

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend, on an temporary basis, the Certified Capital Companies Act of 2003 and the Insurance Regulatory Trust Fund Act of 1993 to permit the Department of Insurance, Securities and Banking to spend fees generated from the Certified Capital Companies Act of 2003; and to amend the Captive Insurance Company Act of 2000 to repeal the sponsored cell provisions and replace them with provisions for the establishment, operation, and liquidation of segregated accounts.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Captive Insurance Company Enhancement Temporary Amendment Act of 2004”.

Sec. 2. The Certified Capital Companies Act of 2003, effective March 10, 2004 (D.C. Law 15-87; 50 DCR 10982), is amended by adding a new section 9a to read as follows:

“Sec. 9a. Fees deposited in Insurance Regulatory Trust Fund.

“All fees collected pursuant to this act shall be deposited in the Insurance Regulatory Trust Fund established by section 3 of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 3-1202), and expended for the purposes authorized by the Fund.”.

Sec. 3. Section 3(a) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1202 (a)), is amended by striking the phrase “this act” and inserting the phrase “this act and the Certified Capital Companies Act of 2003, effective March 10, 2004 (D.C. Law 15-87; 50 DCR 10982),” in its place.

Note,
§ 31-1202

Sec. 4. The Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3901), is amended as follows:

- (1) Paragraph (9) is amended by striking the phrase “sponsored captive insurer”.
- (2) Paragraphs (20), (24), and (25) are repealed.
- (3) A new paragraph (23A) is added to read as follows:

Note,
§ 31-3901

“(23A) “Segregated account” means a separate account established and maintained by any captive insurer:

“(A) In which the minimum capital and surplus required by applicable law is provided by one or more persons;

“(B) That is formed or licensed under the provisions of this act;

“(C) That insures risks of separate participants through contract;

“(D) That is comprised of one or more participants, who are authorized to act on matters relating to the segregated account; and

“(E) That segregates each participant’s liability.”.

(b) Section 7 (D.C. Official Code § 31-3906) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “sponsored captive insurer,”.

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§ 31-3906

(2) Subsections (c), (d), (e), (f), (g), and (h) are repealed.

(c) New sections 17a and 17b are added to read as follows:

“Sec. 17a. Segregated accounts.

“(a)(1) Upon payment of the applicable fee under section 4, a captive insurer may form one or more segregated accounts under this act to:

“(A) Insure risks of one or more participants; or

“(B) Segregate its assets and liabilities from the assets and liabilities of its segregated accounts.

“(2) The assets and liabilities of each segregated account shall be held separately from the assets and liabilities of all other segregated accounts.

“(3) A captive insurer shall be a single legal entity and each segregated account of a captive insurer may be established as a separate legal entity, which shall constitute a legal entity separate from the captive insurer. Each segregated account shall be separately identified or designated as being a part of the captive insurer.

“(4) A captive insurer that maintains any segregated account shall pay an additional annual fee in an amount to be established by the Commissioner for each segregated account.

“(b)(1) A captive insurer may create and issue shares in one or more classes or series for one or more segregated accounts. The proceeds of the issuance of shares shall be included in the assets of the segregated account for which the shares were issued.

“(2) The proceeds of the issuance of shares, other than segregated account shares, shall be included in the captive insurer’s general assets.

“(3) A captive insurer may pay a dividend on segregated account shares of any class or series from segregated account assets whether or not a dividend is declared on any other class or series of segregated account shares or any other shares. The dividends shall only be paid to the shareholders of the segregated account and in accordance with the rights of the shares.

“(c)(1) Any act, matter, deed, agreement, contract, instrument under seal, or other

instrument or arrangement which is to be binding on or to inure to the benefit of a segregated account or accounts shall be executed by the captive insurer for and on behalf of the segregated account or accounts, shall be identified and, where in writing, shall indicate that the execution is in the name of, or by or for the account of, the segregated account or accounts.

“(2) If a captive insurer is in breach of paragraph (1) this subsection:

“(A) Notwithstanding any provisions to the contrary in the captive insurer’s organizational documents or in any contract with such company or otherwise, the directors of the captive insurer shall incur personal liability for the liabilities of the captive insurer and the segregated account under the act, matter, deed, agreement, contract, instrument, or arrangement that was executed; and

“(B)(i) Unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the captive insurer shall have a right of indemnity, in the case of a matter on behalf of or attributable to a segregated account or accounts, against the assets of that account; or

“(ii) In the case of a matter not on behalf of or attributable to any segregated account, the directors shall have a right of indemnity against the general assets of the captive insurer.

“(3) Notwithstanding the provisions of paragraph (2)(A) of this subsection, a court may relieve a director of all or part of this personal liability thereunder if he or she satisfies the court that he or she should be relieved because the director:

“(A) Was not aware of the circumstances giving rise to the liability and, in being not so aware, the director was not fraudulent, reckless or negligent, and did not act in bad faith; or

“(B) Expressly objected, and exercised such rights as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability.

“(4) If, pursuant to the provisions of paragraph (3) of this subsection, the court relieves a director of all or part of his or her personal liability under paragraph (2)(A) of this subsection, the court may order that the liability in question shall instead be met from the portion of the segregated account or general assets of the account of the captive insurer as may be specified in the order.

“(5) Any provision in the organizational documents of a captive insurer, or any other contractual provision under which the captive insurer may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of paragraph (2)(B) of this subsection, shall be void.

“(d)(1) The assets of a captive insurer shall be either segregated account assets or general assets. The segregated account assets comprise the assets of the captive insurer held within or on behalf of the segregated accounts of the captive insurer. The general assets of a captive insurer comprise the assets of the captive insurer which are not segregated account assets.

“(2) The assets of a segregated account are comprised of assets representing the capital stock and reserves attributable to the segregated account, and all other assets attributable to or held within the segregated account. For the purposes of this paragraph, “reserves” includes retained earnings, capital surplus, and paid-in capital.

“(3) The directors of a captive insurer shall establish and maintain, or cause to be established and maintained, procedures:

“(A) To segregate, and keep segregated, account assets separate and separately identifiable from general assets;

“(B) To segregate, and keep segregated, account assets of each segregated account separate and separately identifiable from segregated account assets of any other segregated account; and

“(C) Where relevant, to apportion or transfer assets and liabilities between segregated accounts, or between segregated accounts and general assets of the segregated account captive insurer.

“(4) Segregated account assets shall:

“(A) Only be available and used to meet liabilities of the creditors with respect to that segregated account, and those creditors shall thereby be entitled to have recourse to the segregated account assets attributable to that segregated account; and

“(B) Not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the captive insurer who are not creditors with respect to a particular segregated account, and those creditors shall not be entitled to have recourse to such protected segregated account assets.

“(e)(1) If a liability of a captive insurer to a person arises from a matter, or is otherwise imposed, with respect to a particular segregated account, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to:

“(A) First, the segregated account assets attributable to such segregated account; and

“(B) Second, the captive insurer’s general assets, to the extent that the segregated account assets attributable to the segregated account are insufficient to satisfy the liability, and to the extent that the captive insurer’s general assets exceed any minimum capital amounts lawfully required by this act.

“(2) If a liability of a captive insurer to a person arises otherwise than from a matter in respect of a particular segregated account or accounts, or is imposed otherwise than in respect of a particular segregated account or accounts, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to the captive insurer’s general assets.

“(3) Liabilities of a captive insurer not attributable to any of its segregated accounts shall be discharged from the segregated account captive insurer’s general assets.

Income, receipts, and other property or rights of, or acquired by, a captive insurer not otherwise attributable to any segregated account shall be attributed to the captive insurer's general assets to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this act.

“(f)(1) Each segregated account shall be accounted for separately on the books and records of the captive insurer to reflect the financial condition and results of operations of the segregated account, including net income or loss, dividends, or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Commissioner.

“(2) No sale, exchange, or other transfer of assets may be made by such captive insurer between or among any of its segregated accounts without the written consent of the segregated accounts and the Commissioner.

“(3) No sale, exchange, transfer of assets, dividend, or distribution may be made from a segregated account to any person without the Commissioner's prior written approval and approval shall not be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment with respect to a segregated account.

“(4) Each segregated account captive insurer shall annually file with the Commissioner such financial reports as the Commissioner shall require, which shall include financial statements detailing the financial experience of each segregated account.

“(5) Each captive insurer shall notify the Commissioner within 10 business days of any segregated account that is insolvent or otherwise unable to meet its claims or expense obligations.

“(g)(1) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new segregated account or the withdrawal of any participant from any existing segregated account shall constitute a change in the strategic business plan of that segregated account requiring the Commissioner's prior written approval.

“(2) Any legal person or legal entity may be a participant in a segregated account formed or licensed under this act.

“(3) A participant in a segregated account need not be a shareholder insured within the segregated account or by the captive insurer or any affiliate thereof.

“Sec. 17b. Liquidation and rehabilitation of segregated accounts.

“(a) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a captive insurer, the liquidator:

“(1) Shall deal with the company's assets only in accordance with the procedures set out in subsection (c)(6) of this section; and

“(2) In the discharge of the claims of creditors of the captive insurer, shall apply the captive insurer's assets to those entitled to have recourse thereto under the provisions of this section.

“(b)(1) A petition for a liquidation or rehabilitation order with respect to a

segregated account of a captive insurer may be made by:

“(A) The segregated account captive insurer;

“(B) The majority of the directors of the segregated account captive insurer;

“(C) Any creditor of the segregated account; or

“(D) The Commissioner.

“(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer shall be served upon:

“(A) The captive insurer;

“(B) The Commissioner; and

“(C) Such other persons as the court may direct.

“(c)(1) Subject to the provisions of this section, a liquidation or rehabilitation order with respect to a segregated account may be entered if, in relation to a captive insurer:

“(A) The segregated account assets attributable to a particular segregated account of the captive insurer, and in those cases where creditors of the captive insurer with to that segregated account are entitled to have recourse to the captive insurer’s general assets, are, or are likely to be, insufficient to discharge the claims of creditors with respect to the segregated account; and

“(B) The order would achieve the purposes set out in paragraphs (3)(A) and (B) of this subsection.

“(2) A liquidation or rehabilitation order may be made with respect to one or more segregated accounts.

“(3) A liquidation or rehabilitation order shall direct that the business and segregated account assets of, or attributable to, a segregated account shall be managed by a liquidator or rehabilitator specified in the order for the purpose of:

“(A) The orderly closing or rehabilitation of the business of, or attributable to, the segregated account; and

“(B) The distribution of the segregated account assets, or assets attributable to the segregated account, to those entitled to having recourse thereto.

“(d) The liquidator or rehabilitator of a segregated account:

“(1) Shall have all the functions and powers of the directors responsible for the business and segregated account assets of, or attributable to, the segregated account;

“(2) May at any time apply to the court for directions as to the extent or exercise of any function or power, for the liquidation or rehabilitation order to be discharged or modified, or for any matter occurring during the course of the liquidation or rehabilitation.

“(3) In exercising his functions and powers, shall:

“(A) Be deemed to act as the agent of the captive insurer; and

“(B) Not incur personal liability except to the extent that he acts fraudulently, recklessly, negligently, or in bad faith.

“(e) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:

“(1) No proceedings may be instituted or continued by or against the captive insurer or segregated account in respect of which the liquidation or rehabilitation order was made; and

“(2) Except by leave of the court, no action may be taken to enforce any security or to execute legal process in respect of the business or segregated account assets of or attributable to the segregated account in respect of which the liquidation or rehabilitation order was made.

“(f) During the period of operation of a liquidation or rehabilitation order:

“(1) The functions and powers of the directors shall cease with respect to the business of, or attributable to, the segregated account or segregated account assets for which the order was made; and

“(2)(A) The liquidator or rehabilitator of the segregated account shall be entitled to be present at all meetings of the captive insurer or segregated account and to vote at the meetings, as if he or she were a director of the captive insurer; and

“(B) Unless there are no creditors that are entitled to have recourse to the captive insurer’s general assets, the liquidator’s or rehabilitator’s voting authority includes matters concerning the captive insurer’s general assets.

“(g)(1) The court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.

“(2) The court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order or adjourn the proceeding.

“(3) Upon the issuance of an order discharging a liquidation or rehabilitation order for a segregated account of a captive insurer on the ground that the purpose for which the order was made had been achieved or substantially achieved, the court may direct that any payment made by the liquidator or rehabilitator to any creditor of the captive insurer, with respect to that segregated account, shall fully satisfy the liabilities of the captive insurer to that creditor with respect to that segregated account, and the creditor’s claims against the captive insurer with respect to that segregated account shall be extinguished.”.

(d) Section 9 (D.C. Official Code§ 31-3908) is amended as follows:

(1) Subsection (a)(3) is amended by striking the phrase “a rental captive insurer, for a sponsored captive insurer,” and inserting the phrase “or a rental captive insurer” in its place.

(2) Subsection (f)(2) is amended by striking the phrase “a rental captive insurer, for a sponsored captive insurer,” and inserting the phrase “or a rental captive insurer” in its place.

Note,
§ 31-3908

Sec. 5. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.2(c)(3)).

Sec. 6. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia