

The Senate Committee on Insurance and Labor offered the following substitute to HB 214:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 extensively revise Chapter 41, relating to captive insurance companies; to provide for
3 definitions; to provide for sponsored captive insurance companies; to provide for
4 incorporated protected cells; to provide for formation of sponsored captive insurance
5 companies; to provide for filings and notifications to the Commissioner; to provide for
6 establishment and maintenance of protected cells; to provide for certain protected cell
7 requirements at the discretion of the Commissioner; to provide for conservation,
8 rehabilitation, or liquidation requirements and exceptions; to provide for related matters; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

16 Said title is further amended in Code Section 33-41-2, relating to definitions, by revising
17 paragraphs (5), (6), and (7) as follows:

18 "(5) 'Captive insurance company' means any pure captive insurance company, association
19 captive insurance company, agency captive insurance company, industrial insured captive
20 insurance company, sponsored captive insurance company, or risk retention group captive
21 insurance company.

22 (6) 'Controlled unaffiliated business' means:

23 (A) Any person:

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

- 25 (ii) That has an existing contractual relationship with a parent or one of its affiliated
 26 companies; and
- 27 (iii) Whose risks are managed by a ~~pure~~ captive insurance company in accordance
 28 with this chapter and approved by the Commissioner; or
- 29 (B) A reinsurance ~~pooling~~ arrangement with other captive insurance companies that
 30 is approved by the Commissioner.
- 31 (7) 'Formation documents' means articles of incorporation, if the captive insurance
 32 company or the prospective captive insurance company is a stock insurer ~~or a, stock~~
 33 corporation, mutual insurer, or articles of organization, if the captive insurance company
 34 or the prospective captive insurance company is a limited liability company, and any
 35 amendments or restatements of the same. For purposes of this term, an incorporated
 36 protected cell, as defined in Article 2 of this chapter, shall be included in the definition
 37 of 'captive insurance company.'"

38 SECTION 3.

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

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

46 SECTION 4.

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

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

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

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

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

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

60 ~~(C) Organized as a manager-managed limited liability company.~~
 61 (3) An incorporated protected cell may be formed by one or more participants of a
 62 sponsored captive insurance company as a stock corporation or as a manager-managed
 63 limited liability company separate from the sponsored captive insurance company of
 64 which it is a part."

65 SECTION 5.

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

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

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

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

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

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

86 SECTION 6.

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

88 "ARTICLE 2

89 33-41-100.

90 In addition to the general provisions of Article 1 of this chapter, the provisions of this
 91 article shall apply to sponsored captive insurance companies.

92 33-41-101.

93 As used in this article, the term:

94 (1) 'General account' means all the assets and liabilities of a sponsored captive insurance
 95 company that are not attributable to a protected cell.

96 (2) 'Incorporated protected cell' means a protected cell that is established as a stock
 97 corporation or manager-managed limited liability company separate from the sponsored
 98 captive insurance company of which it is a part.

99 (3) 'Participant' means a person, and any affiliates thereof, that is insured or reinsured by
 100 a sponsored captive insurance company, where the losses of the participant are limited
 101 through a participant contract to such participant's protected cell assets or to the pro rata
 102 share of the assets of one or more protected cells that are identified in such participant
 103 contract.

104 (4) 'Participant contract' means a contract by which a sponsored captive insurance
 105 company insures or reinsures the risks of a participant, or the controlled unaffiliated
 106 business thereof, and limits the losses to the participant's protected cell assets or to the
 107 pro rata share of the assets of one or more protected cells that are identified in such
 108 participant contract.

109 (5) 'Protected cell' means a separate and distinct account or accounts established by a
 110 sponsored captive insurance company in which an identified pool of assets are maintained
 111 for one or more participants in accordance with the terms of one or more participant
 112 contracts to fund the liability of the sponsored captive insurance company insured or
 113 assumed on behalf of such participants as set forth in such participant contracts. A
 114 protected cell may be an incorporated protected cell or an unincorporated protected cell.

115 (6) 'Protected cell assets' means all assets, contract rights, and general intangibles
 116 identified with and attributable to a specific protected cell that may not be used to pay any
 117 expenses or claims other than those attributable to such protected cell.

118 (7) 'Protected cell liability' means all liabilities and other obligations identified with and
 119 attributable to a specific protected cell.

120 (8) 'Sponsor' means any person, other than a risk retention group, that is approved by the
 121 Commissioner, in the exercise of his or her sole discretion, to organize and operate a
 122 sponsored captive insurance company and to provide all or part of its required capital and
 123 surplus.

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

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

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

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

134 (D) Funds its liabilities to each participant through one or more protected cells and
135 keeps the protected cell assets and protected cell liabilities of each protected cell
136 segregated from the general account and from the protected cell assets and protected
137 cell liabilities of other protected cells; and

138 (E) Establishes administrative and accounting procedures necessary to allocate,
139 identify, separate, and segregate the protected cell assets, protected cell liabilities,
140 insurance and reinsurance obligations, assets, credits, liabilities, losses, tax benefits, and
141 refunds attributable to the protected cells.

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

144 33-41-102.

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

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

155 (c) Each sponsored captive insurance company shall annually file with the Commissioner
156 such financial reports as he or she shall require. Any such financial report shall include,
157 without limitation, accounting statements detailing the financial experience of each
158 protected cell.

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

162 33-41-103.

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

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

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

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

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

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

182 (e) An incorporated protected cell shall be entitled to enter into contracts and undertake
183 obligations in its own name and for its own account unless prohibited by an applicable
184 participant contract. In the case of a contract or obligation to which the sponsored captive
185 insurance company is not a party, either in its own name and for its own account or on
186 behalf of a protected cell, the counterparty to the contract or obligation shall have no right
187 or recourse against the sponsored captive insurance company and its assets other than
188 against assets properly attributable to the incorporated protected cell that is a party to the
189 contract or obligation.

190 33-41-104.

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

196 (b) When establishing a protected cell, the sponsored captive insurance company shall
197 attribute to the protected cell assets with a value at least equal to the reserves and other

198 insurance liabilities attributable to such protected cell in cash or in readily marketable
199 securities with established market value.

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

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

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

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

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

224 (h) The sponsored captive insurance company shall attribute all insurance obligations,
225 assets, and liabilities relating to a reinsurance contract entered into with respect to a
226 protected cell to such protected cell as set forth in the business plan and participant
227 contracts approved by the Commissioner, which may include a tax allocation agreement
228 to which the sponsored captive insurance company is a party.

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

232 (j) Notwithstanding any other provisions of this title, sponsored captive insurance
233 companies shall not be subject to any restrictions on eligible investments whatever;

234 however, the Commissioner may prohibit or limit any investment that threatens the
 235 solvency or liquidity of any sponsored captive insurance company.

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

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

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

240 (3) Secured by a trust fund in the United States for the benefit of participants,
 241 policyholders, and claimants or funded by an irrevocable letter of credit or other

242 arrangement that is acceptable to the Commissioner. The Commissioner, in his or her

243 sole discretion, shall approve the form, terms, and funding amount of any trust, and may

244 require the sponsored captive insurance company to increase the funding of any security

245 arrangement established under this chapter. If the form of security is a letter of credit, the

246 letter of credit must be in conformance with Code Section 33-41-9 and approved by the

247 Commissioner.

248 33-41-105.

249 (a) In connection with the conservation, rehabilitation, or liquidation of captive insurance

250 companies set forth in Code Section 33-41-21, including sponsored captive insurance

251 companies, the assets and liabilities of a protected cell shall at all times be kept separate

252 from, and shall not be commingled with, those of other protected cells and the sponsored

253 captive insurance company except to the extent that the assets and liabilities of any one or

254 more protected cells are determined to have not been allocated, segregated, and separated

255 pursuant to the business plan and participant contracts approved by the Commissioner, and

256 which are subject to the tracing provisions set forth in this article.

257 (b) Notwithstanding the provisions of this title, in the event of the insolvency of a

258 sponsored captive insurance company where the Commissioner determines that one or

259 more protected cells remain solvent, the Commissioner may separate such cells from the

260 sponsored captive insurance company and may allow, on application of the sponsored

261 captive insurance company or participant, for the conversion of such protected cells into

262 one or more new or existing other captive insurance companies.

263 33-41-106.

264 All provisions set forth in subsection (c) of Code Section 33-41-16 shall also apply to

265 sponsored captive insurance companies in the same manner."

266 **SECTION 7.**

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