



Sen. John G. Mulroe

**Filed: 4/19/2017**

10000SB1286sam003

LRB100 06959 SMS 25197 a

1 AMENDMENT TO SENATE BILL 1286

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1286, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Insurance Code is amended by  
6 changing Sections 121-2.08, 123C-1, 123C-2, 123C-3, 123C-9,  
7 123C-11, 123C-12, 123C-13, 123C-16, 123C-17, and 123C-19 and by  
8 adding Sections 123C-23, 123C-24, 123C-25, 123C-26, 123C-27,  
9 and 123C-28 as follows:

10 (215 ILCS 5/121-2.08) (from Ch. 73, par. 733-2.08)

11 Sec. 121-2.08. Transactions in this State involving  
12 contracts of insurance independently procured directly from an  
13 unauthorized insurer by industrial insureds.

14 (a) As used in this Section:

15 "Exempt commercial purchaser" means exempt commercial  
16 purchaser as the term is defined in subsection (1) of Section

1 445 of this Code.

2 "Home state" means home state as the term is defined in  
3 subsection (1) of Section 445 of this Code.

4 "Industrial insured" means an insured:

5 (i) that procures the insurance of any risk or risks of  
6 the kinds specified in Classes 2 and 3 of Section 4 of this  
7 Code by use of the services of a full-time employee who is  
8 a qualified risk manager or the services of a regularly and  
9 continuously retained consultant who is a qualified risk  
10 manager;

11 (ii) that procures the insurance directly from an  
12 unauthorized insurer without the services of an  
13 intermediary insurance producer; and

14 (iii) that is an exempt commercial purchaser whose home  
15 state is Illinois.

16 "Insurance producer" means insurance producer as the term  
17 is defined in Section 500-10 of this Code.

18 "Qualified risk manager" means qualified risk manager as  
19 the term is defined in subsection (1) of Section 445 of this  
20 Code.

21 "Unauthorized insurer" means unauthorized insurer as the  
22 term is defined in subsection (1) of Section 445 of this Code.

23 (b) For contracts of insurance effective January 1, 2015 or  
24 later, within 90 days after the effective date of each contract  
25 of insurance issued under this Section, the insured shall file  
26 a report with the Director by submitting the report to the

1 Surplus Line Association of Illinois in writing or in a  
2 computer readable format and provide information as designated  
3 by the Surplus Line Association of Illinois. The information in  
4 the report shall be substantially similar to that required for  
5 surplus line submissions as described in subsection (5) of  
6 Section 445 of this Code. Where applicable, the report shall  
7 satisfy, with respect to the subject insurance, the reporting  
8 requirement of Section 12 of the Fire Investigation Act.

9 (c) For contracts of insurance effective January 1, 2015  
10 through December 31, 2017 or later, within 30 days after filing  
11 the report, the insured shall pay to the Director for the use  
12 and benefit of the State a sum equal to the gross premium of  
13 the contract of insurance multiplied by the surplus line tax  
14 rate, as described in paragraph (3) of subsection (a) of  
15 Section 445 of this Code, and shall pay the fire marshal tax  
16 that would otherwise be due annually in March for insurance  
17 subject to tax under Section 12 of the Fire Investigation Act.  
18 For contracts of insurance effective January 1, 2018 or later,  
19 within 30 days after filing the report, the insured shall pay  
20 to the Director for the use and benefit of the State a sum  
21 equal to 0.5% of the gross premium of the contract of  
22 insurance, and shall pay the fire marshal tax that would  
23 otherwise be due annually in March for insurance subject to tax  
24 under Section 12 of the Fire Investigation Act. For contracts  
25 of insurance effective January 1, 2015 or later, within 30 days  
26 after filing the report, the insured shall pay to the Surplus

1 Line Association of Illinois a countersigning fee that shall be  
2 assessed at the same rate charged to members pursuant to  
3 subsection (4) of Section 445.1 of this Code.

4 (d) For contracts of insurance effective January 1, 2015 or  
5 later, the insured shall withhold the amount of the taxes and  
6 countersignature fee from the amount of premium charged by and  
7 otherwise payable to the insurer for the insurance. If the  
8 insured fails to withhold the tax and countersignature fee from  
9 the premium, then the insured shall be liable for the amounts  
10 thereof and shall pay the amounts as prescribed in subsection  
11 (c) of this Section.

12 (e) Contracts of insurance with an industrial insured that  
13 qualifies as a Safety-Net Hospital are not subject to  
14 subsections (b) through (d) of this Section.

15 (Source: P.A. 98-978, eff. 1-1-15.)

16 (215 ILCS 5/123C-1) (from Ch. 73, par. 735C-1)

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

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

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

21 (1) is an affiliate of another entity if the entity  
22 directly or indirectly, through one or more  
23 intermediaries, controls, is controlled by, or is under  
24 common control with the other entity.

25 (2) is an affiliate of another entity if the entity is

1       an affiliate of and is controlled by the other entity  
2       directly or indirectly through one or more intermediaries.  
3       A subsidiary or holding company of an entity is an affiliate of  
4       that entity. ~~shall have the meaning set forth in subsection (a)~~  
5       ~~of Section 131.1 (and, for purposes of such definition, the~~  
6       ~~definitions of "control" and "person", as set forth in~~  
7       ~~subsections (b) and (c) of Section 131.1, respectively, shall~~  
8       ~~be applicable).~~

9       B. "Association" means any entity meeting the requirements  
10      set forth in either of the following paragraphs (1), (2) or  
11      (3):

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

19           (a) own, control, or hold with power to vote  
20      (directly or indirectly) all of the outstanding voting  
21      securities of an association captive insurance company  
22      incorporated as a stock insurer; or

23           (b) have complete voting control (directly or  
24      indirectly) over an association captive insurance  
25      company organized as a mutual insurer;

26           (2) any organized association of individuals, legal

1       representatives, corporations (whether for profit or not  
2       for profit), partnerships, trusts, associations, units of  
3       government or other organizations, or any combination of  
4       the foregoing:

5               (a) whose member organizations are engaged in  
6       businesses or activities similar or related with  
7       respect to the liability of which such members are  
8       exposed by virtue of any related, similar, or common  
9       business, trade, product, services, premises, or  
10       operations; and

11              (b) whose member organizations:

12                   (i) directly or indirectly own or control, and  
13       hold with power to vote, at least 80% of all of the  
14       outstanding voting securities of an association  
15       captive insurance company incorporated as a stock  
16       insurer; or

17                   (ii) directly or indirectly have at least 80%  
18       of the voting control over an association captive  
19       insurance company organized as a mutual insurer;  
20       or

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

1            Provided, however, that with respect to each of the  
2            associations described in paragraphs (1), (2) and (3) above, no  
3            member organization may (i) own, control, or hold with power to  
4            vote in excess of 25% of the voting securities of an  
5            association captive insurance company incorporated as a stock  
6            insurer, or (ii) have more than 25% of the voting control of an  
7            association captive insurance company organized as a mutual  
8            insurer.

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

12           D. "Captive insurance company" means any pure captive  
13           insurance company, association captive insurance company or  
14           industrial insured captive insurance company organized under  
15           the provisions of this Article.

16           E. "Director" means the Director of the Department of  
17           Insurance.

18           F. "Industrial insured" means an insured which (together  
19           with its affiliates) at the time of its initial procurement of  
20           insurance from an industrial insured captive insurance  
21           company:

22                (1) has available to it advice with respect to the  
23                purchase of insurance through the use of the services of a  
24                full-time employee acting as an insurance manager or buyer  
25                or the services of a regularly and continuously retained  
26                qualified insurance consultant; and

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

4           (3) either (i) has at least 25 full-time employees, or  
5           (ii) has gross assets in excess of \$3,000,000, or (iii) has  
6           annual gross revenues in excess of \$5,000,000.

7           G. "Industrial insured captive insurance company" means  
8           any company that insures risks of industrial insureds that are  
9           members of the industrial insured group, and their affiliated  
10          companies.

11          H. "Industrial insured group" means any group of industrial  
12          insureds that collectively:

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

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



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

4 I. "Member organization" means any individual, legal  
5 representative, corporation (whether for profit or not for  
6 profit), partnership, association, unit of government, trust  
7 or other organization that belongs to an association or an  
8 industrial insured group.

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

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

22 (i) any business (whether for profit or not for  
23 profit), trade, product, services (including professional  
24 services), premises, or operations; or

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

1 L. "Pure captive insurance company" means any company that  
2 insures only risks of its parent or affiliated companies or  
3 both.

4 M. "Unit of government" includes any state, regional or  
5 local government, or any agency or political subdivision  
6 thereof, or any district, authority, public educational  
7 institution or school district, public corporation or other  
8 unit of government in this State or any similar unit of  
9 government in any other state.

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

17 O. "Qualified independent actuary" means a person that is  
18 either:

19 (1) a member in good standing with the Casualty  
20 Actuarial Society; or

21 (2) a member in good standing with the American Academy  
22 of Actuaries who has been approved as qualified for signing  
23 casualty loss reserve opinions by the Casualty Practice  
24 Council of the American Academy of Actuaries.

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

26 (1) that is not an affiliate;

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

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

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

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

11           S. "Safety-Net Hospital" means an Illinois hospital that  
12           qualifies as a Safety-Net Hospital under Section 5-5e.1 of the  
13           Illinois Public Aid Code.

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

15           (215 ILCS 5/123C-2) (from Ch. 73, par. 735C-2)

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

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

18           A. Except as provided by this Section, a captive insurance  
19           company may write any type of insurance, but may only insure  
20           the operational risks of the company's affiliates and risks of  
21           a controlled unaffiliated business. Any captive insurance  
22           company, when permitted by its articles of association or  
23           charter, may apply to the Director for a certificate of  
24           authority to transact any and all insurance in classes 2 and 3  
25           of Section 4 of this Code, except that:

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

4           ~~(2) no association captive insurance company may~~  
5 ~~insure any risks other than those of the member~~  
6 ~~organizations of its association, and their affiliated~~  
7 ~~companies;~~

8           ~~(3) no industrial insured captive insurance company~~  
9 ~~may insure any risks other than those of the members of the~~  
10 ~~industrial insured group, and their affiliated companies;~~  
11 ~~and~~

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

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

15           ~~(ii) personal coverage for personal risk~~  
16 ~~liability, or~~

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

22           ~~(iv) accident and health insurance as provided in~~  
23 ~~clause (a) of Class 2 of Section 4, provided, however,~~  
24 ~~this exclusion does not preclude stop-loss insurance~~  
25 ~~or reinsurance of a single employer self funded~~  
26 ~~employee disability benefit plan or an employee~~

1 ~~welfare plan as described in 29 U.S.C. 1001 et seq.~~

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

3 (1) life insurance;

4 (2) annuities;

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

9 (4) title insurance;

10 (5) mortgage guaranty insurance;

11 (6) financial guaranty insurance;

12 (7) residential property insurance;

13 (8) personal automobile insurance; or

14 (9) workers' compensation insurance.

15 A-10. A captive insurance company may not issue a type of  
16 insurance, including automobile liability insurance, that is  
17 required under the laws of this State or a political  
18 subdivision of this State as a prerequisite for obtaining a  
19 license or permit if the law requires that the liability  
20 insurance be issued by an insurer authorized to engage in the  
21 business of insurance in this State.

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

24 (1) an affiliated certified self-insurer authorized  
25 under the Workers' Compensation Act or a similar affiliated  
26 entity expressly authorized by analogous laws of another

1       state; or

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

5       B. No captive insurance company shall do any insurance  
6       business in this State unless:

7               (1) it first obtains from the Director a certificate of  
8       authority authorizing it to do such insurance business in  
9       this State; and

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

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

17       D. Each captive insurance company, or the organizations  
18       providing the principal administrative or management services  
19       to such captive insurance company, shall maintain a place of  
20       business in this State.

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

22               (215 ILCS 5/123C-3) (from Ch. 73, par. 735C-3)

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

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

25       A. The Department may not issue a certificate of authority

1 to a captive insurance company unless the company possesses and  
2 maintains unencumbered capital and surplus in an amount  
3 determined by the Director after considering:

4 (1) the amount of premium written by the captive  
5 insurance company;

6 (2) the characteristics of the assets held by the  
7 captive insurance company;

8 (3) the terms of reinsurance arrangements entered into  
9 by the captive insurance company;

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

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

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

1           B. The amount of capital and surplus determined by the  
2 Director under subsection A of this Section may not be less  
3 than \$250,000 for a pure captive insurance company, \$500,000  
4 for an industrial insured captive insurance company, and  
5 \$750,000 for an association captive insurance company. Such  
6 capital may be in the form of (1) all cash or cash equivalents,  
7 or (2) cash or cash equivalents representing at least 20% of  
8 the requisite capital, together with an irrevocable letter of  
9 credit for the remainder of the requisite capital, which letter  
10 of credit must (a) be approved by the Director, (b) be issued  
11 or unconditionally confirmed by (i) a bank chartered by this  
12 State, (ii) a member bank of the Federal Reserve System or  
13 (iii) a United States office of a foreign banking corporation  
14 that is: (A) licensed under the laws of the United States or  
15 any state thereof, (B) regulated, supervised and examined by  
16 United States federal or state authorities having regulatory  
17 authority over banks and trust companies, and (C) designated by  
18 the Securities Valuation Office of the National Association of  
19 Insurance Commissioners as meeting its credit standards for  
20 issuing or confirming letters of credit or, in the event that  
21 the Director elects to establish credit standards by rule, in  
22 compliance with rules promulgated by the Director establishing  
23 reasonable standards of safety and soundness substantially  
24 equivalent to those of the Securities Valuation Office of the  
25 National Association of Insurance Commissioners, and (c)  
26 satisfy the requirements of Section 123C 19; or (3) cash or



1 ~~cash equivalents representing at least 33% of the requisite~~  
2 ~~capital, together with irrevocable contractual obligations of~~  
3 ~~the member organizations of the captive insurance company for~~  
4 ~~the payment of the remainder of the requisite capital in no~~  
5 ~~more than 3 equal installments in each of the 3 calendar years~~  
6 ~~following the date of the grant of the certificate of authority~~  
7 ~~to the captive insurance company, which irrevocable~~  
8 ~~contractual obligations shall by contract be subject to~~  
9 ~~acceleration (in a manner acceptable to the Director) by the~~  
10 ~~Company at the direction of the Director and shall be secured~~  
11 ~~by a letter of credit or other form of guarantee or security~~  
12 ~~acceptable to the Director.~~

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

15 (1) United States currency;

16 (2) an irrevocable letter of credit, in a form approved  
17 by the Director and not secured by a guarantee from an  
18 affiliate, naming the Director as beneficiary for the  
19 security of the captive insurance company's policyholders  
20 and issued by a bank approved by the Director;

21 (3) bonds of this State; or

22 (4) bonds or other evidences of indebtedness of the  
23 United States, the principal and interest of which are  
24 guaranteed by the United States.

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

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

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

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

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

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

24 (2) In addition, prior to March 1 of each year, each  
25 association captive insurance company shall submit to the  
26 Director such additional data or information, which the

1 Director may from time to time require, on a form specified by  
2 the Director.

3 (3) On or before June 1 of each year, each captive  
4 insurance company shall submit to the Director a report of its  
5 financial condition at last year's end with an independent  
6 certified public accountant's opinion of the company's  
7 financial condition. ~~Prior to June 1 of each year, each~~  
8 ~~association and industrial insured captive insurance company~~  
9 ~~shall submit to the Director a report of its financial~~  
10 ~~condition, certified by a recognized firm of independent public~~  
11 ~~accountants acceptable to the Director and including the items~~  
12 ~~referred to in items (i), (ii), (iii) and (iv) of paragraph (1)~~  
13 ~~of this subsection B.~~

14 (4) Unless the Director permits otherwise, the reports of  
15 financial condition referred to in paragraphs (1) and (3) of  
16 this subsection B are to be prepared in accordance with the  
17 Accounting Practices and Procedures Manual adopted by the  
18 National Association of Insurance Commissioners. The Director  
19 shall have authority to extend the time for filing any report  
20 or statement by any company for reasons which he considers good  
21 and sufficient.

22 C. In addition, any captive insurance company may be  
23 required by the Director, when he considers such action to be  
24 necessary and appropriate for the protection of policyholders,  
25 creditors, shareholders or claimants, to file, within 60 days  
26 after mailing to the company of a notice that such is required,

1 a supplemental summary statement as of the last day of any  
2 calendar month occurring during the 100 days next preceding the  
3 mailing of such notice designated by him on forms prescribed  
4 and furnished by the Director. No company shall be required to  
5 file more than 4 supplemental summary statements during any  
6 consecutive 12 month period.

7 D. Every captive insurance company shall, at all times,  
8 maintain reserves in an amount estimated in the aggregate to  
9 provide for the payment of all losses and claims incurred,  
10 whether reported or unreported, which are unpaid and for which  
11 such company may be liable, and to provide for the expenses of  
12 adjustment or settlement of such losses and claims. The  
13 aggregate reserves shall be reduced by reinsurance ceded which  
14 meets the requirements of Section 123C-13. For the purpose of  
15 such reserves, the company shall keep a complete and itemized  
16 record showing all losses and claims on which it has received  
17 notice, including all notices received by it of the occurrence  
18 of any event which may result in a loss. Such record shall be  
19 opened in chronological receipt order, with each notice of loss  
20 or claim identified by appropriate number or coding.

21 E. Every captive insurance company shall maintain an  
22 unearned premium reserve on all policies in force which reserve  
23 shall be charged as a liability. The portions of the gross  
24 premiums in force, after deducting reinsurance qualifying  
25 under Section 123C-13, which shall be held as a premium  
26 reserve, shall never be less in the aggregate than the

1 company's actual liability to all its insureds for the return  
2 of gross unearned premiums. In the calculation of the company's  
3 actual liability to all its insureds, the reserve shall be  
4 computed pursuant to the method commonly referred to as the  
5 monthly pro rata method; provided, however, that the Director  
6 may require that such reserve shall be equal to the unearned  
7 portions of the gross premiums in force, after deducting  
8 reinsurance qualifying under Section 123C-13, in which case the  
9 reserve shall be computed on each respective risk from the date  
10 of the issuance of the policy.

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

15 (1) the annual report, including a statement of  
16 actuarial opinion by a qualified independent actuary  
17 concerning the reasonableness of the captive insurance  
18 company's loss and loss adjustment expense reserves in such  
19 form and of such content as specified in the National  
20 Association of Insurance Commissioners Annual Statement  
21 Instructions: Property and Casualty, no later than the 60th  
22 day after the date of the company's fiscal year's end;

23 (2) the report of its financial condition at last  
24 year's end with an independent certified public  
25 accountant's opinion of the company's financial condition;  
26 and

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

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

7           G. Notwithstanding the requirements of this Section, a  
8           captive insurance company may prepare and issue financial  
9           statements prepared in accordance with generally accepted  
10          accounting principles.

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

12           (215 ILCS 5/123C-11) (from Ch. 73, par. 735C-11)

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

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

16          A. The certificate of authority of a captive insurance  
17          company to do an insurance business in this State may be  
18          suspended or revoked by the Director for any of the following  
19          reasons:

20           (1) insolvency or impairment of required capital or  
21           surplus to policy holders;

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

24           (3) refusal or failure to submit an annual report, as  
25           required by Section 123C-9, or any other report or

1 statement required by law or by lawful order of the  
2 Director;

3 (4) failure to comply with the provisions of its own  
4 charter or bylaws (or, in the case of an industrial insured  
5 captive, with the provisions of the investment policy set  
6 forth in its plan of operation as approved from time to  
7 time by the Director);

8 (5) failure to submit to examination or any legal  
9 obligation relative thereto, as required by Section  
10 123C-10;

11 (6) refusal or failure to pay expenses, ~~and~~ charges, and  
12 and taxes as required by Sections 408, 409, 123C-10, and  
13 123C-17;

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

18 (8) failure otherwise to comply with the laws of this  
19 State.

20 B. If the Director finds, upon examination, hearing, or  
21 other evidence, that any captive insurance company has  
22 committed any of the acts specified in subsection A, he may  
23 suspend or revoke such certificate of authority if he deems it  
24 in the best interest of the public and the policyholders of  
25 such captive insurance company, notwithstanding any other  
26 provision of this Article.

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

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

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

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

7 Sec. 123C-12. Legal investments.

8 A. The provisions of Article VIII and of Sections 131.2 and  
9 131.3 shall apply to association captive insurance companies.

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

20 C. A captive insurance company may make loans to its  
21 affiliates with the prior approval of the Director. Each loan  
22 must be evidenced by a note approved by the Director. A captive  
23 insurance company may not make a loan of the minimum capital  
24 and surplus funds required by this Article.

25 D. The Director may prohibit or limit an investment that



1 threatens the solvency or liquidity of a captive insurance  
2 company.

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

4 (215 ILCS 5/123C-13) (from Ch. 73, par. 735C-13)

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

6 Sec. 123C-13. Reinsurance.

7 A. Any captive insurance company may provide reinsurance on  
8 risks ceded by any other insurer; provided, however, that the  
9 risks so assumed are the same as the captive insurance company  
10 could legally insure on a direct basis.

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

13 B. Subject to the provisions of Article XI, any captive  
14 insurance company may cede, and may take credit for in the  
15 establishment of reserves, all or any part of its risks.  
16 Furthermore, in addition to Section 173.1, any pure or  
17 industrial insured captive insurance company may take credit,  
18 as either an asset or a deduction from liability, for  
19 reinsurance so ceded to the extent:

20 (1) The reinsurer satisfies all of the following (a)  
21 through (g):

22 (a) the principal business of the reinsurer (other  
23 than investments in subsidiaries and other investment  
24 activities) is to accept reinsurance from captive  
25 insurance companies organized under Article VIIC, of

1           which the company accepting the reinsurance directly  
2           or indirectly owns, controls, or holds with power to  
3           vote more than 80% of the outstanding voting securities  
4           if organized as a stock company or more than 80% of the  
5           voting control if organized as a mutual company and to  
6           provide insurance related services;

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

9           (c) submits to this State's authority to examine  
10          its books and records and agrees to pay the cost  
11          thereof;

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

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

16          (f) files with the Department the following:

17               (i) evidence of its submission to the  
18               jurisdiction of any court of competent  
19               jurisdiction in any state of the United States and  
20               its agreement to comply with all requirements  
21               necessary to give the court jurisdiction and to  
22               abide by the final decision of the court or of any  
23               appellate court in the event of an appeal; and

24               (ii) an instrument designating the Director or  
25               a designated attorney as its true and lawful  
26               attorney upon whom may be served any lawful process

1           in any action, suit, or proceeding instituted by or  
2           on behalf of the ceding company;

3           (g) has not been the subject of an order of the  
4           Director entered after notice and hearing prohibiting  
5           the reinsurer from utilizing this paragraph (1); or  
6           (2) the taking of credit by the captive insurance  
7           company has otherwise received the prior approval of the  
8           Director.

9           C. A captive insurance company shall provide notice to the  
10          Director of a reinsurance agreement to which the company  
11          becomes a party not later than the 30th day after the date of  
12          the execution of the agreement.

13          D. A captive insurance company shall provide notice of a  
14          termination of a previously filed reinsurance agreement to the  
15          Director not later than the 30th day after the date of  
16          termination.

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

21                  (1) a captive reinsurance pool composed only of other  
22                  captive insurance companies holding a certificate of  
23                  authority under this Article or a similar law of another  
24                  jurisdiction; or

25                  (2) an affiliated captive insurance company holding a  
26                  certificate of authority under this Article or a similar

1           law of another jurisdiction.

2           (Source: P.A. 87-108.)

3           (215 ILCS 5/123C-16) (from Ch. 73, par. 735C-16)

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

5           Sec. 123C-16. Tax.

6           A. Every captive insurance company organized under the  
7 provisions of this Article and doing business in this State  
8 shall, for the privilege of doing business in this State, pay  
9 to the Director for the State treasury the State tax imposed  
10 under Section 409 to the same extent and in the same manner as  
11 a domestic insurance company using a tax form prescribed by the  
12 Director on or before March 15 of each year.

13           B. Domestic captive insurance companies shall be insurance  
14 companies subject to the rules now provided for such companies  
15 under the Illinois Income Tax Act.

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

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

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

1 (c) conduct in this State substantially all of the  
2 company's underwriting, policy issuing and servicing  
3 operations relating to the company's policyholders and  
4 certificate holders; and

5 (d) comply with the provisions of Section 133(2) with  
6 respect to such domestic captive insurance company's  
7 books, records, documents, accounts, vouchers and  
8 securities.

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

10 (215 ILCS 5/123C-17) (from Ch. 73, par. 735C-17)  
11 (Section scheduled to be repealed on January 1, 2027)  
12 Sec. 123C-17. Fees.

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

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

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

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

24 C. Any funds collected from captive insurance companies  
25 pursuant to this Section shall be treated in the manner

1 provided in subsection (11) of Section 408.

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

3 (215 ILCS 5/123C-19) (from Ch. 73, par. 735C-19)

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

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

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

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

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

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

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

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

25 (2) without the prior written approval of the Director,

1 no such letter of credit may be allowed to expire, in any  
2 period of 12 consecutive months ending on the date of such  
3 expiration, in an amount greater than the greater of (a)  
4 10% of the company's surplus as regards policyholders as of  
5 the 31st day of December next preceding, or (b) the net  
6 income of the company for the 12 month period ending the  
7 31st ~~31st~~ day of December next preceding. For purposes of  
8 this Section, net income includes net realized capital  
9 gains in an amount not to exceed 20% of net unrealized  
10 capital gains; and

11 (3) each such letter of credit shall provide for 30  
12 days' advance written notice to the Director of the  
13 proposed expiration of the letter of credit.

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

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

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

24 (215 ILCS 5/123C-23 new)

25 Sec. 123C-23. Approval of captive reinsurance pools.

1 Before determining whether to approve a captive insurance  
2 company's participation in a captive reinsurance pool under  
3 Section 123C-13 of this Code, the Director may:

4 (1) require the captive insurance company provide to  
5 the Director evidence that the captive reinsurance pool:

6 (a) is composed only of other captive insurance  
7 companies holding a certificate of authority under  
8 this Article or a similar law of another jurisdiction;  
9 and

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

12 (2) impose any other limitation or requirement on the  
13 captive insurance company that is necessary and proper to  
14 provide adequate security for the captive insurance  
15 company.

16 (215 ILCS 5/123C-24 new)

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

23 (215 ILCS 5/123C-25 new)

24 Sec. 123C-25. Captive managers. Before providing captive



1 management services to a licensed captive insurance company, a  
2 captive management company shall register with the Director by  
3 providing the information required on a form adopted by the  
4 Director.

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

6 Sec. 123C-26. Dividends.

7 A. A captive insurance company shall notify the Director in  
8 writing when issuing policyholder dividends.

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

13 (215 ILCS 5/123C-27 new)

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

17 (215 ILCS 5/123C-28 new)

18 Sec. 123C-28. Confidentiality.

19 A. Any information filed by an applicant or captive  
20 insurance company under this Article is confidential and  
21 privileged for all purposes, including for purposes of the  
22 Freedom of Information Act, a response to a subpoena, or  
23 evidence in a civil action. Except as provided by subsections B

1 and C of this Section, the information may not be disclosed  
2 without the prior written consent of the applicant or captive  
3 insurance company to which the information pertains.

4 B. If the recipient of the information described by  
5 subsection A of this Section has the legal authority to  
6 maintain the confidential or privileged status of the  
7 information and verifies that authority in writing, the  
8 Director or his or her designee may disclose the information to  
9 any of the following entities functioning in an official  
10 capacity:

11 (1) a director of insurance or an insurance department  
12 of another state;

13 (2) an authorized law enforcement official;

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

15 (4) the Attorney General;

16 (5) a grand jury;

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

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

25 (8) an international insurance regulator or analogous  
26 financial agency if the captive insurance company is

1 affiliated with an insurance company that is part of an  
2 insurance holding company system as described in Article  
3 VIII 1/2 of this Code and the holding company system  
4 operates in the entity's jurisdiction; or

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

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

13 (215 ILCS 5/123C-4 rep.)

14 Section 10. The Illinois Insurance Code is amended by  
15 repealing Section 123C-4."