



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1286

Introduced 2/9/2017, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

See Index

Amends the Domestic Captive Insurance Companies Article of the Illinois Insurance Code. Makes changes to provisions concerning definitions. Prohibits captive insurance companies from issuing certain types of insurance. Provides that the Department of Insurance may not issue a certificate of authority to a captive insurance company unless the company possesses and maintains unencumbered capital and surplus in an amount determined by the Director of Insurance after considering specified factors. Provides that the amount of capital and surplus may not be less than specified for classes of captive insurance companies. Makes changes to the reports a captive insurance company must submit to the Director. Allows, upon written application to the Director, the annual report to be filed at a fiscal year's end, rather than on or prior to March 1. Allows a captive insurance company to make loans to its affiliates with the prior approval of the Director. Adds additional requirements for a captive insurance company to provide reinsurance. Provides that annually, 10% of the premium tax revenues collected under certain provisions of the Code to be transferred to the Department for the regulation of captive insurance companies. Reduces fees for the filing of certain documents from \$7,000 to \$2,000. Removes certain requirements to issue letters of credit. Allows the Director to approve captive reinsurance pools under certain circumstances. Makes provisions concerning standards for risk management of controlled unaffiliated businesses, captive managers, dividends, and confidentiality. Allows the Director to adopt rules to enforce the provisions. Repeals a provision concerning minimum surplus. Makes other changes.

LRB100 06959 SMS 17010 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 123C-1, 123C-2, 123C-3, 123C-9, 123C-11,
6 123C-12, 123C-13, 123C-16, 123C-17, and 123C-19 and by adding
7 Sections 123C-23, 123C-24, 123C-25, 123C-26, 123C-27, and
8 123C-28 as follows:

9 (215 ILCS 5/123C-1) (from Ch. 73, par. 735C-1)

10 (Section scheduled to be repealed on January 1, 2027)

11 Sec. 123C-1. Definitions. As used in this Article:

12 A. "Affiliate" or "Affiliated company" includes a parent
13 entity that controls a captive insurance company and:

14 (1) is an affiliate of another entity if the entity
15 directly or indirectly, through one or more
16 intermediaries, controls, is controlled by, or is under
17 common control with the other entity.

18 (2) is an affiliate of another entity if the entity is
19 an affiliate of and is controlled by the other entity
20 directly or indirectly through one or more intermediaries.

21 A subsidiary or holding company of an entity is an affiliate of
22 that entity. ~~shall have the meaning set forth in subsection (a)~~
23 ~~of Section 131.1 (and, for purposes of such definition, the~~

1 ~~definitions of "control" and "person", as set forth in~~
2 ~~subsections (b) and (c) of Section 131.1, respectively, shall~~
3 ~~be applicable).~~

4 B. "Association" means any entity meeting the requirements
5 set forth in either of the following paragraphs (1), (2) or
6 (3):

7 (1) any organized association of individuals, legal
8 representatives, corporations (whether for profit or not
9 for profit), partnerships, trusts, associations, units of
10 government or other organizations, or any combination of
11 the foregoing, that has been in continuous existence for at
12 least one year, the member organizations of which
13 collectively:

14 (a) own, control, or hold with power to vote
15 (directly or indirectly) all of the outstanding voting
16 securities of an association captive insurance company
17 incorporated as a stock insurer; or

18 (b) have complete voting control (directly or
19 indirectly) over an association captive insurance
20 company organized as a mutual insurer;

21 (2) any organized association of individuals, legal
22 representatives, corporations (whether for profit or not
23 for profit), partnerships, trusts, associations, units of
24 government or other organizations, or any combination of
25 the foregoing:

26 (a) whose member organizations are engaged in

1 businesses or activities similar or related with
2 respect to the liability of which such members are
3 exposed by virtue of any related, similar, or common
4 business, trade, product, services, premises, or
5 operations; and

6 (b) whose member organizations:

7 (i) directly or indirectly own or control, and
8 hold with power to vote, at least 80% of all of the
9 outstanding voting securities of an association
10 captive insurance company incorporated as a stock
11 insurer; or

12 (ii) directly or indirectly have at least 80%
13 of the voting control over an association captive
14 insurance company organized as a mutual insurer;
15 or

16 (3) any risk retention group, as defined in subsection
17 (11) of Section 123B-2, domiciled in this State and
18 organized under this Article; however, beginning 6 months
19 after the effective date of this amendatory Act of 1995, a
20 risk retention group shall no longer qualify as an
21 association under this Article.

22 Provided, however, that with respect to each of the
23 associations described in paragraphs (1), (2) and (3) above, no
24 member organization may (i) own, control, or hold with power to
25 vote in excess of 25% of the voting securities of an
26 association captive insurance company incorporated as a stock

1 insurer, or (ii) have more than 25% of the voting control of an
2 association captive insurance company organized as a mutual
3 insurer.

4 C. "Association captive insurance company" means any
5 company that insures risks of (i) the member organizations of
6 an association, and (ii) their affiliated companies.

7 D. "Captive insurance company" means any pure captive
8 insurance company, association captive insurance company or
9 industrial insured captive insurance company organized under
10 the provisions of this Article.

11 E. "Director" means the Director of the Department of
12 Insurance.

13 F. "Industrial insured" means an insured which (together
14 with its affiliates) at the time of its initial procurement of
15 insurance from an industrial insured captive insurance
16 company:

17 (1) has available to it advice with respect to the
18 purchase of insurance through the use of the services of a
19 full-time employee acting as an insurance manager or buyer
20 or the services of a regularly and continuously retained
21 qualified insurance consultant; and

22 (2) pays aggregate annual premiums in excess of
23 \$100,000 for insurance on all risks except for life,
24 accident and health; and

25 (3) either (i) has at least 25 full-time employees, or
26 (ii) has gross assets in excess of \$3,000,000, or (iii) has

1 annual gross revenues in excess of \$5,000,000.

2 G. "Industrial insured captive insurance company" means
3 any company that insures risks of industrial insureds that are
4 members of the industrial insured group, and their affiliated
5 companies.

6 H. "Industrial insured group" means any group of industrial
7 insureds that collectively:

8 (1) directly or indirectly (including ownership or
9 control through a company which is wholly owned by such
10 group of industrial insureds) own or control, and hold with
11 power to vote, all of the outstanding voting securities of
12 an industrial insured captive insurance company
13 incorporated as a stock insurer; or

14 (2) directly or indirectly (including control through
15 a company which is wholly owned by such group of industrial
16 insureds) have complete voting control over an industrial
17 insured captive insurance company organized as a mutual
18 insurer; provided, however, that no member organization
19 may (i) own, control, or hold with power to vote in excess
20 of 25% of the voting securities of an industrial insured
21 captive insurance company incorporated as a stock insurer,
22 or (ii) have more than 25% of the voting control of an
23 industrial insured captive insurance company organized as
24 a mutual insurer.

25 I. "Member organization" means any individual, legal
26 representative, corporation (whether for profit or not for

1 profit), partnership, association, unit of government, trust
2 or other organization that belongs to an association or an
3 industrial insured group.

4 J. "Parent" means a corporation, partnership, individual
5 or other legal entity that directly or indirectly owns,
6 controls, or holds with power to vote more than 50% of the
7 outstanding voting securities of a company.

8 K. "Personal risk liability" means liability to other
9 persons for (i) damage because of injury to any person, (ii)
10 damage to property, or (iii) other loss or damage, in each case
11 resulting from any personal, familial, or household
12 responsibilities or activities, but does not include legal
13 liability for damages (including costs of defense, legal costs
14 and fees, and other claims expenses) because of injuries to
15 other persons, damage to their property, or other damage or
16 loss to such other persons resulting from or arising out of:

17 (i) any business (whether for profit or not for
18 profit), trade, product, services (including professional
19 services), premises, or operations; or

20 (ii) any activity of any state or local government, or
21 any agency or political subdivision thereof.

22 L. "Pure captive insurance company" means any company that
23 insures only risks of its parent or affiliated companies or
24 both.

25 M. "Unit of government" includes any state, regional or
26 local government, or any agency or political subdivision

1 thereof, or any district, authority, public educational
2 institution or school district, public corporation or other
3 unit of government in this State or any similar unit of
4 government in any other state.

5 N. "Control" means the power to direct, or cause the
6 direction of, the management and policies of an entity, other
7 than the power that results from an official position with or
8 corporate office held in the entity. The power may be possessed
9 directly or indirectly by any means, including through the
10 ownership of voting securities or by contract, other than a
11 commercial contract for goods or non-management services.

12 O. "Qualified independent actuary" means a person that is
13 either:

14 (1) a member in good standing with the Casualty
15 Actuarial Society; or

16 (2) a member in good standing with the American Academy
17 of Actuaries who has been approved as qualified for signing
18 casualty loss reserve opinions by the Casualty Practice
19 Council of the American Academy of Actuaries.

20 P. "Controlled unaffiliated business" means an entity:

21 (1) that is not an affiliate;

22 (2) that has an existing contractual relationship with
23 an affiliate under which the affiliate bears a potential
24 financial loss; and

25 (3) whose risks are managed by a captive insurance
26 company under Section 123C-24 of this Code.

1 Q. "Operational risk" means any potential financial loss of
2 an affiliate, except for a loss arising from an insurance
3 policy issued by a captive or insurance affiliate.

4 R. "Captive management company" means an entity providing
5 administrative services to a captive insurance company.

6 (Source: P.A. 89-97, eff. 7-7-95; 90-794, eff. 8-14-98.)

7 (215 ILCS 5/123C-2) (from Ch. 73, par. 735C-2)

8 (Section scheduled to be repealed on January 1, 2027)

9 Sec. 123C-2. Authority of captives; restrictions.

10 A. Except as provided by this Section, a captive insurance
11 company may write any type of insurance, but may only insure
12 the operational risks of the company's affiliates and risks of
13 a controlled unaffiliated business. ~~Any captive insurance~~
14 company, when permitted by its articles of association or
15 charter, may apply to the Director for a certificate of
16 authority to transact any and all insurance in classes 2 and 3
17 of Section 4 of this Code, except that:

18 ~~(1) no pure captive insurance company may insure any~~
19 ~~risks other than those of its parent and affiliated~~
20 ~~companies;~~

21 ~~(2) no association captive insurance company may~~
22 ~~insure any risks other than those of the member~~
23 ~~organizations of its association, and their affiliated~~
24 ~~companies;~~

25 ~~(3) no industrial insured captive insurance company~~

1 ~~may insure any risks other than those of the members of the~~
2 ~~industrial insured group, and their affiliated companies;~~
3 ~~and~~

4 ~~(4) no captive insurance company may provide:~~

5 ~~(i) personal motor vehicle coverage or homeowner's~~
6 ~~insurance coverage or any component thereof, or~~

7 ~~(ii) personal coverage for personal risk~~
8 ~~liability, or~~

9 ~~(iii) coverage for an employer's liability to its~~
10 ~~employees other than legal liability under the federal~~
11 ~~Employers' Liability Act (45 U.S.C. 51 et seq.),~~
12 ~~provided, however, this exclusion does not preclude~~
13 ~~reinsurance of such employer's liability, or~~

14 ~~(iv) accident and health insurance as provided in~~
15 ~~clause (a) of Class 2 of Section 4, provided, however,~~
16 ~~this exclusion does not preclude stop loss insurance~~
17 ~~or reinsurance of a single employer self funded~~
18 ~~employee disability benefit plan or an employee~~
19 ~~welfare plan as described in 29 U.S.C. 1001 et seq.~~

20 A-5. A captive insurance company may not issue:

21 (1) life insurance;

22 (2) annuities;

23 (3) accident and health insurance for the company's
24 parent and affiliates, except to insure employee benefits
25 that are subject to the federal Employee Retirement Income
26 Security Act of 1974;

- 1 (4) title insurance;
- 2 (5) mortgage guaranty insurance;
- 3 (6) financial guaranty insurance;
- 4 (7) residential property insurance;
- 5 (8) personal automobile insurance; or
- 6 (9) workers' compensation insurance.

7 A-10. A captive insurance company may not issue a type of
8 insurance, including automobile liability insurance, that is
9 required under the laws of this State or a political
10 subdivision of this State as a prerequisite for obtaining a
11 license or permit if the law requires that the liability
12 insurance be issued by an insurer authorized to engage in the
13 business of insurance in this State.

14 A-15. A captive insurance company is authorized to issue a
15 contractual reimbursement policy to:

16 (1) an affiliated certified self-insurer authorized
17 under the Workers' Compensation Act or a similar affiliated
18 entity expressly authorized by analogous laws of another
19 state; or

20 (2) an affiliate that is insured by a workers'
21 compensation insurance policy with a negotiated deductible
22 endorsement.

23 B. No captive insurance company shall do any insurance
24 business in this State unless:

25 (1) it first obtains from the Director a certificate of
26 authority authorizing it to do such insurance business in

1 this State; and

2 (2) it appoints a resident registered agent to accept
3 service of process and to otherwise act on its behalf in
4 this State.

5 C. No captive insurance company shall adopt a name that is
6 the same as, deceptively similar to, or likely to be confused
7 with or mistaken for, any other existing business name
8 registered in this State.

9 D. Each captive insurance company, or the organizations
10 providing the principal administrative or management services
11 to such captive insurance company, shall maintain a place of
12 business in this State.

13 (Source: P.A. 91-357, eff. 7-29-99.)

14 (215 ILCS 5/123C-3) (from Ch. 73, par. 735C-3)

15 (Section scheduled to be repealed on January 1, 2027)

16 Sec. 123C-3. Minimum capital and surplus.

17 A. The Department may not issue a certificate of authority
18 to a captive insurance company unless the company possesses and
19 maintains unencumbered capital and surplus in an amount
20 determined by the Director after considering:

21 (1) the amount of premium written by the captive
22 insurance company;

23 (2) the characteristics of the assets held by the
24 captive insurance company;

25 (3) the terms of reinsurance arrangements entered into

1 by the captive insurance company;

2 (4) the type of business covered in policies issued by
3 the captive insurance company;

4 (5) the underwriting practices and procedures of the
5 captive insurance company; and

6 (6) any other criteria that has an impact on the
7 operations of the captive insurance company determined to
8 be significant by the Director. ~~No pure captive insurance~~
9 ~~company, association captive insurance company~~
10 ~~incorporated as a stock insurer, or industrial insured~~
11 ~~captive insurance company incorporated as a stock insurer~~
12 ~~shall be issued a certificate of authority unless it shall~~
13 ~~possess and thereafter maintain unimpaired paid in capital~~
14 ~~of not less than the minimum capital requirement applicable~~
15 ~~to the class or classes and clause or clauses of Section 4~~
16 ~~describing the kind or kinds of insurance which such~~
17 ~~captive insurance company is authorized to write, as set~~
18 ~~forth in subsection (1) of Section 13.~~

19 B. The amount of capital and surplus determined by the
20 Director under subsection A of this Section may not be less
21 than \$250,000 for a pure captive insurance company, \$500,000
22 for an industrial insured captive insurance company, and
23 \$750,000 for an association captive insurance company. ~~Such~~
24 ~~capital may be in the form of (1) all cash or cash equivalents;~~
25 ~~or (2) cash or cash equivalents representing at least 20% of~~
26 ~~the requisite capital, together with an irrevocable letter of~~

1 ~~credit for the remainder of the requisite capital, which letter~~
2 ~~of credit must (a) be approved by the Director, (b) be issued~~
3 ~~or unconditionally confirmed by (i) a bank chartered by this~~
4 ~~State, (ii) a member bank of the Federal Reserve System or~~
5 ~~(iii) a United States office of a foreign banking corporation~~
6 ~~that is: (A) licensed under the laws of the United States or~~
7 ~~any state thereof, (B) regulated, supervised and examined by~~
8 ~~United States federal or state authorities having regulatory~~
9 ~~authority over banks and trust companies, and (C) designated by~~
10 ~~the Securities Valuation Office of the National Association of~~
11 ~~Insurance Commissioners as meeting its credit standards for~~
12 ~~issuing or confirming letters of credit or, in the event that~~
13 ~~the Director elects to establish credit standards by rule, in~~
14 ~~compliance with rules promulgated by the Director establishing~~
15 ~~reasonable standards of safety and soundness substantially~~
16 ~~equivalent to those of the Securities Valuation Office of the~~
17 ~~National Association of Insurance Commissioners, and (c)~~
18 ~~satisfy the requirements of Section 123C 19; or (3) cash or~~
19 ~~cash equivalents representing at least 33% of the requisite~~
20 ~~capital, together with irrevocable contractual obligations of~~
21 ~~the member organizations of the captive insurance company for~~
22 ~~the payment of the remainder of the requisite capital in no~~
23 ~~more than 3 equal installments in each of the 3 calendar years~~
24 ~~following the date of the grant of the certificate of authority~~
25 ~~to the captive insurance company, which irrevocable~~
26 ~~contractual obligations shall by contract be subject to~~

1 ~~acceleration (in a manner acceptable to the Director) by the~~
2 ~~Company at the direction of the Director and shall be secured~~
3 ~~by a letter of credit or other form of guarantee or security~~
4 ~~acceptable to the Director.~~

5 C. The capital and surplus required by subsection A of this
6 Section must be in the form of:

7 (1) United States currency;

8 (2) an irrevocable letter of credit, in a form approved
9 by the Director and not secured by a guarantee from an
10 affiliate, naming the Director as beneficiary for the
11 security of the captive insurance company's policyholders
12 and issued by a bank approved by the Director;

13 (3) bonds of this State; or

14 (4) bonds or other evidences of indebtedness of the
15 United States, the principal and interest of which are
16 guaranteed by the United States.

17 (Source: P.A. 86-632.)

18 (215 ILCS 5/123C-9) (from Ch. 73, par. 735C-9)

19 (Section scheduled to be repealed on January 1, 2027)

20 Sec. 123C-9. Reports, statements and mandatory reserves.

21 A. Captive insurance companies shall not be required to
22 make any annual report except as provided in this Article.

23 B. (1) On or before ~~Prior to~~ March 1 of each year, each
24 captive insurance company shall submit to the Director a report
25 of its financial condition, verified by oath of 2 of its

1 executive officers and including (i) a balance sheet reporting
2 assets, liabilities, capital and surplus, (ii) a statement of
3 gain or loss from operations, (iii) a statement of changes in
4 financial position, (iv) a statement of changes in capital and
5 surplus, ~~and~~ (v) in the case of industrial insured captive
6 insurance companies, an analysis of loss reserve development,
7 information on risks ceded and assumed under reinsurance
8 agreements, on forms prescribed by the Director, and a schedule
9 of its invested assets on forms prescribed by the Director, and
10 (vi) a statement of actuarial opinion by a qualified
11 independent actuary concerning the reasonableness of the
12 captive insurance company's loss and loss adjustment expense
13 reserves in such form and of such content as specified in the
14 National Association of Insurance Commissioners Annual
15 Statement Instructions: Property and Casualty.

16 (2) In addition, prior to March 1 of each year, each
17 association captive insurance company shall submit to the
18 Director such additional data or information, which the
19 Director may from time to time require, on a form specified by
20 the Director.

21 (3) On or before June 1 of each year, each captive
22 insurance company shall submit to the Director a report of its
23 financial condition at last year's end with an independent
24 certified public accountant's opinion of the company's
25 financial condition. ~~Prior to June 1 of each year, each~~
26 ~~association and industrial insured captive insurance company~~

1 ~~shall submit to the Director a report of its financial~~
2 ~~condition, certified by a recognized firm of independent public~~
3 ~~accountants acceptable to the Director and including the items~~
4 ~~referred to in items (i), (ii), (iii) and (iv) of paragraph (1)~~
5 ~~of this subsection B.~~

6 (4) Unless the Director permits otherwise, the reports of
7 financial condition referred to in paragraphs (1) and (3) of
8 this subsection B are to be prepared in accordance with the
9 Accounting Practices and Procedures Manual adopted by the
10 National Association of Insurance Commissioners. The Director
11 shall have authority to extend the time for filing any report
12 or statement by any company for reasons which he considers good
13 and sufficient.

14 C. In addition, any captive insurance company may be
15 required by the Director, when he considers such action to be
16 necessary and appropriate for the protection of policyholders,
17 creditors, shareholders or claimants, to file, within 60 days
18 after mailing to the company of a notice that such is required,
19 a supplemental summary statement as of the last day of any
20 calendar month occurring during the 100 days next preceding the
21 mailing of such notice designated by him on forms prescribed
22 and furnished by the Director. No company shall be required to
23 file more than 4 supplemental summary statements during any
24 consecutive 12 month period.

25 D. Every captive insurance company shall, at all times,
26 maintain reserves in an amount estimated in the aggregate to

1 provide for the payment of all losses and claims incurred,
2 whether reported or unreported, which are unpaid and for which
3 such company may be liable, and to provide for the expenses of
4 adjustment or settlement of such losses and claims. The
5 aggregate reserves shall be reduced by reinsurance ceded which
6 meets the requirements of Section 123C-13. For the purpose of
7 such reserves, the company shall keep a complete and itemized
8 record showing all losses and claims on which it has received
9 notice, including all notices received by it of the occurrence
10 of any event which may result in a loss. Such record shall be
11 opened in chronological receipt order, with each notice of loss
12 or claim identified by appropriate number or coding.

13 E. Every captive insurance company shall maintain an
14 unearned premium reserve on all policies in force which reserve
15 shall be charged as a liability. The portions of the gross
16 premiums in force, after deducting reinsurance qualifying
17 under Section 123C-13, which shall be held as a premium
18 reserve, shall never be less in the aggregate than the
19 company's actual liability to all its insureds for the return
20 of gross unearned premiums. In the calculation of the company's
21 actual liability to all its insureds, the reserve shall be
22 computed pursuant to the method commonly referred to as the
23 monthly pro rata method; provided, however, that the Director
24 may require that such reserve shall be equal to the unearned
25 portions of the gross premiums in force, after deducting
26 reinsurance qualifying under Section 123C-13, in which case the

1 reserve shall be computed on each respective risk from the date
2 of the issuance of the policy.

3 E-5. A captive insurance company may make a written
4 application to the Director for filing its annual report
5 required under this Section on a fiscal year's end. If an
6 alternative filing date is granted, the company shall file:

7 (1) the annual report, including a statement of
8 actuarial opinion by a qualified independent actuary
9 concerning the reasonableness of the captive insurance
10 company's loss and loss adjustment expense reserves in such
11 form and of such content as specified in the National
12 Association of Insurance Commissioners Annual Statement
13 Instructions: Property and Casualty, no later than the 60th
14 day after the date of the company's fiscal year's end;

15 (2) the report of its financial condition at last
16 year's end with an independent certified public
17 accountant's opinion of the company's financial condition;
18 and

19 (3) its balance sheet, income statement, and statement
20 of cash flows, verified by 2 of its executive officers,
21 before March 1 of each year to provide sufficient detail to
22 support a premium tax return.

23 F. The reports required by this Section shall be prepared
24 and filed on a calendar year basis.

25 G. Notwithstanding the requirements of this Section, a
26 captive insurance company may prepare and issue financial

1 statements prepared in accordance with generally accepted
2 accounting principles.

3 (Source: P.A. 85-131; 86-1155; 86-1156.)

4 (215 ILCS 5/123C-11) (from Ch. 73, par. 735C-11)

5 (Section scheduled to be repealed on January 1, 2027)

6 Sec. 123C-11. Grounds and procedures for suspension or
7 revocation of certificate of authority.

8 A. The certificate of authority of a captive insurance
9 company to do an insurance business in this State may be
10 suspended or revoked by the Director for any of the following
11 reasons:

12 (1) insolvency or impairment of required capital or
13 surplus to policy holders;

14 (2) failure to meet the requirements of Sections 123C-3
15 or 123C-4;

16 (3) refusal or failure to submit an annual report, as
17 required by Section 123C-9, or any other report or
18 statement required by law or by lawful order of the
19 Director;

20 (4) failure to comply with the provisions of its own
21 charter or bylaws (or, in the case of an industrial insured
22 captive, with the provisions of the investment policy set
23 forth in its plan of operation as approved from time to
24 time by the Director);

25 (5) failure to submit to examination or any legal

1 obligation relative thereto, as required by Section
2 123C-10;

3 (6) refusal or failure to pay expenses, ~~and~~ charges, ~~and~~
4 and taxes as required by Sections 408, 409, 123C-10, and
5 123C-17;

6 (7) use of methods that, although not otherwise
7 specifically prohibited by law, nevertheless render its
8 operation detrimental or its condition unsound with
9 respect to the public or to its policyholders; or

10 (8) failure otherwise to comply with the laws of this
11 State.

12 B. If the Director finds, upon examination, hearing, or
13 other evidence, that any captive insurance company has
14 committed any of the acts specified in subsection A, he may
15 suspend or revoke such certificate of authority if he deems it
16 in the best interest of the public and the policyholders of
17 such captive insurance company, notwithstanding any other
18 provision of this Article.

19 C. The provisions of Articles XIII and XIII 1/2 shall apply
20 to and govern the conservation, rehabilitation, liquidation
21 and dissolution of captive insurance companies.

22 (Source: P.A. 85-131.)

23 (215 ILCS 5/123C-12) (from Ch. 73, par. 735C-12)

24 (Section scheduled to be repealed on January 1, 2027)

25 Sec. 123C-12. Legal investments.

1 A. The provisions of Article VIII and of Sections 131.2 and
2 131.3 shall apply to association captive insurance companies.

3 B. No pure captive insurance company or industrial insured
4 captive insurance company shall be subject to any restrictions
5 on allowable investments whatever, including those limitations
6 contained in Articles VIII and VIII 1/2; provided, however,
7 that the Director may prohibit or limit any investment or type
8 of investment that threatens the solvency or liquidity of any
9 such company; and provided further that an industrial insured
10 captive insurance company must adhere to the investment policy
11 set forth in its plan of operation as approved from time to
12 time by the Director.

13 C. A captive insurance company may make loans to its
14 affiliates with the prior approval of the Director. Each loan
15 must be evidenced by a note approved by the Director. A captive
16 insurance company may not make a loan of the minimum capital
17 and surplus funds required by this Article.

18 D. The Director may prohibit or limit an investment that
19 threatens the solvency or liquidity of a captive insurance
20 company.

21 (Source: P.A. 85-131.)

22 (215 ILCS 5/123C-13) (from Ch. 73, par. 735C-13)

23 (Section scheduled to be repealed on January 1, 2027)

24 Sec. 123C-13. Reinsurance.

25 A. Any captive insurance company may provide reinsurance on

1 risks ceded by any other insurer; provided, however, that the
2 risks so assumed are the same as the captive insurance company
3 could legally insure on a direct basis.

4 The provisions of Section 174.1 shall not apply to any
5 captive insurance company providing reinsurance.

6 B. Subject to the provisions of Article XI, any captive
7 insurance company may cede, and may take credit for in the
8 establishment of reserves, all or any part of its risks.
9 Furthermore, in addition to Section 173.1, any pure or
10 industrial insured captive insurance company may take credit,
11 as either an asset or a deduction from liability, for
12 reinsurance so ceded to the extent:

13 (1) The reinsurer satisfies all of the following (a)
14 through (g):

15 (a) the principal business of the reinsurer (other
16 than investments in subsidiaries and other investment
17 activities) is to accept reinsurance from captive
18 insurance companies organized under Article VIIC, of
19 which the company accepting the reinsurance directly
20 or indirectly owns, controls, or holds with power to
21 vote more than 80% of the outstanding voting securities
22 if organized as a stock company or more than 80% of the
23 voting control if organized as a mutual company and to
24 provide insurance related services;

25 (b) is licensed to transact insurance or
26 reinsurance in its jurisdiction of domicile;

1 (c) submits to this State's authority to examine
2 its books and records and agrees to pay the cost
3 thereof;

4 (d) files annually with the Director a copy of its
5 most recent audited financial statements;

6 (e) maintains a surplus as regards policyholders
7 in an amount that is not less than \$20,000,000;

8 (f) files with the Department the following:

9 (i) evidence of its submission to the
10 jurisdiction of any court of competent
11 jurisdiction in any state of the United States and
12 its agreement to comply with all requirements
13 necessary to give the court jurisdiction and to
14 abide by the final decision of the court or of any
15 appellate court in the event of an appeal; and

16 (ii) an instrument designating the Director or
17 a designated attorney as its true and lawful
18 attorney upon whom may be served any lawful process
19 in any action, suit, or proceeding instituted by or
20 on behalf of the ceding company;

21 (g) has not been the subject of an order of the
22 Director entered after notice and hearing prohibiting
23 the reinsurer from utilizing this paragraph (1); or

24 (2) the taking of credit by the captive insurance
25 company has otherwise received the prior approval of the
26 Director.

1 C. A captive insurance company shall provide notice to the
2 Director of a reinsurance agreement to which the company
3 becomes a party not later than the 30th day after the date of
4 the execution of the agreement.

5 D. A captive insurance company shall provide notice of a
6 termination of a previously filed reinsurance agreement to the
7 Director not later than the 30th day after the date of
8 termination.

9 E. Notwithstanding Section 123C-15 of this Code, a captive
10 insurance company, with the Director's approval, may accept
11 risks from and cede risks to or take credit for reserves on
12 risks ceded to:

13 (1) a captive reinsurance pool composed only of other
14 captive insurance companies holding a certificate of
15 authority under this Article or a similar law of another
16 jurisdiction; or

17 (2) an affiliated captive insurance company holding a
18 certificate of authority under this Article or a similar
19 law of another jurisdiction.

20 (Source: P.A. 87-108.)

21 (215 ILCS 5/123C-16) (from Ch. 73, par. 735C-16)

22 (Section scheduled to be repealed on January 1, 2027)

23 Sec. 123C-16. Tax.

24 A. Every captive insurance company organized under the
25 provisions of this Article and doing business in this State

1 shall, for the privilege of doing business in this State, pay
2 to the Director for the State treasury the State tax imposed
3 under Section 409 to the same extent and in the same manner as
4 a domestic insurance company using a tax form prescribed by the
5 Director on or before March 15 of each year.

6 B. Domestic captive insurance companies shall be insurance
7 companies subject to the rules now provided for such companies
8 under the Illinois Income Tax Act.

9 C. A domestic captive insurance company that has engaged
10 one or more administrative or management service organizations
11 in order to comply with subsection D of Section 123C-2 shall be
12 deemed to meet the requirements of Section 409(4)(a) through
13 (d) provided that the company and such organizations when
14 viewed collectively as a group:

15 (a) maintain a place of business in this State; and

16 (b) maintain in this State personnel knowledgeable of
17 and responsible for the company's operations, books,
18 records, administration and annual statement; and

19 (c) conduct in this State substantially all of the
20 company's underwriting, policy issuing and servicing
21 operations relating to the company's policyholders and
22 certificate holders; and

23 (d) comply with the provisions of Section 133(2) with
24 respect to such domestic captive insurance company's
25 books, records, documents, accounts, vouchers and
26 securities.

1 D. Annually, 10% of the premium tax revenues collected
2 pursuant to this Section shall be transferred to the Department
3 for the regulation of captive insurance companies under this
4 Article.

5 (Source: P.A. 86-632; 86-634.)

6 (215 ILCS 5/123C-17) (from Ch. 73, par. 735C-17)

7 (Section scheduled to be repealed on January 1, 2027)

8 Sec. 123C-17. Fees.

9 A. The Director shall charge, collect, and give proper
10 acquittances for the payment of the following fees and charges
11 with respect to a captive insurance company:

12 1. For filing all documents submitted for the
13 incorporation or organization or certification of a
14 captive insurance company, \$2,000 ~~\$7,000~~.

15 2. For filing requests for approval of changes in the
16 elements of a plan of operations, \$200.

17 B. Except as otherwise provided in subsection A of this
18 Section and in Section 123C-10, the provisions of Section 408
19 shall apply to captive insurance companies.

20 C. Any funds collected from captive insurance companies
21 pursuant to this Section shall be treated in the manner
22 provided in subsection (11) of Section 408.

23 (Source: P.A. 93-32, eff. 7-1-03.)

24 (215 ILCS 5/123C-19) (from Ch. 73, par. 735C-19)

1 (Section scheduled to be repealed on January 1, 2027)

2 Sec. 123C-19. Letters of credit.

3 A. Any letter of credit used to meet the requirements set
4 forth in Sections 123C-3 and 123C-4:

5 (1) (blank); ~~may not be used to provide more than 80%~~
6 ~~of the amount required in Section 123C-3 and may not be~~
7 ~~used to provide more than 80% of the amount required in~~
8 ~~Section 123C-4;~~

9 (2) may not be allowed to expire without the prior
10 written approval of the Director and shall provide for 30
11 days' advance written notice to the Director of the
12 proposed expiration of the letter of credit; and

13 (3) must be provided pursuant to arrangements,
14 acceptable to the Director, wherein all funds obtained by
15 the company under the letter of credit are free of claims
16 of any party which may arise on account of the company's
17 resort to the letter of credit.

18 B. If letters of credit are used to provide surplus in
19 excess of the amounts required in Section 123C-4:

20 (1) the aggregate amount of all such letters of credit
21 shall not exceed the policyholder surplus of the company;

22 (2) without the prior written approval of the Director,
23 no such letter of credit may be allowed to expire, in any
24 period of 12 consecutive months ending on the date of such
25 expiration, in an amount greater than the greater of (a)
26 10% of the company's surplus as regards policyholders as of

1 the 31st day of December next preceding, or (b) the net
2 income of the company for the 12 month period ending the
3 31st ~~31st~~ day of December next preceding. For purposes of
4 this Section, net income includes net realized capital
5 gains in an amount not to exceed 20% of net unrealized
6 capital gains; and

7 (3) each such letter of credit shall provide for 30
8 days' advance written notice to the Director of the
9 proposed expiration of the letter of credit.

10 C. (Blank). ~~The Director may require any company to draw~~
11 ~~upon its letters of credit, in amounts determined by the~~
12 ~~Director, if the Director determines that such action is~~
13 ~~necessary for the protection of the interests of policyholders.~~

14 D. (Blank). ~~Any company including amounts supported by~~
15 ~~letters of credit in its capital or surplus shall, prior to the~~
16 ~~time any person becomes a policyholder, notify such person of~~
17 ~~the amounts supported by letters of credit and included in the~~
18 ~~company's capital or surplus.~~

19 (Source: P.A. 85-131.)

20 (215 ILCS 5/123C-23 new)

21 Sec. 123C-23. Approval of captive reinsurance pools.
22 Before determining whether to approve a captive insurance
23 company's participation in a captive reinsurance pool under
24 Section 123C-13 of this Code, the Director may:

25 (1) require the captive insurance company provide to

1 the Director evidence that the captive reinsurance pool:

2 (a) is composed only of other captive insurance
3 companies holding a certificate of authority under
4 this Article or a similar law of another jurisdiction;
5 and

6 (b) will be able to meet the pool's financial
7 obligations; and

8 (2) impose any other limitation or requirement on the
9 captive insurance company that is necessary and proper to
10 provide adequate security for the captive insurance
11 company.

12 (215 ILCS 5/123C-24 new)

13 Sec. 123C-24. Standards for risk management of controlled
14 unaffiliated business. The Director may adopt rules
15 establishing standards to ensure that an affiliated company is
16 able to exercise control of the risk management function of any
17 controlled unaffiliated business to be insured by the captive
18 insurance company.

19 (215 ILCS 5/123C-25 new)

20 Sec. 123C-25. Captive managers. Before providing captive
21 management services to a licensed captive insurance company, a
22 captive management company shall register with the Director by
23 providing the information required on a form adopted by the
24 Director.

1 (215 ILCS 5/123C-26 new)

2 Sec. 123C-26. Dividends.

3 A. A captive insurance company shall notify the Director in
4 writing when issuing policyholder dividends.

5 B. A captive insurance company, with the Director's
6 approval, may issue dividends or distributions to the holders
7 of an equity interest in the captive insurance company. The
8 Director shall adopt rules to implement this subsection B.

9 (215 ILCS 5/123C-27 new)

10 Sec. 123C-27. Rulemaking authority. The Director may adopt
11 reasonable rules as necessary to implement the purposes and
12 provisions of this Article.

13 (215 ILCS 5/123C-28 new)

14 Sec. 123C-28. Confidentiality.

15 A. Any information filed by an applicant or captive
16 insurance company under this Article is confidential and
17 privileged for all purposes, including for purposes of the
18 Freedom of Information Act, a response to a subpoena, or
19 evidence in a civil action. Except as provided by subsections B
20 and C of this Section, the information may not be disclosed
21 without the prior written consent of the applicant or captive
22 insurance company to which the information pertains.

23 B. If the recipient of the information described by

1 subsection A of this Section has the legal authority to
2 maintain the confidential or privileged status of the
3 information and verifies that authority in writing, the
4 Director or his or her designee may disclose the information to
5 any of the following entities functioning in an official
6 capacity:

7 (1) a director of insurance or an insurance department
8 of another state;

9 (2) an authorized law enforcement official;

10 (3) a State's Attorney of this State;

11 (4) the Attorney General;

12 (5) a grand jury;

13 (6) the National Association of Insurance
14 Commissioners if the captive insurance company is
15 affiliated with an insurance company that is part of an
16 insurance holding company system as described in Article
17 VIII 1/2 of this Code;

18 (7) another state or federal regulator if the applicant
19 or captive insurance company to which the information
20 relates operates in the entity's jurisdiction;

21 (8) an international insurance regulator or analogous
22 financial agency if the captive insurance company is
23 affiliated with an insurance company that is part of an
24 insurance holding company system as described in Article
25 VIII 1/2 of this Code and the holding company system
26 operates in the entity's jurisdiction; or

1 (9) members of a supervisory college described by
2 Section 131.20c of this Code, if the captive insurance
3 company is affiliated with an insurance company that is
4 part of an insurance holding company system as described in
5 Article VIII 1/2 of this Code.

6 C. The Director may use information described by subsection
7 A of this Section in the furtherance of a legal or regulatory
8 action relating to the administration of this Code.

9 (215 ILCS 5/123C-4 rep.)

10 Section 10. The Illinois Insurance Code is amended by
11 repealing Section 123C-4.

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