

Senate Bill 173

By: Senators Jones of the 25th, Harbison of the 15th, McKoon of the 29th, Harbin of the 16th, Kirk of the 13th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 41 of Title 33 of the Official Code of Georgia Annotated, relating to
 2 captive insurance companies, so as to provide for revision of certain terms and addition of
 3 terms; to provide for scope of provisions and lines of businesses for a captive insurance
 4 company; to provide for an agency captive insurance company; to provide certificate of
 5 authority to extend to board of managers; to provide for board of managers; to provide for
 6 captive corporate organization requirements; to provide for certain exemptions; to provide
 7 for exceptions, fees, and articles of incorporation requirements; to provide for powers and
 8 requirements by the Commissioner; to change certain provisions relating to business name
 9 providing for formation documents; to provide for changes to provision relating to the board
 10 of directors; to update certain language; to change certain provisions relating to taxation on
 11 direct premiums relating to risk retention group; to provide for related matters; to repeal
 12 conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 Chapter 41 of Title 33 of the Official Code of Georgia Annotated, relating to captive
 16 insurance companies, is amended by revising Code Section 33-41-2, relating to definitions,
 17 as follows:

18 "33-41-2.

19 Terms not defined in this chapter shall have the same meaning ascribed to them in this title.
 20 As used in this chapter, unless the context otherwise requires, the term:

21 (1) 'Affiliate' means ~~an individual, partnership, corporation, limited liability company,~~
 22 ~~trust, or estate that directly, or indirectly through one or more intermediaries, controls,~~
 23 ~~is controlled by, or is under common control with one or more of the shareholders or~~
 24 ~~members of a captive insurance company. Affiliates shall also include employees of any~~
 25 ~~shareholder or member, or any affiliate thereof, of a captive insurance company. For the~~
 26 ~~purpose of the foregoing definition of affiliate, 'control' means: any person in the same~~

27 corporate system as a parent, an industrial insured, or a member organization by virtue
 28 of common ownership, control, operation, or management.

29 ~~(A) Ownership of shares of a corporation possessing 50 percent or more of the total~~
 30 ~~voting power of all classes of shares entitled to vote or possessing 50 percent or more~~
 31 ~~of the total value of the outstanding shares of the corporation; and~~

32 ~~(B) Ownership of 50 percent or more by value of the beneficial or membership~~
 33 ~~interests in a partnership, trust, limited liability company, or estate.~~

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

35 (A) ~~An~~ Any domestic insurance company granted a certificate of authority pursuant
 36 to this chapter that is owned or controlled by an insurance agency, brokerage, managing
 37 general agent, or reinsurance intermediary, or an affiliate thereof, or under common
 38 ownership or control with such agency, brokerage, managing general agent, or
 39 reinsurance intermediary, and that only reinsures the risk of insurance or annuity
 40 contracts placed by or through such agency, brokerage, managing general agent, or
 41 reinsurance intermediary; or

42 (B) ~~An~~ Any domestic insurance company granted a certificate of authority pursuant to
 43 this chapter that is owned or controlled by a marketer, producer, administrator, issuer,
 44 or provider of service contracts or warranties and that only reinsures the contractual
 45 liability arising out of such service contracts or warranties sold through such marketer,
 46 producer, administrator, issuer, or provider.

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

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

56 (5) 'Captive insurance company' means any pure captive insurance company, association
 57 captive insurance company, agency captive insurance company, industrial insured captive
 58 insurance company, or risk retention group captive insurance company.

59 (6) 'Controlled unaffiliated business' means:

60 (A) ~~A~~ Any person:

61 (i) That is not ~~an affiliate of the parent~~ in the corporate system of a parent and its
 62 affiliated companies;

63 (ii) That has an existing contractual relationship with ~~an affiliate of the parent under~~
 64 ~~which the affiliate bears a potential financial loss~~ a parent or one of its affiliated
 65 companies; and

66 (iii) ~~The risks of which are managed by a captive insurance company under an~~
 67 ~~arrangement~~ Whose risks are managed by a pure captive insurance company in
 68 accordance with this chapter and approved by the Commissioner; or

69 (B) A reinsurance pooling arrangement with other captive insurance companies that
 70 is approved by the Commissioner.

71 (7) 'Formation documents' means articles of incorporation, if the captive insurance
 72 company or the prospective captive insurance company is a stock insurer or a mutual
 73 insurer, or articles of organization, if the captive insurance company or the prospective
 74 captive insurance company is a limited liability company, and any amendments or
 75 restatements of the same.

76 ~~(7)~~(8) 'Industrial insured' means an insured:

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

81 (B) Whose aggregate annual premiums for insurance on all risks total at least
 82 \$25,000.00; and

83 (C) Who either:

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

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

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

87 ~~(8)~~(9) 'Industrial insured captive insurance company' means any domestic insurance
 88 company granted a certificate of authority ~~under~~ pursuant to this chapter to insure or
 89 reinsure the risks of industrial insureds and their affiliates and which has as its
 90 shareholders or members only industrial insureds that are insured or reinsured by the
 91 industrial insured captive insurance company or which has as its sole shareholder or sole
 92 member an entity whose only owners are industrial insureds that are insured or reinsured
 93 by the industrial insured captive insurance company.

94 (10) 'Mutual insurer' means an incorporated insurer without capital stock or shares that
 95 is owned and governed by its policyholders.

96 ~~(9)~~(11) 'Parent' means an entity which directly or indirectly owns, controls, or holds with
 97 power to vote ~~shares representing~~ more than 50 percent of the total outstanding voting;
 98 ~~power and value of a pure captive insurance company.~~

135 for such types of insurance. Such insurance policies and bonds issued by a captive
 136 insurance company shall constitute satisfactory proof that the motor vehicle owners or
 137 employers, as applicable, insured under such policies or bonds have satisfied the
 138 requirements for motor vehicle accident insurance prescribed by Code Section 33-34-4 and
 139 for workers' compensation insurance prescribed by Code Section 34-9-121.

140 (c) Except as otherwise provided in ~~subsection (d)~~ of this Code section:

141 (1) A captive insurance company shall not insure or reinsure any risks resulting from:

142 (A) Any personal, familial, or household responsibilities; or

143 (B) Activities other than risks resulting from responsibilities arising out of any
 144 business, whether profit or nonprofit; trade; product; services, including professional
 145 or fiduciary services; or commercial premises or commercial operations;

146 (2) A captive insurance company may only cede reinsurance as provided in Code
 147 Section 33-41-14;

148 (3) A pure captive insurance company may only insure or reinsure the risks of its parent,
 149 affiliates of its parent, and its controlled unaffiliated business;

150 (4) An association captive insurance company may only insure or reinsure the risks of
 151 the members of its association and their affiliates;

152 (5) An industrial insured captive insurance company may only insure or reinsure the
 153 risks of the industrial insureds, and their affiliates, that are its shareholders or
 154 shareholders of its sole shareholder; ~~and~~

155 (6) A risk retention group captive insurance company may only insure or reinsure the
 156 risks of its group members; and

157 (7) An agency captive insurance company may only reinsure:

158 (A) The risk of insurance or annuity contracts placed by or through the agency,
 159 brokerage, managing general agent, or reinsurance intermediary by which it is owned
 160 or controlled; or

161 (B) The contractual liability arising out of service contracts or warranties sold through
 162 a marketer, producer, administrator, issuer, or provider of service contracts or
 163 warranties by which it is owned or controlled.

164 (d) A captive insurance company may, with prior written approval from the
 165 Commissioner, reinsure the risks insured or reinsured either directly or indirectly by:

166 (1) Any other captive insurance company; or

167 (2) Any foreign or alien insurance company which satisfies the ownership or
 168 membership requirements of a captive insurance company under this chapter; provided,
 169 however, that the risks insured or reinsured from the foreign or alien insurance company
 170 are solely those of its owners or members or their affiliates."

171 **SECTION 3.**

172 Said chapter is further amended in Code Section 33-41-4, relating to certificate of authority
 173 required, by revising paragraph (4) as follows:

174 "(4) Its board of directors or board of managers holds at least one meeting each year in
 175 this state."

176 **SECTION 4.**

177 Said chapter is further amended by revising Code Section 33-41-5, relating to incorporation,
 178 as follows:

179 "33-41-5.

180 (a)(1) A pure captive insurance company or an agency captive insurance company ~~must~~
 181 may be incorporated as a stock insurer ~~with its capital divided into shares~~ or organized
 182 as a manager-managed limited liability company.

183 ~~(b)(2)~~ (2) An association captive insurance company, ~~or~~ an industrial insured captive
 184 insurance company, or a risk retention group captive insurance company ~~shall~~ may be
 185 incorporated:

186 ~~(1)(A) Incorporated as~~ (A) Incorporated as As a stock insurer ~~with its capital divided into shares; or~~

187 ~~(2)(B) Incorporated as~~ (B) Incorporated as As a mutual insurer; ~~or without capital stock, the governing~~
 188 body of which is elected by its members.

189 (C) Organized as a manager-managed limited liability company.

190 (b)(1) Captive insurance companies formed as corporations pursuant to this chapter shall
 191 be subject to the provisions of Chapter 2 of Title 14, other applicable statutes, and the
 192 applicable provisions of this chapter. Such captive insurance companies are also subject
 193 to regulations promulgated hereunder, which the Commissioner has the authority to
 194 establish regarding the formation, organization, operations, merger, and dissolution of
 195 captive insurance companies formed as corporations. In the event of any conflict
 196 between statutes or regulations of this state that are applicable to such captive insurance
 197 companies, the provisions of this chapter or regulations promulgated hereunder shall
 198 control.

199 (2) Captive insurance companies formed as limited liability companies pursuant to this
 200 chapter shall be subject to the provisions of Chapter 11 of Title 14, other applicable
 201 statutes, and the applicable provisions of this chapter. Such captive insurance companies
 202 are also subject to regulations promulgated hereunder, which the Commissioner has the
 203 authority to establish regarding the formation, organization, operations, merger, and
 204 dissolution of captive insurance companies formed as limited liability companies. In the
 205 event of any conflict between statutes or regulations of this state that are applicable to

206 such captive insurance companies, the provisions of this chapter or regulations
 207 promulgated hereunder shall control.

208 (3) Captive insurance companies shall be exempt from all applicable publishing and
 209 probate court certification requirements set forth in Title 14 or this title.

210 (4) The provisions of Chapter 14 of this title shall not apply to captive insurance
 211 companies except as specifically set forth herein or by the Commissioner through
 212 regulation.

213 ~~(c)(1)(A) The applicable statutes of this state relating to the powers and procedures of~~
 214 ~~domestic corporations shall apply to captive insurance companies, except where in~~
 215 ~~conflict with the express provisions of this chapter or regulations promulgated~~
 216 ~~hereunder; provided, however, that captive insurance companies are exempt from the~~
 217 ~~requirements of subsection (b) of Code Section 33-14-5~~ To form a captive insurance
 218 company in this state, formation documents and a fee of \$100.00 shall be submitted to
 219 the Commissioner, who shall pay such fee into the state treasury. The Commissioner
 220 shall examine the formation documents to determine whether such documents will
 221 enable the captive insurance company to comply with the applicable insurance laws of
 222 this state; and, if the Commissioner finds that the formation documents, if approved,
 223 will enable the captive insurance company to do so, the Commissioner shall issue under
 224 his or her hand and official seal a certificate approving the formation documents and
 225 shall transmit a copy of such documents and the certificate of approval to the Secretary
 226 of State for recording.

227 (B) The articles of incorporation of a captive insurance company must be signed by the
 228 incorporator and shall contain the following:

- 229 (i) The name of the captive insurance company;
 230 (ii) The number of shares the captive insurance company is authorized to issue,
 231 which must be greater than zero;
 232 (iii) The street address and county of the initial registered office and the name of the
 233 initial registered agent at that office;
 234 (iv) The name and address of each incorporator, of which there must be at least one;
 235 (v) The street address of the captive insurance company's principal office;
 236 (vi) The number of directors, which number shall not be less than three, who shall
 237 conduct the affairs of the captive insurance company; and
 238 (vii) Such other provisions not inconsistent with law deemed appropriate by the
 239 incorporator.

240 (C) The articles of organization of a captive insurance company must be signed by the
 241 organizer and must contain the following:

- 242 (i) The name of the captive insurance company;

- 243 (ii) The street address and county of the initial registered office and the name of the
 244 initial registered agent at that office;
- 245 (iii) The name and address of each organizer, of which there must be at least one;
 246 (iv) The street address of the captive insurance company's principal office;
 247 (v) The number of managers, which number shall not be less than three, who shall
 248 conduct the affairs of the captive insurance company; and
- 249 (vi) Such other provisions not inconsistent with law deemed appropriate by the
 250 organizer.
- 251 (2) All corporate powers and privileges to captive insurance companies shall be issued
 252 and granted by the Secretary of State upon the terms, liabilities, and restrictions of and
 253 subject to this title and the laws and Constitution of this state. If for any reason the
 254 Secretary of State is disqualified or unable to issue or grant said powers, the duties
 255 required by this chapter, or regulations promulgated hereunder, to be performed by the
 256 Secretary of State shall be performed by the Commissioner.
- 257 (3) When the certificate of the Commissioner as to his or her approval of the formation
 258 documents have been received in the office of the Secretary of State, the Secretary of
 259 State shall issue to the captive insurance company under the seal of this state a certificate
 260 of incorporation or organization. The captive insurance company shall not transact
 261 business as an insurer until it has applied for and received from the Commissioner a
 262 certificate of authority as provided by this chapter.
- 263 ~~(d)(1) The incorporation procedures of Code Sections 33-14-4 through 33-14-6,~~
 264 ~~inclusive, and the amendment procedures of Code Section 33-14-8 shall apply to captive~~
 265 ~~insurance companies; provided, however, that captive insurance companies are exempt~~
 266 ~~from the publishing and probate court certification requirements of Code Sections~~
 267 ~~33-14-5 and 33-14-8. A captive insurance company may amend its formation documents~~
 268 ~~for any lawful purpose in accordance with the provisions of Chapter 2 of Title 14 if it is~~
 269 ~~a corporation or Chapter 11 of Title 14 if it is a limited liability company.~~
- 270 (2) The captive insurance company shall submit to the Commissioner any proposed
 271 amendment to its formation documents and a fee of \$50.00, which the Commissioner
 272 shall transmit into the state treasury.
- 273 (3) The Commissioner shall examine the proposed amendment to its formation
 274 documents to determine whether such documents will enable the captive insurance
 275 company to comply with the applicable insurance laws of this state; and, if the
 276 Commissioner finds that such documents, if approved, will enable the captive insurance
 277 company to do so, the Commissioner shall issue under his or her hand and official seal
 278 a certificate approving amended formation documents and shall transmit a copy of such
 279 documents and the certificate of approval to the Secretary of State for recording.

280 (e)(1) A captive insurance company may merge with or into one or more business
281 entities in accordance with the provisions of Chapter 2 of Title 14 if it is a corporation or
282 Chapter 11 of Title 14 if it is a limited liability company, but shall submit to the
283 Commissioner all required merger documents set forth therein.

284 (2) The Commissioner shall examine all required merger documents to determine
285 whether such documents will enable the captive insurance company to comply with the
286 applicable insurance laws of this state; and, if the Commissioner finds that such
287 documents, if approved, will enable the captive insurance company to do so, the
288 Commissioner shall issue under his or her hand and official seal a certificate approving
289 the merger documents and shall transmit a copy of such documents and the certificate of
290 approval to the Secretary of State for recording.

291 (f)(1) A captive insurance company that was formed as a stock corporation may elect to
292 convert to a manager-managed limited liability company pursuant to Title 14, but shall
293 submit to the Commissioner all required conversion documents set forth therein and a fee
294 of \$100.00, which the Commissioner shall transmit to the state treasury.

295 (2) The Commissioner shall examine the required conversion documents to determine
296 whether such documents will enable the captive insurance company to comply with the
297 applicable laws of this state; and, if the Commissioner finds that such documents, if
298 approved, will enable the captive insurance company to do so, the Commissioner shall
299 issue under his or her hand and official seal a certificate approving the conversion
300 documents and shall transmit a copy of such documents and the certificate of approval
301 to the Secretary of State for recording.

302 (g)(1) A captive insurance company may dissolve in accordance with the provisions of
303 Chapter 2 of Title 14 if it is a corporation, or Chapter 11 of Title 14 if it is a limited
304 liability company, but shall submit to the Commissioner all required dissolution
305 documents set forth therein.

306 (2) The Commissioner shall examine the required dissolution documents to determine
307 whether such documents will enable the captive insurance company to dissolve in
308 compliance with the applicable insurance laws of this state; and, if the Commissioner
309 finds that such documents, if approved, will enable the captive insurance company to do
310 so, the Commissioner shall issue under his or her hand and official seal a certificate
311 approving the dissolution and shall transmit a copy of such documents and the certificate
312 of approval to the Secretary of State for recording."

313 **SECTION 5.**

314 Said chapter is further amended by revising Code Section 33-41-6, relating to business name,
315 as follows:

316 "33-41-6.

317 (a) A captive insurance company shall not use any name which is either similar,
318 misleading, or confusing with respect to any other name already in use by any other captive
319 insurance company, domestic mutual or stock insurance company, corporation, or
320 association organized or doing business in this state. The Commissioner shall not approve
321 the ~~articles of incorporation~~ formation documents of an applicant attempting to use such
322 a name nor shall the Commissioner approve an application for a certificate of authority
323 from such applicant.

324 ~~(b)(1) With the exception of risk retention group captive insurance companies, the name~~
325 ~~of a captive insurance company shall include the words 'captive insurance company.'~~

326 ~~(2)~~ The name of a risk retention group captive insurance company shall include the
327 words 'risk retention group captive insurance company.'

328 (c) If the captive insurance company is a mutual insurer, the word 'mutual' shall ~~also~~ be
329 a part of ~~the~~ its name."

330 **SECTION 6.**

331 Said chapter is further amended by revising Code Section 33-41-7, relating to directors, as
332 follows:

333 "33-41-7.

334 (a) The affairs of every captive insurance company shall be managed by not less than three
335 directors or managers.

336 (b) At least one of the directors or managers of every captive insurance company shall be
337 a resident of this state, ~~and a majority of the directors shall be citizens of the United States.~~

338 (c) Every captive insurance company shall report to the Commissioner within 30 days after
339 any change in its directors or managers including in its report a statement of the business
340 and professional background and affiliations of any new director or manager."

341 **SECTION 7.**

342 Said chapter is further amended in Code Section 33-41-10, relating to application for
343 certificate of authority, by revising paragraph (1) of subsection (a) and subsections (b), (c),
344 (d), and (e), as follows:

345 "(1) A copy of the captive insurance company's adopted or proposed articles of
346 incorporation and bylaws; or articles of organization and operating agreement; and"

347 "(b) In determining whether to approve an application for an original or renewal certificate
 348 of authority to a captive insurance company, the Commissioner shall examine the
 349 applicable items submitted to him or her pursuant to subsections (a), (e), and (f) of this
 350 Code section. The Commissioner may rely upon and accept the reports of independent
 351 agents who may include licensed insurance counselors, brokers, agents, or adjusters
 352 discussed under Chapter 23 of this title, certified actuarial consultants, certified public
 353 accountants, risk managers, and examiners of insurance companies in order to facilitate his
 354 or her examination of the application for a certificate of authority by a captive insurance
 355 company. The expenses and charges of such independent agents shall be paid directly by
 356 the captive insurance company.

357 (c) Each captive insurance company shall pay to the Commissioner an amount equal to all
 358 costs of examining, investigating, and processing its application for an original or renewal
 359 certificate of authority. In addition, it shall pay a fee for the initial year of ~~registration~~
 360 licensure and a renewal fee for each year thereafter in the amount periodically imposed
 361 under this title upon ~~other domestic~~ captive insurance companies.

362 (d) Pursuant to Code Section 33-3-15, if the Commissioner is satisfied that the documents
 363 and statements filed by the captive insurance company comply with the provisions of this
 364 chapter, ~~he shall notify the captive insurance company of his intention to issue a certificate~~
 365 ~~of authority~~ the Commissioner shall promptly issue a certificate of authority authorizing
 366 the captive insurance company to transact insurance in this state until the thirtieth day of
 367 June thereafter.

368 (e) ~~After the captive insurance company has been notified pursuant to subsection (d) of~~
 369 ~~this Code section, the~~ The captive insurance company shall provide the Commissioner with
 370 the following documentation as soon as practicable:

371 (1) Evidence satisfactory to the Commissioner that the minimum capital or surplus
 372 required for the particular captive insurance company under Code Section 33-41-8 has
 373 been paid in and that the appropriate amount thereof has been deposited with the state;
 374 and

375 (2) A financial statement showing the assets and liabilities of the captive insurance
 376 company which is certified by its president and calculated in accordance with the
 377 accounting standards set ~~out~~ forth in Chapter 10 of this title, except as modified by this
 378 chapter.

379 ~~Thereafter, the Commissioner shall promptly issue a certificate of authority authorizing the~~
 380 ~~captive insurance company to transact insurance in this state until the thirtieth day of June~~
 381 ~~thereafter.~~ Notwithstanding subsection (d) of this Code section, the Commissioner may
 382 require that the captive insurance company submit the documentation required by this
 383 subsection prior to issuing the captive insurance company a certificate of authority."

384

SECTION 8.

385 Said chapter is further amended in Code Section 33-41-22, relating to taxation, by revising
386 paragraphs (1) and (2) as follows:

387 "(1) A tax at the rate of 0.4 percent on the first \$20 million and 0.3 percent on each dollar
388 thereafter on its direct premiums collected, after deducting from the direct premiums
389 subject to the tax the amounts paid to policyholders as return premiums which must
390 include dividends on unabsorbed premiums or premium deposits returned or credited to
391 policyholders. However, risk retention group captive insurance companies shall only be
392 subject to such taxes on direct premiums collected for coverages within the State of
393 Georgia;

394 (2) A tax at the rate of 0.225 percent on the first \$20 million of assumed reinsurance
395 premium, and 0.150 percent on the next \$20 million and 0.050 percent on the next \$20
396 million, and 0.025 percent of each dollar thereafter. However, no reinsurance tax applies
397 to premiums for risks or portions of risks that are subject to taxation on a direct basis
398 pursuant to ~~paragraph (1) of this Code section~~ this title. No reinsurance premium tax
399 shall be payable in connection with the receipt of assets in exchange for the assumption
400 of loss reserves and other liabilities of another insurer under common ownership and
401 control, provided that the Commissioner verifies that such transaction is part of a plan to
402 discontinue the operations of such other insurer, and if the intent of the parties to such
403 transaction is to renew or maintain such business with the captive insurance company;"

404

SECTION 9.

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