropriate under the circumstances based on the  
 170 captive insurance company's business plan as described in ~~paragraph (2) of subsection (a)~~  
 171 ~~of~~ Code Section 33-41-10. Additional capital or surplus may be required if the captive  
 172 insurance company's business plan indicates that an increase is required in order for the  
 173 captive insurance company to meet its contractual obligations to its policyholders or to  
 174 maintain its solvency.

175 (b) Minimum capital or surplus of up to \$500,000.00 shall be maintained in any of the  
 176 following:

177 (1) Cash;

178 (2) Certificates of deposit or similar certificates or evidences of deposits in banks or trust  
 179 companies but only to the extent that the certificates or deposits are insured by the  
 180 Federal Deposit Insurance Corporation;

181 (3) Savings accounts, certificates of deposit, or similar certificates or evidences of  
 182 deposit in savings and loan associations and building and loan associations but only to  
 183 the extent that the same are insured by the Federal Savings and Loan Insurance  
 184 Corporation; or

185 (4) ~~Promissory notes or other obligations of shareholders secured by one or more letters~~  
 186 ~~of credit, as described in~~ One or more letters of credit, so long as they are in conformance  
 187 with Code Section 33-41-9.

188 (c) ~~One hundred thousand dollars of the minimum capital or surplus of an~~ Each association  
 189 captive insurance company, ~~an industrial insured captive insurance company, or a~~ and risk  
 190 retention group captive insurance company must ~~be deposited~~ deposit with the state prior  
 191 to the issuance of a certificate of authority."

## 192 SECTION 7.

193 Said title is further amended by revising subsection (a) of Code Section 33-41-9, relating to  
 194 letters of credit, as follows:

195 "(a) Any letter of credit used to meet the requirements set forth in ~~Code Sections 33-41-8,~~  
 196 ~~33-41-12, and 33-41-14~~ this chapter shall be:

197 (1) Clean, irrevocable, and unconditional;

198 (2) Issued by a bank approved by the Commissioner, which is either a bank chartered by  
 199 the State of Georgia or a national bank which is a member of the Federal Reserve System;

200 (3) Presentable and payable within the State of Georgia; and

201 (4) Provided in conformity with any other requirements established by the  
 202 Commissioner."

203

**SECTION 8.**

204 Said title is further amended by revising subsections (b) and (d) of Code Section 33-41-10,  
205 relating to application for and issuance of certificate of authority, as follows:

206 "(b) In determining whether to approve an application for an original or renewal certificate  
207 of authority to a captive insurance company, the Commissioner shall examine the  
208 applicable items submitted to him or her pursuant to ~~subsections (a), (e), and (f) of this~~  
209 Code section. The Commissioner may rely upon and accept the reports of independent  
210 agents who may include licensed insurance counselors, brokers, agents, or adjusters  
211 discussed under Chapter 23 of this title, certified actuarial consultants, certified public  
212 accountants, risk managers, and examiners of insurance companies in order to facilitate his  
213 or her examination of the application for a certificate of authority by a captive insurance  
214 company. The expenses and charges of such independent agents shall be paid directly by  
215 the captive insurance company."

216 "(d) Pursuant to Code Section 33-3-15, if the Commissioner is satisfied that the documents  
217 and statements filed by the captive insurance company in its application for a certificate of  
218 authority comply with the provisions of this chapter, the Commissioner shall promptly  
219 issue a certificate of authority authorizing the captive insurance company to transact  
220 insurance in this state until the thirtieth day of June thereafter. The effective date of such  
221 certificate of authority shall be:

222 (1) The date on which the Commissioner is satisfied that the documents and statements  
223 filed by the captive insurance company in its application for a certificate of authority  
224 comply with the provisions of this chapter; or

225 (2) A date specified by the Commissioner, which shall not precede the date on which the  
226 application for a certificate of authority was first filed with the Commissioner."

227

**SECTION 9.**

228 Said title is further amended by revising subsection (c) of Code Section 33-41-19, relating  
229 to rates, underwriting rules, and policy forms and notice on policies, as follows:

230 ~~"(c) Each captive insurance company shall provide the following notice in ten-point type~~  
231 ~~on the front page and declaration page on all policies and on the front page of all~~  
232 ~~applications for policies:~~

233 ~~"This captive insurance company is not subject to all of the insurance laws and regulations~~  
234 ~~of the State of Georgia. State insurers insolvency guaranty funds are not available to the~~  
235 ~~policyholders of this captive insurance company."~~ Reserved."

236

**SECTION 10.**

237 Said title is further amended in Code Section 33-41-22, relating to taxation, by revising  
238 paragraphs (4) and (5) and adding new paragraphs to read as follows:

239 "(4) Two or more captive insurance companies under common ownership and control,  
240 other than sponsored captive insurance companies, shall be taxed as though they were a  
241 single captive insurance company. For the purposes of this Code section, the term  
242 'common ownership and control' shall mean the direct or indirect ownership, control or  
243 hold with power to vote more than 50 percent of the outstanding voting securities or  
244 membership interests of two or more such captive insurance companies; and

245 (5) The tax provided for in paragraphs (1) and (2) of this Code section shall be calculated  
246 on an annual basis, notwithstanding policies or contracts of insurance or contracts of  
247 reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the  
248 premium shall be prorated for purposes of determining the tax due; and

249 (6)(A) For purposes of this Code section, a protected cell, as defined in Article 2 of this  
250 chapter, shall be included in the definition of a 'captive insurance company.'

251 (B) The common ownership and control aggregation rules set forth in paragraph (4) of  
252 this Code section shall apply to each individual protected cell with respect to the  
253 participant or participants of such individual protected cell.

254 (C) Notwithstanding any other provision of this Code section, a sponsored captive  
255 insurance company shall be responsible for collecting and remitting taxes due from its  
256 protected cells.

257 (7)(A) Every insured whose home state is Georgia and who procures or causes to be  
258 procured or continues or renews insurance with a captive insurance company domiciled  
259 outside of Georgia, other than reinsurance, shall within 30 days after the date such  
260 insurance was so procured, continued, or renewed file a report of the same with the  
261 Commissioner in writing upon designated forms. The report shall state the name and  
262 address of the insured or insureds, name and address of the captive insurance company  
263 domiciled outside of Georgia, the subject of the insurance, a general description of the  
264 coverage, the amount of premium currently paid thereon, and such additional  
265 information as reasonably requested by the Commissioner.

266 (B) For the general support of the government of this state, there is levied and there  
267 shall be collected from every insured in this state meeting the requirements of  
268 subparagraph (A) of this paragraph, for the privilege of so insuring his or her property  
269 or interests both in and out of this state, a tax at the rate of 4 percent of the gross  
270 premium paid for any such insurance, after deduction of return premiums, if any. Such  
271 tax shall be paid to the Commissioner at the same time the report set forth in  
272 subparagraph (A) of this paragraph is filed.



- 273 (C) The tax imposed under subparagraph (B) of this paragraph, if delinquent, shall bear  
 274 interest at the rate of 6 percent per annum, compounded annually.  
 275 (D) Such tax shall be collectable by civil action brought by the Commissioner or by  
 276 distrain.  
 277 (E) Subparagraph (B) of this paragraph shall not apply to accident and sickness  
 278 insurance.  
 279 (F) This paragraph shall have an effective date of January 1, 2021, and shall apply to  
 280 all applicable policies of insurance that have an effective date on or after January 1,  
 281 2021."

## 282 SECTION 11.

283 Said title is further amended by repealing Code Section 33-41-23, relating to rules and  
 284 regulations, and enacting a new Code Section 33-41-23 to read as follows:

285 "33-41-23.

286 (a) A captive insurance company that meets the definition of a dormant captive insurance  
 287 company set forth in this chapter may apply to the Commissioner for a certificate of  
 288 dormancy on a form or forms as may be prescribed by the Commissioner.

289 (b) A dormant captive insurance company that has been issued a certificate of dormancy  
 290 pursuant to this Code section shall:

291 (1) Possess and thereafter maintain unimpaired, paid-in-capital and surplus of at least  
 292 \$25,000.00;

293 (2) Submit to the Commissioner a report of its financial condition on or before March  
 294 1 of each year on a form or in a manner as prescribed by the Commissioner;

295 (3) Renew such certificate every five years by submitting documentation as prescribed  
 296 by the Commissioner and paying a renewal fee of \$500.00; and

297 (4) Be subject to an examination pursuant to Code Section 33-41-16 in the discretion of  
 298 the Commissioner.

299 (c) A dormant captive insurance company that has been issued a certificate of dormancy  
 300 pursuant to this Code section shall not:

301 (1) Be subject to or liable for the payment of any tax pursuant to Code Section 33-41-22;  
 302 or

303 (2) Be required to submit any annual forms, fees, or documents that are otherwise  
 304 required by this chapter, other than those required pursuant to this Code section.

305 (d) The Commissioner may, upon written request, declare a captive insurance company  
 306 to be dormant for purposes of this Code section even if such captive insurance company  
 307 retains liabilities associated with policies written or assumed, provided that such captive  
 308 insurance company has otherwise ceased the transaction of insurance business. However,

309 in this case, the Commissioner may, in his or her discretion, require such captive insurance  
 310 company to possess and maintain unimpaired, paid-in-capital and surplus and reserves  
 311 greater than that required by this Code section.

312 (e) A certificate of dormancy shall be revoked if a captive insurance company no longer  
 313 meets the definition of a dormant captive insurance company or fails to meet the  
 314 requirements as set forth in this Code section.

315 (f) A dormant captive insurance company shall apply to the Commissioner for approval  
 316 and shall be granted such approval to surrender its certificate of dormancy and resume  
 317 conducting the business of insurance prior to issuing any insurance policies and shall pay  
 318 an application fee as prescribed by the Commissioner.

319 (g) Any provisions of this title which are inconsistent with the provisions of this Code  
 320 section shall not apply to dormant captive insurance companies."

321 **SECTION 12.**

322 Said title is further amended by repealing Code Section 33-41-24, relating to inapplicability  
 323 of inconsistent provisions, and enacting a new Code Section 33-41-24 to read as follows:

324 "33-41-24.

325 The Commissioner may adopt rules establishing standards to ensure that a pure captive  
 326 insurance company's parent or any of its affiliated companies is able to exercise control of  
 327 the risk management function of any controlled unaffiliated business to be insured by the  
 328 pure captive insurance company; provided, however, that, until such time as rules under  
 329 this Code section are adopted, the Commissioner may approve or deny the coverage of  
 330 such risks by a pure captive insurance company on a case by case basis."

331 **SECTION 13.**

332 Said title is further amended by adding new Code sections to read as follows:

333 "33-41-25.

334 The Commissioner may establish such rules and regulations and issue such interpretive  
 335 rulings as may be necessary to carry out the provisions of this chapter.

336 33-41-26.

337 Any provisions of this title which are inconsistent with the provisions of this chapter shall  
 338 not apply to captive insurance companies; provided, however, that pure and agency captive  
 339 insurance companies shall not be subject to the requirements of Chapter 13 of this title."

340 **SECTION 14.**

341 Said title is further amended in Chapter 41 by adding a new article to read as follows:

342 "ARTICLE 2343 33-41-100.344 In addition to the general provisions of Article 1 of this chapter, the provisions of this  
345 article shall apply to sponsored captive insurance companies.346 33-41-101.347 As used in this article, the term:348 (1) 'General account' means all the assets and liabilities of a sponsored captive insurance  
349 company that are not attributable to a protected cell.350 (2) 'Incorporated protected cell' means a protected cell that is established as a stock  
351 corporation or manager-managed limited liability company separate from the sponsored  
352 captive insurance company of which it is a part.353 (3) 'Participant' means a person, and any affiliates thereof, that is insured or reinsured by  
354 a sponsored captive insurance company, where the losses of the participant are limited  
355 through a participant contract to such participant's protected cell assets or to the pro rata  
356 share of the assets of one or more protected cells that are identified in such participant  
357 contract.358 (4) 'Participant contract' means a contract by which a sponsored captive insurance  
359 company insures or reinsures the risks of a participant, or the controlled unaffiliated  
360 business thereof, and limits the losses to the participant's protected cell assets or to the  
361 pro rata share of the assets of one or more protected cells that are identified in such  
362 participant contract.363 (5) 'Protected cell' means a separate and distinct account or accounts established by a  
364 sponsored captive insurance company in which an identified pool of assets are maintained  
365 for one or more participants in accordance with the terms of one or more participant  
366 contracts to fund the liability of the sponsored captive insurance company insured or  
367 assumed on behalf of such participants as set forth in such participant contracts. A  
368 protected cell may be an incorporated protected cell or an unincorporated protected cell.369 (6) 'Protected cell assets' means all assets, contract rights, and general intangibles  
370 identified with and attributable to a specific protected cell that may not be used to pay any  
371 expenses or claims other than those attributable to such protected cell.372 (7) 'Protected cell liability' means all liabilities and other obligations identified with and  
373 attributable to a specific protected cell.374 (8) 'Sponsor' means any person, other than a risk retention group, that is approved by the  
375 Commissioner, in the exercise of his or her sole discretion, to organize and operate a

376 sponsored captive insurance company and to provide all or part of its required capital and  
 377 surplus.

378 (9) 'Sponsored captive insurance company' means any domestic stock insurer or  
 379 manager-managed limited liability company formed by one or more sponsors having  
 380 been granted a certificate of authority pursuant to this chapter that:

381 (A) May only be owned by its participants and sponsors, unless the Commissioner has  
 382 authorized the issuance of nonvoting securities to other persons:

383 (B) Maintains at least \$250,000.00 in capital and surplus subject to Code Section  
 384 33-41-8, which shall at all times be available to pay any expenses of or claims against  
 385 it;

386 (C) May only insure or reinsure the risks of its participants, or the controlled  
 387 unaffiliated business thereof, in accordance with separate participant contracts;

388 (D) Funds its liabilities to each participant through one or more protected cells and  
 389 keeps the protected cell assets and protected cell liabilities of each protected cell  
 390 segregated from the general account and from the protected cell assets and protected  
 391 cell liabilities of other protected cells: and

392 (E) Establishes administrative and accounting procedures necessary to allocate,  
 393 identify, separate, and segregate the protected cell assets, protected cell liabilities,  
 394 insurance and reinsurance obligations, assets, credits, liabilities, losses, tax benefits and  
 395 refunds attributable to the protected cells.

396 (10) 'Unincorporated protected cell' means a protected cell that is not itself a legal entity  
 397 separate from the sponsored captive insurance company of which it is a part.

398 33-41-102.

399 (a) A sponsored captive insurance company may establish one or more protected cells if  
 400 the Commissioner has approved in writing a business plan, or an amendment to such plan,  
 401 with respect to each protected cell that includes information about the participant, the  
 402 associated participant contract or contracts, and any other information requested by the  
 403 Commissioner.

404 (b) No participant contract shall take effect without the Commissioner's prior written  
 405 approval. The addition of each new protected cell, the withdrawal of any current  
 406 participant, or the termination of any existing protected cell shall constitute a change in the  
 407 business plan of the sponsored captive insurance company and shall require the  
 408 Commissioner's prior written approval.

409 (c) Each sponsored captive insurance company shall annually file with the Commissioner  
 410 such financial reports as he or she shall require. Any such financial report shall include,

411 without limitation, accounting statements detailing the financial experience of each  
412 protected cell.

413 (d) Each sponsored captive insurance company shall notify the Commissioner in writing  
414 within ten business days of any protected cell becoming insolvent or otherwise unable to  
415 meet its claim, expense, insurance, or reinsurance obligations.

416 33-41-103.

417 (a) A sponsored captive insurance company licensed under this chapter may establish and  
418 maintain one or more protected cells to insure or reinsure risks subject to the provisions,  
419 terms, and conditions set forth in this chapter, and it is the intent of the General Assembly  
420 to provide sponsored captive insurance companies with the option to establish one or more  
421 protected cells as incorporated protected cells without limiting any rights or protections  
422 applicable to unincorporated protected cells.

423 (b) The creation of a protected cell pursuant to this chapter does not create, with respect  
424 to such protected cell, a legal person separate from the sponsored captive insurance  
425 company of which it is a part unless such protected cell is an incorporated protected cell.

426 (c) In addition to the provisions required by subparagraphs (c)(1)(B) and (c)(1)(C) of Code  
427 Section 33-41-5, an incorporated protected cell must also include the following in its  
428 formation documents:

429 (1) A reference to the sponsored captive insurance company of which it will be a part;  
430 and

431 (2) A statement that the entity is a protected cell incorporated for the limited purposes  
432 authorized by the sponsored captive insurance company's certificate of authority.

433 (d) An incorporated protected cell shall not use any name that is either similar, misleading,  
434 or confusing with respect to any other name already in use by any other entity doing  
435 business in this state.

436 (e) An incorporated protected cell shall be entitled to enter into contracts and undertake  
437 obligations in its own name and for its own account unless prohibited by an applicable  
438 participant contract. In the case of a contract or obligation undertaken directly by an  
439 incorporated protected cell to which the sponsored captive insurance company is not a  
440 party, either in its own name and for its own account or on behalf of a protected cell, the  
441 counterparts to the contract or obligation shall have no right or recourse against the  
442 sponsored captive insurance company, any other protected cell not a party to such contract  
443 or obligation or any assets other than against assets properly attributable to the incorporated  
444 protected cell that is a party to the contract or obligation.

445 33-41-104.

446 (a) All attributions of assets and liabilities to the protected cells and the general account  
447 shall be made by the sponsored captive insurance company in accordance with the business  
448 plan and applicable participant contracts as approved by the Commissioner, and unless the  
449 sponsor consents and the Commissioner has granted prior written approval, the general  
450 account shall not be used to pay any expenses or claims attributed solely to a protected cell.

451 (b) When establishing a protected cell, the sponsored captive insurance company shall  
452 attribute to the protected cell assets with a value at least equal to the reserves and other  
453 insurance liabilities attributable to such protected cell in cash or in readily marketable  
454 securities with established market value.

455 (c) Amounts attributable to a protected cell under this chapter are owned by the protected  
456 cell. No sponsored captive insurance company shall be, or hold itself out to be, a trustee  
457 with respect to those protected cell assets of such protected cell account. Notwithstanding  
458 this subsection, the sponsored captive insurance company may allow for a security interest  
459 to attach to protected cell assets when in favor of a creditor of the protected cell and  
460 otherwise allowable under applicable law.

461 (d) Each protected cell shall be accounted for separately on the books and records of the  
462 sponsored captive insurance company to reflect each protected cell's financial condition  
463 and results of operations, net income or loss, dividends or other distributions to  
464 participants, and such other factors regarding each protected cell as may be provided in the  
465 applicable participant contract or required by the Commissioner.

466 (e) The assets of a protected cell shall not be chargeable with liabilities of any other  
467 protected cell or, unless otherwise agreed in the applicable participant contract, of the  
468 sponsored captive insurance company generally.

469 (f) No sale, exchange, transfer of assets, dividend, or distribution, other than a transaction  
470 in accordance with the applicable participant contract, may be made with respect to a  
471 protected cell by or to a sponsored captive insurance company or participant without the  
472 Commissioner's written approval. In no event shall such approval be given if the sale,  
473 exchange, transfer, dividend, or distribution would result in the insolvency or impairment  
474 of a protected cell.

475 (g) The remedy of tracing is applicable to protected cell assets if they are commingled with  
476 protected cell assets of other protected cells or the general account in violation of this  
477 article and any applicable participant contracts. The remedy of tracing shall not be  
478 construed as an exclusive remedy.

479 (h) The sponsored captive insurance company shall attribute all insurance obligations,  
480 assets, and liabilities relating to a reinsurance contract entered into with respect to a  
481 protected cell to such protected cell as set forth in the business plan and participant

482 contracts approved by the Commissioner, which may include a tax allocation agreement  
483 to which the sponsored captive insurance company is a party.

484 (i) Notwithstanding any other provision of this chapter, the assets of two or more protected  
485 cells may be combined for purposes of investment, and such combination shall not be  
486 construed as defeating the segregation of such assets for accounting or other purposes.

487 (j) Notwithstanding any other provisions of this title, sponsored captive insurance  
488 companies shall not be subject to any restrictions on eligible investments whatever;  
489 however, the Commissioner may prohibit or limit any investment that threatens the  
490 solvency or liquidity of any sponsored captive insurance company.

491 (k) If required by the Commissioner, in his or her discretion, the business written by a  
492 sponsored captive insurance company, with respect to each protected cell, shall be:

493 (1) Fronted by an insurance company licensed pursuant to the laws of any state;

494 (2) Reinsured by a reinsurer authorized or approved by the Commissioner; or

495 (3) Secured by a trust fund in the United States for the benefit of participants,  
496 policyholders, and claimants or funded by an irrevocable letter of credit or other  
497 arrangement that is acceptable to the Commissioner. The Commissioner, in his or her  
498 sole discretion, shall approve the form, terms, and funding amount of any trust, and may  
499 require the sponsored captive insurance company to increase the funding of any security  
500 arrangement established under this chapter. If the form of security is a letter of credit, the  
501 letter of credit must be in conformance with Code Section 33-41-9 and approved by the  
502 Commissioner.

503 33-41-105.

504 (a) In connection with the conservation, rehabilitation, or liquidation of captive insurance  
505 companies set forth in Code Section 33-41-21, including sponsored captive insurance  
506 companies, the assets and liabilities of a protected cell shall at all times be kept separate  
507 from, and shall not be commingled with, those of other protected cells and the sponsored  
508 captive insurance company except to the extent that the assets and liabilities of any one or  
509 more protected cells are determined to have not been allocated, segregated, and separated  
510 pursuant to the business plan and participant contracts approved by the Commissioner, and  
511 which are subject to the tracing provisions set forth in this article.

512 (b) Notwithstanding the provisions of this title, in the event of the insolvency of a  
513 sponsored captive insurance company where the Commissioner determines that one or  
514 more protected cells remain solvent, the Commissioner may separate such cells from the  
515 sponsored captive insurance company and may allow, on application of the sponsored  
516 captive insurance company or participant, for the conversion of such protected cells into  
517 one or more new or existing other captive insurance companies.

518 33-41-106.

519 All provisions set forth in subsection (c) of Code Section 33-41-16 shall also apply to  
 520 sponsored captive insurance companies in the same manner."

521 **SECTION 15.**

522 Said title is further amended by revising subsection (c) of Code Section 33-1-17, relating to  
 523 the Special Insurance Fraud Fund, as follows:

524 "(c)(1) The Commissioner shall prepare, on an annual basis, a separate budget request  
 525 to the General Assembly which sets forth the anticipated cost and expense of funding the  
 526 investigation and prosecution of insurance fraud in this state for the ensuing 12 months.  
 527 Beginning with the year 1997, such budget request shall set forth the annual cost and  
 528 expense of the investigation and prosecution of insurance fraud in Georgia for the  
 529 preceding 12 months.

530 (2) There is imposed upon each foreign, alien, and domestic insurance company doing  
 531 business in the state an annual assessment under a formula to be established by regulation  
 532 promulgated by the Commissioner. The formula shall be calculated such that the total  
 533 proceeds paid or collected from such assessments for any year shall not exceed the  
 534 amounts appropriated by the General Assembly pursuant to paragraph (3) of this  
 535 subsection, which appropriation shall be based upon the budget request setting forth the  
 536 applicable annual cost and expense of the investigation and prosecution of insurance  
 537 fraud in Georgia submitted by the Commissioner. Such assessments may be measured  
 538 by kind of company, kind of insurance, income, volume of transactions, or such other  
 539 factors as the Commissioner determines appropriate. Assessments shall be due and  
 540 payable for each calendar quarter at the times specified in subsection (b) of Code Section  
 541 33-8-6. Any insurance company which fails to report and pay any installment of such  
 542 assessment shall be subject to penalties and interest as provided by subsection (d) of Code  
 543 Section 33-8-6. The Commissioner shall provide by regulation for such other terms and  
 544 conditions for the payment or collection of such assessments as may be necessary to  
 545 ensure the proper payment and collection thereof. Notwithstanding the foregoing, the  
 546 provisions of this Code section shall not apply to an agency captive insurance company,  
 547 dormant captive insurance company, industrial insured captive insurance company,  
 548 sponsored captive insurance company (including a protected cell thereof), or pure captive  
 549 insurance company.

550 (3) The General Assembly may appropriate to the Insurance Department funds for the  
 551 investigation of insurance fraud and for the funding of the prosecution of insurance fraud.  
 552 The Commissioner is authorized to use such funds for investigation of insurance fraud  
 553 and to reimburse prosecuting attorneys for some or all of the costs of retaining assistant



554 prosecuting attorneys to prosecute insurance fraud cases. The Commissioner shall  
555 provide by regulation for such other terms and conditions for the use of the funds for the  
556 investigation, reimbursement, and prosecution contemplated by the terms of this  
557 paragraph."

558

**SECTION 16.**

559 All laws and parts of laws in conflict with this Act are repealed.