House Bill 552 (COMMITTEE SUBSTITUTE)

By: Representatives Williamson of the 115th, Shaw of the 176th, Smith of the 134th, Efstration of the 104th, and Golick of the 40th

A BILL TO BE ENTITLED

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide for changes to the captive insurance company provisions; to add certain definitions; to change prerequisites to transacting insurance; to amend provisions relating to directors; to revise the required amounts of capital or surplus for each captive insurance company; to provide for application of certain provisions to the examination of a captive insurance company and add confidentiality of certain information and documents provided to the Commissioner; to change the taxation requirements; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

″33-41-2.

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

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

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

(B) Ownership of 50 percent or more by value of the beneficial interests in a partnership, trust, or estate.

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

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

(4) 'Captive insurance company' means any pure captive insurance company, association captive insurance company, industrial insured captive insurance company, or risk retention group captive insurance company.

(5) 'Controlled unaffiliated business' means:

(A) A person:

(i) That is not an affiliate;

(ii) That has an existing contractual relationship with an affiliate under which the affiliate bears a potential financial loss; and

(iii) The risks of which are managed by a captive insurance company under an arrangement approved by the Commissioner; or

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

~~(5)~~(6) 'Industrial insured' means an insured:

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

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

(C) Who either:

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

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

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

~~(6)~~(7) 'Industrial insured captive insurance company' means any domestic insurance company granted a certificate of authority under this chapter to insure or reinsure the risks of industrial insureds and their affiliates and which has as its shareholders or members only industrial insureds that are insured or reinsured by the industrial insured captive insurance company or which has as its sole shareholder or sole member a corporation whose only shareholders are industrial insureds that are insured or reinsured by the industrial insured captive insurance company.

~~(7)~~(8) 'Parent' means a corporation which directly owns shares representing more than 50 percent of the total outstanding voting power and value of a pure captive insurance company.

~~(8)~~(9) 'Pure captive insurance company' means any domestic insurance company granted a certificate of authority under this chapter to insure or reinsure the risks of its parent and affiliates of its parent, and controlled unaffiliated business.

~~(9)~~(10) 'Risk retention group captive insurance company' is any pure, association, or industrial insured captive insurance company which has been granted a certificate of authority under this chapter and determined by the Commissioner to be established and maintained as a 'risk retention group' as defined under the federal Liability Risk Retention Act of 1986, as amended. A risk retention group may be chartered and licensed either under this chapter or under Chapter 40 of this title.

~~(10)~~(11) 'Transact,' as used in this chapter, shall not include the organizational activities associated with the preliminary formation, incorporation, petitioning for a certificate of authority, and initial capitalization of a captive insurance company.″

SECTION 2.

Said title is further amended by revising Code Section 33-41-4, relating to prerequisites to transacting insurance, as follows:

″33-41-4.

No captive insurance company may transact any insurance in this state unless:

(1) It first obtains from the Commissioner a certificate of authority authorizing it to transact insurance in this state;

(2) It maintains its principal place of business in this state; ~~and~~

(3) Any organization providing the principal administrative or management services to such captive insurance company shall maintain its principal place of business in this state and shall be approved by the Commissioner; and

(4) Its board of directors holds at least one meeting each year in this state.″

SECTION 3.

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

″33-41-7.

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

(b) At least ~~one-third~~ one of the directors of every captive insurance company ~~must~~ shall be a resident of this state~~, except that no more than three directors shall be required to be residents of this state. A~~ and a majority of the directors ~~must~~ shall be citizens of the United States.

(c) Every captive insurance company ~~must~~ shall report to the Commissioner within 30 days after any change in its directors including in its report a statement of the business and professional background and affiliations of any new director.″

SECTION 4.

Said title is further amended by revising subsection (a) of Code Section 33-41-8, relating to amount of capital or surplus, as follows:

″(a) The amount of minimum capital or surplus required for each captive insurance company shall be determined on an individual basis, however:

(1) ~~No~~ A pure captive insurance company ~~incorporated as a stock insurer~~ shall ~~be issued a certificate of authority unless it shall possess and thereafter maintain a minimum of \$500,000.00 in capital~~ maintain at least \$250,000.00 in surplus; ~~or~~

(2) ~~No~~ An association captive insurance company ~~incorporated as a mutual insurer~~ shall ~~be issued a certificate of authority unless it shall possess and thereafter maintain a minimum of \$500,000.00 in surplus.~~ maintain at least \$500,000.00 in surplus;

(3) An industrial insured captive insurance company shall maintain at least \$500,000.00 in surplus; and

(4) A risk retention group shall maintain at least \$500,000.00 in surplus.

The Commissioner may require additional capital or surplus of any captive insurance company in an amount he or she deems appropriate under the circumstances based on the captive insurance company's business plan as described in paragraph (2) of subsection (a) of Code Section 33-41-10. Additional capital or surplus may be required if the captive insurance company's business plan indicates that an increase is required in order for the captive insurance company to meet its contractual obligations to its policyholders or to maintain its solvency.″

SECTION 5.

Said title is further amended by revising Code Section 33-41-16, relating to examination by the Commissioner or agent, as follows:

″33-41-16.

(a) The Commissioner or his or her designated agent may visit each captive insurance company at any time and examine its affairs in order to ascertain its financial condition, its ability to fulfill its contractual obligations, and its compliance with this chapter. For these purposes, the Commissioner or his or her designated agent shall have free access to all of the books and records relating to the business of the captive insurance company. The expenses and charges of any examination conducted pursuant to this Code section shall be paid directly by the captive insurance company examined.

(b) When necessary or desirable to assist in any examination under this Code section, the Commissioner may retain such independent agents as described in subsection (b) of Code Section 33-41-10, as the Commissioner deems appropriate, in order to facilitate his or her examination under this Code section. The expenses and charges of such persons so retained or designated shall be paid directly by the captive insurance company. The provision of subsection (g) of Code Section 33-2-14 shall apply to examinations of any captive insurance company.

(c) All portions of license applications reasonably designated confidential by or on behalf of an applicant pure captive insurance company, all information and documents, and any copies of the foregoing, produced or obtained by or submitted or disclosed to the Commissioner pursuant to this chapter that are reasonably designated confidential by a pure captive insurance company, and all examination reports, preliminary examination reports, working papers, recorded information, other documents, and any copies of any of the foregoing, produced or obtained by or submitted or disclosed to the Commissioner pursuant to this chapter shall be given confidential treatment, except as to disclosures consented to by the pure captive insurance company, and shall not be subject to subpoena, shall not be made public by the Commissioner, and shall not be provided or disclosed to any other person at any time except to:

(1) Insurance commissioners of any state or of any foreign country or jurisdiction, provided that:

(A) Such receiving party shall agree in writing to maintain the confidentiality of such information; and

(B) The laws of the receiving party require such information to be and to remain confidential; or

(2) A law enforcement official or agency of this state, any other state, or the United States of America so long as such official or agency agrees in writing to hold it confidential and in a manner consistent with this Code section.″

SECTION 6.

Said title is further amended by revising Code Section 33-41-22, relating to taxation, as follows:

″33-41-22.

In lieu of any other taxes imposed by this title, all captive insurance companies licensed under this chapter shall pay the following taxes:

(1) All captive insurance companies chartered and licensed under this chapter, except pure captive insurance companies, shall be taxed under the provisions of Chapter 8 of this title and any other provisions of law in the same manner as other domestic insurance companies; and

(2) A pure captive insurance company shall pay a tax at the rate of four-tenths of 1 percent on the first $20 million and three-tenths of 1 percent on each dollar thereafter on the direct premiums collected and the annual maximum aggregate tax shall be $100,000.00.″

SECTION 7.

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