

General Assembly

## Raised Bill No. 908

January Session, 2019

LCO No. 4519



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by: (INS)

## AN ACT AUTHORIZING FOREIGN BRANCH CAPTIVE INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. Section 38a-91aa of the general statutes is repealed and
- 2 the following is substituted in lieu thereof (*Effective July 1, 2019*):
- 3 As used in sections 38a-91aa to 38a-91tt, inclusive, as amended by
- 4 this act, and sections 38a-91ww and 38a-91xx:
- 5 (1) "Affiliated company" means any company in the same corporate
- 6 system as a parent, an industrial insured or a member organization by
- 7 virtue of common ownership, control, operation or management.
- 8 (2) "Agency captive insurance company" means a captive insurance
- 9 company that:
- 10 (A) Is owned or directly or indirectly controlled by one or more
- 11 insurance agents or insurance producers licensed in accordance with
- 12 sections 38a-702a to 38a-702r, inclusive;

- (B) Only insures against risks covered by insurance policies sold, solicited or negotiated through the insurance agents or insurance producers that own or control such captive insurance company; and
- 16 (C) Does not insure against risks covered by any health insurance 17 policy or plan.
- 18 (3) "Alien captive insurance company" means any insurance 19 company formed to write insurance business for its parent and 20 affiliated companies and licensed pursuant to the laws of an alien 21 jurisdiction that imposes statutory or regulatory standards on 22 companies transacting the business of insurance in such jurisdiction 23 that the commissioner deems to be acceptable.
- 24 (4) "Association" means any legal association of individuals, 25 corporations, limited liability companies, partnerships, associations or 26 other entities that has been in continuous existence for at least one 27 year, where the association itself or some or all of the member 28 organizations:
- 29 (A) Directly or indirectly own, control or hold with power to vote all 30 of the outstanding voting securities or other voting interests of an 31 association captive insurance company incorporated as a stock insurer;
- 32 (B) Have complete voting control over an association captive 33 insurance company incorporated as a mutual corporation or formed as 34 a limited liability company; or
- 35 (C) Constitute all of the subscribers of an association captive 36 insurance company formed as a reciprocal insurer.
  - (5) "Association captive insurance company" means any company that insures risks of the member organizations of an association, and includes a company that also insures risks of such member organizations' affiliated companies or of the association.
- 41 (6) "Branch business" means any insurance business transacted in

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- 42 this state by a branch captive insurance company.
- (7) "Branch captive insurance company" means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
- 47 (8) "Branch operations" means any business operations in this state 48 of a branch captive insurance company.
  - (9) "Captive insurance company" means any (A) pure captive insurance company, agency captive insurance company, association captive insurance company, industrial insured captive insurance company or special purpose financial captive insurance company that is domiciled in this state and formed or licensed under the provisions of sections 38a-91aa to 38a-91tt, inclusive, [or] as amended by this act, (B) branch captive insurance company.
  - (10) "Ceding insurer" means an insurance company, approved by the commissioner and licensed or otherwise authorized to transact the business of insurance or reinsurance in its state or country of domicile, that cedes risk to a special purpose financial captive insurance company pursuant to a reinsurance contract.
- 63 (11) "Commissioner" means the Insurance Commissioner.
- 64 (12) "Controlled unaffiliated business" means any person:
- (A) Who, (i) in the case of a pure captive insurance company, is not in the corporate system of a parent and the parent's affiliated companies, or (ii) in the case of an industrial insured captive insurance company, is not in the corporate system of an industrial insured and the industrial insured's affiliated companies;
  - (B) Who, (i) in the case of a pure captive insurance company, has an

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- existing contractual relationship with a parent or one of the parent's affiliated companies, or (ii) in the case of an industrial insured captive insurance company, has an existing contractual relationship with an industrial insured or one of the industrial insured's affiliated
- 74 industrial insured or one of the industrial insured's affiliated 75 companies; and
- (C) Whose risks are managed by a pure captive insurance company or an industrial insured captive insurance company, as applicable, in accordance with section 38a-91qq.
  - (13) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per-incident or aggregate limit established by the commissioner.
- 84 (14) "Foreign branch business" means any insurance business 85 transacted in this state by a foreign branch captive insurance company.
- (15) "Foreign branch captive insurance company" means any alien captive insurance company that is (A) licensed by the commissioner to transact foreign branch business in this state through a business unit with a principal place of business in this state, and (B) not otherwise licensed by the commissioner to transact the business of insurance in this state.
- 92 (16) "Foreign branch operations" means any business operations in 93 this state of a foreign branch captive insurance company.
- [(14)] (17) "Incorporated protected cell" means a protected cell that is established as a corporation or a limited liability company, separate from the sponsored captive insurance company with which it has entered into a participant contract.
- 98 [(15)] (18) "Industrial insured" means an insured:
- 99 (A) Who procures the insurance of any risk or risks by use of the

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	Raised Bill No. 908
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102 103	(B) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and
104	(C) Who has at least twenty-five full-time employees.
105 106 107 108	[(16)] (19) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise an industrial insured group, and includes a company that also insures risks of such industrial insureds' affiliated companies.
109 110	[(17)] (20) "Industrial insured group" means any group of industrial insureds that collectively:
111 112 113 114	(A) Directly or indirectly own, control or hold with power to vote all of the outstanding voting securities or other voting interests of an industrial insured captive insurance company incorporated as a stock insurer;
115 116 117	(B) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual corporation or formed as a limited liability company; or
118 119	(C) Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer.
120 121 122 123	[(18)] (21) "Insurance securitization" or "securitization" means a transaction or a group of related transactions, which may include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements, in which all or
<ul><li>124</li><li>125</li><li>126</li></ul>	part of the result of such transaction is used to fund a special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer and by which:

(A) A special purpose financial captive insurance company directly

- or indirectly obtains proceeds through the issuance of securities by such company or any other person; or
- 130 (B) A person provides, for the benefit of a special purpose financial 131 captive insurance company, one or more letters of credit or other assets 132 that the commissioner has authorized such company to treat as 133 admitted assets for purposes of its annual report. "Insurance 134 securitization" or "securitization" does not include the issuance of a 135 letter of credit for the benefit of the commissioner to satisfy all or part 136 of a special purpose financial captive insurance company's capital and 137 surplus requirements under section 38a-91dd, as amended by this act.
- [(19)] (22) "Member organization" means any individual, corporation, limited liability company, partnership, association or other entity that belongs to an association.
- [(20)] (23) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members.
- [(21)] (24) "Parent" means any individual, corporation, limited liability company, partnership or other entity that directly or indirectly owns, controls or holds with power to vote more than fifty per cent of the outstanding voting:
- 148 (A) Securities of a pure captive insurance company organized as a 149 stock insurer; or
- (B) Membership interests of a pure captive insurance company organized as a nonprofit corporation or as a limited liability company.
- [(22)] (25) "Participant" means any association, corporation, limited liability company, partnership, trust or other entity, and any affiliated company thereof, that is insured by a sponsored captive insurance company pursuant to a participant contract.
- [(23)] (26) "Participant contract" means a contract entered into by a

- 157 sponsored captive insurance company and a participant by which the 158 sponsored captive insurance company insures the risks of the 159 participant and limits the losses of each such participant to its pro rata 160 share of the assets of one or more protected cells identified in such participant contract.
  - [(24)] (27) "Protected cell" means a separate account established by a sponsored captive insurance company, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of such participants as set forth in such participant contracts.
- 168 [(25)] (28) "Pure captive insurance company" means any company 169 that insures risks of its parent and affiliated companies or controlled 170 unaffiliated business.
  - [(26)] (29) "Reinsurance contract" means a contract entered into by a special purpose financial captive insurance company and a ceding insurer by which the special purpose financial captive insurance company agrees to provide reinsurance to the ceding insurer for risks associated with the ceding insurer's insurance or reinsurance business.
  - [(27)] (30) "Risk retention group" means a captive insurance company organized under the laws of this state pursuant to the federal Liability Risk Retention Act of 1986, 15 USC 3901 et seg., as amended from time to time, as a stock insurer or mutual corporation, a reciprocal or other limited liability entity.
  - [(28)] (31) "Security" has the same meaning as provided in section 36b-3 and includes any form of debt obligation, equity, surplus certificate, surplus note, funding agreement, derivative or other financial instrument that the commissioner designates as a security for purposes of sections 38a-91aa to 38a-91tt, inclusive, as amended by this act.
- 187 [(29)] (32) "Special purpose financial captive insurance company"

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- means a company that is licensed by the commissioner in accordance with section 38a-91bb, as amended by this act.
- [(30)] (33) "Special purpose financial captive insurance company security" means a security issued by (A) a special purpose financial captive insurance company, or (B) a third party, the proceeds of which are obtained directly or indirectly by a special purpose financial captive insurance company.
- [(31)] (34) "Sponsor" means any association, corporation, limited liability company, partnership, trust or other entity that is approved by the commissioner to organize and operate a sponsored captive insurance company and to provide all or part of the required unimpaired paid-in capital and surplus.
- [(32)] (35) "Sponsored captive insurance company" means a captive insurance company:
- 202 (A) In which the minimum required unimpaired paid-in capital and surplus are provided by one or more sponsors;
- 204 (B) That insures risks of its participants only through separate 205 participant contracts; and
- (C) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.
- [(33)] (36) "Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with the National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41, as amended from time to time, and as modified or supplemented by the commissioner.
- Sec. 2. Subsection (e) of section 38a-91bb of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July*

217 1, 2019):

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- 218 (e) (1) If the commissioner finds that the documents and statements 219 that a captive insurance company, other than a special purpose 220 financial captive insurance company, has filed comply with the 221 provisions of sections 38a-91aa to 38a-91tt, inclusive, as amended by 222 this act, the commissioner may grant a license authorizing the 223 company to do insurance business in this state until April first 224 thereafter. The captive insurance company may apply to renew such 225 license on such forms as the commissioner prescribes.
  - (2) (A) The commissioner may grant a license authorizing a special purpose financial captive insurance company to do reinsurance business in this state until April first thereafter upon the commissioner's finding that (i) the proposed plan of operation provides for a reasonable and expected successful operation, (ii) the terms of the reinsurance contract and related transactions comply with sections 38a-91aa to 38a-91tt, inclusive, as amended by this act, (iii) the proposed plan of operation is not hazardous to any ceding insurer, and (iv) the insurance regulator of the state of domicile of each ceding insurer has notified the commissioner in writing or has otherwise provided assurance satisfactory to the commissioner that such regulator has approved or has not disapproved the transaction, provided the commissioner shall not be precluded from issuing a license to a special purpose financial captive insurance company if such regulator has not responded with respect to all or any part of the transaction.
  - (B) In conjunction with granting such license, the commissioner may issue an order to the special purpose financial captive insurance company of any additional provisions, terms or conditions regarding the organization, licensing or operation of such company that are not inconsistent with the provisions of this chapter and are deemed appropriate by the commissioner.
- 248 (3) The commissioner shall not grant a license to a branch captive

- 249 insurance company unless the alien captive insurance company grants
- 250 the commissioner authority to examine the alien captive insurance
- 251 company in the jurisdiction in which the alien captive insurance
- 252 company is formed.
- 253 (4) The commissioner shall not grant a license to a foreign branch
- 254 captive insurance company unless the foreign branch captive
- 255 insurance company or alien captive insurance company grants the
- 256 commissioner authority to examine the affairs of such foreign branch
- 257 captive insurance company or alien captive insurance company in the
- 258 jurisdiction in which such foreign branch captive insurance company
- or alien captive insurance company was formed, operates or maintains
- 260 books and records.
- Sec. 3. Section 38a-91dd of the general statutes is repealed and the
- following is substituted in lieu thereof (*Effective July 1, 2019*):
- 263 (a) (1) The [Insurance Commissioner] <u>commissioner</u> shall not issue a
- license to a captive insurance company or allow the company to retain
- such license unless the company has and maintains unimpaired paid-
- 266 in capital and surplus of:
- 267 (A) In the case of a pure captive insurance company, not less than
- 268 two hundred fifty thousand dollars;
- 269 (B) In the case of an association captive insurance company, not less
- 270 than five hundred thousand dollars;
- 271 (C) In the case of an industrial insured captive insurance company,
- 272 not less than five hundred thousand dollars:
- (D) In the case of a risk retention group, not less than one million
- 274 dollars;
- 275 (E) In the case of a sponsored captive insurance company, not less
- than two hundred twenty-five thousand dollars;

- 277 (F) In the case of a special purpose financial captive insurance 278 company, not less than two hundred fifty thousand dollars;
- 279 (G) In the case of a sponsored captive insurance company licensed 280 as a special purpose financial captive insurance company, not less than 281 five hundred thousand dollars; and
- 282 (H) In the case of an agency captive insurance company, not less 283 than five hundred thousand dollars.
  - (2) (A) The [Insurance Commissioner] commissioner shall not issue a license to a branch captive insurance company or allow the company to retain such license unless the company has and maintains, as security for the payment of liabilities attributable to the branch operations:
  - (i) Not less than two hundred fifty thousand dollars; and
  - (ii) Reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operations. The commissioner may permit a branch captive insurance company to credit against any such reserves any security for loss reserves that the branch captive insurance company posts with a ceding insurer or is posted by a reinsurer with the branch captive insurance company, so long as such security remains posted.
  - (B) The amounts required under subparagraph (A) of this subdivision may be held, with the prior approval of the commissioner, in the form of (i) a trust formed under a trust agreement and funded by assets acceptable to the commissioner, (ii) an irrevocable letter of credit issued or confirmed by a bank approved by the commissioner, (iii) with respect to the amount required under subparagraph (A)(i) of this subdivision only, cash on deposit with the commissioner, or (iv) any combination thereof.

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308	(3) (A) The commissioner shall not issue a license to a foreign
309	branch captive insurance company or allow the company to retain
310	such license unless the company has and maintains, as security for the
311	payment of liabilities attributable to the foreign branch operations:

(i) Not less than two hundred fifty thousand dollars; and

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- 313 (ii) Reserves on such insurance policies or such reinsurance 314 contracts as may be issued or assumed by the foreign branch captive 315 insurance company through its foreign branch operations, including 316 reserves for losses, allocated loss adjustment expenses, incurred but 317 not reported losses and unearned premiums with regard to business 318 written through the foreign branch operations. The commissioner may 319 permit a foreign branch captive insurance company to credit against 320 any such reserves any assets belonging to (I) the company that are held 321 in trust for, or otherwise segregated or controlled by, a ceding insurer 322 that secure the reinsurance obligations of such company to the ceding 323 insurer, or (II) a reinsurer that are held in trust for, or otherwise under 324 the control of, the company and secure the reinsurance obligations of 325 the reinsurer to such company.
- (B) The amounts required under subparagraph (A) of this 326 327 subdivision may be held, with the prior approval of the commissioner, 328 in the form of (i) a trust formed under a trust agreement and funded 329 by assets acceptable to the commissioner, (ii) an irrevocable letter of 330 credit issued or confirmed by a bank approved by the commissioner, 331 or (iii) any combination thereof.
  - (C) The commissioner may exempt a foreign branch captive insurance company from the requirements established in this subdivision, provided the commissioner determines, the commissioner's discretion, that the company is financially stable.
- 336 (b) The commissioner may adopt regulations, in accordance with chapter 54, to establish additional capital and surplus requirements 337 based upon the type, volume and nature of insurance business

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- 340 (c) Notwithstanding any other provision of this section, the commissioner shall have the discretion to allow a captive insurance 342 company, other than a captive insurance company organized as a risk 343 retention group, to maintain less than the required unimpaired paid-in 344 capital and surplus set forth in subsection (a) of this section. The 345 commissioner shall consider the type, volume and nature of the 346 insurance or reinsurance business transacted by such a captive 347 insurance company in establishing the amount of unimpaired paid-in 348 capital and surplus the company is required to maintain.
- 349 (d) Except as specified in [subdivision (2)] subdivisions (2) and (3) of 350 subsection (a) of this section, capital and surplus may be in the form of 351 cash or an irrevocable letter of credit issued by a bank approved by the 352 commissioner.
- 353 Sec. 4. Subsection (e) of section 38a-91ff of the general statutes is 354 repealed and the following is substituted in lieu thereof (Effective July 355 1, 2019):
- 356 (e) (1) No branch captive insurance company shall do any insurance 357 business in this state unless it maintains a principal place of business 358 for its branch operations in this state.
- 359 (2) No foreign branch captive insurance company shall do any 360 insurance business in this state unless it operates through a business 361 unit that maintains a principal place of business for such company's 362 foreign branch operations in this state.
- 363 Sec. 5. Subdivision (1) of subsection (b) of section 38a-91gg of the 364 general statutes is repealed and the following is substituted in lieu 365 thereof (Effective July 1, 2019):
  - (b) (1) (A) Prior to March first of each year and, in the case of pure captive insurance companies and industrial insured captive insurance companies, prior to March fifteenth of each year, each captive

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insurance company, other than a branch captive insurance company or a foreign branch captive insurance company that is required to submit reports or statements in the foreign branch captive insurance company's domiciliary jurisdiction, shall submit to the [Insurance Commissioner] commissioner a report of its financial condition verified by oath of two of its executive officers. The commissioner shall establish the form and content of the annual report to be filed by special purpose captive insurance companies.

(B) In the case of branch captive insurance companies, prior to March first of each year, each such company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed. Such reports and statements shall be verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

(C) In the case of a foreign branch captive insurance company that is required to submit reports and statements in its domiciliary jurisdiction, the company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws of its domiciliary jurisdiction or the domiciliary jurisdiction of the alien captive insurance company. Such reports and statements shall be verified by oath of two of the executive officers of such foreign branch captive insurance company, and be submitted to the commissioner on the same day that such reports and statements are filed with the domiciliary jurisdiction of such foreign branch captive insurance company or alien captive insurance company. If the commissioner is not satisfied that the annual report filed by the foreign branch captive insurance company in the domiciliary jurisdiction of such foreign branch captive insurance company in the

- company or alien captive insurance company provides adequate information concerning the financial condition of such foreign branch captive insurance company, such foreign branch captive insurance company shall, at a time prescribed by the commissioner, submit to the commissioner a report, in a form and manner prescribed by the commissioner, that provides the commissioner with adequate information concerning the financial condition of such foreign branch captive insurance company.
- Sec. 6. Subsection (a) of section 38a-91hh of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July* 1, 2019):

- (a) (1) At least once every three years, and additionally whenever the Insurance Commissioner determines it to be prudent, the commissioner or the commissioner's designee shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of sections 38a-91aa to 38a-91tt, inclusive, as amended by this act, and any applicable provisions of this title. The commissioner may extend the three-year period to five years, provided a captive insurance company is subject to a comprehensive annual audit during such period by independent auditors approved by the commissioner and of a scope satisfactory to the commissioner.
- (2) The examination of a branch captive insurance company pursuant to this section shall be of branch business and branch operations only, as long as the branch captive insurance company provides annually to the commissioner a certificate of compliance or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

- 434 (3) The examination of a foreign branch captive insurance company 435 pursuant to this section shall be of foreign branch business and foreign 436 branch operations only, as long as the foreign branch captive insurance 437 company provides annually to the commissioner a certificate of 438 compliance or its equivalent, issued by or filed with the domiciliary 439 jurisdiction of the foreign branch captive insurance company or alien 440 captive insurance company, and demonstrates to the commissioner's satisfaction that such foreign branch captive insurance company is 441 442 operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction. 443
- Sec. 7. Subdivision (1) of subsection (c) of section 38a-91nn of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2019*):
  - (c) (1) The annual minimum aggregate tax to be paid by a captive insurance company, other than a sponsored captive insurance company, calculated under subsection (a) of this section shall be seven thousand five hundred dollars, and the annual maximum aggregate tax calculated under subsections (a) and (b) of this section shall be two hundred thousand dollars. In the case of a branch captive insurance company, the annual aggregate tax to be paid by such company shall apply only to the branch business of such company. In the case of a foreign branch captive insurance company, the annual aggregate tax to be paid by such company shall apply only to the foreign branch business of such company.
- Sec. 8. Subparagraph (A) of subdivision (2) of subsection (g) of section 38a-91ss of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2019*):
- (A) Proceeds from a special purpose financial captive insurance company securitization or letters of credit or other assets described in subdivision [(18)] (21) of section 38a-91aa, as amended by this act;

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This act shall take effect as follows and shall amend the following sections:				
Section 1	July 1, 2019	38a-91aa		
Sec. 2	July 1, 2019	38a-91bb(e)		
Sec. 3	July 1, 2019	38a-91dd		
Sec. 4	July 1, 2019	38a-91ff(e)		
Sec. 5	July 1, 2019	38a-91gg(b)(1)		
Sec. 6	July 1, 2019	38a-91hh(a)		
Sec. 7	July 1, 2019	38a-91nn(c)(1)		
Sec. 8	July 1, 2019	38a-91ss(g)(2)(A)		

INS Joint Favorable