

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Captive Insurance Company Act of 2004 to strike references to segregated accounts, to clarify certain statutory requirements for protected cell captive insurers and protected cells, including with respect to capital and surplus levels and annual reports, to confirm the confidentiality of captive insurers' license application materials and clarify when they may be shared with other regulators and officials, to permit the Commissioner of the Department of Insurance, Securities and Banking to extend or waive the requirement to conduct a financial examination of captive insurers every 5 years upon the satisfaction of specified criteria, and to make the Insurance Trade and Economic Development Amendment Act of 2000 applicable to District-domiciled risk retention groups; and to amend the Risk Retention Act of 1993 to require the filing of quarterly statements by risk retention groups licensed as captive insurers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Captive Insurance Company Amendment Act of 2014".

Sec. 2. The Captive Insurance Company Act of 2004, effective March 17, 2005 (D.C. Law 15-262; D.C. Official Code § 31-3931.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3931.01) is amended as follows:

(1) Paragraph (5) is amended to read as follows:

"(5) "Association captive insurer" means a captive insurer that only insures risks of the member organizations of an association and the affiliated companies of those members, including:

"(A) Groups formed pursuant to the Product Liability Risk Retention Act of 1981, approved September 25, 1981 (95 Stat. 949; 15 U.S.C. § 3901 *et seq.*), and the employee benefit plans or trusts of such organizations or companies; and

"(B) Risk retention groups chartered pursuant to the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4101 *et seq.*)."

(2) Paragraph (6) is amended by striking the phrase "insurance company" and inserting the word "insurer" in its place.

(3) Paragraph (9) is amended by striking the phrase "segregated account" and inserting the phrase "branch captive insurer, protected cell" in its place.

(4) A new paragraph (13A) is added to read as follows:

“(13A) “Incorporated protected cell” means a protected cell that is established as a corporation or other legal entity separate from the protected cell captive insurer of which it is a part.”.

(5) Paragraphs (18) and (19) are amended by striking the phrase “segregated account” wherever it appears and inserting the phrase “protected cell” in its place.

(6) New paragraphs (20A) and (20B) are added to read as follows:

“(20A) “Protected cell” means a separate account established and maintained by a protected cell captive insurer and includes an incorporated protected cell.

“(20B) “Protected cell captive insurer” means a captive insurer that:

“(A) Is formed and licensed under the provisions of this act;

“(B) Insures the risks of separate participants through a contract; and

“(C) Segregates each participant's liability through one or more protected cells.”.

(7) Paragraph (26) is repealed.

(b) Section 5 (D.C. Official Code § 31-3931.04) is amended as follows:

(1) Subsection (a) is amended by striking the word “section” and inserting the word “act” in its place.

(2) Subsection (b) is amended as follows:

(A) Paragraphs (2) and (3) are repealed.

(B) Paragraph (8) is amended by striking the word “The” and inserting the phrase “In addition to the requirements in section 4(b), the” in its place.

(C) Paragraph (13) is amended by striking the phrase “(6), (8), or (9)” and inserting the phrase “(9), (10), (11), or (12)” in its place.

(c) Section 7 (D.C. Official Code § 31-3931.06) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a)(1) In addition to any other capital required to be maintained pursuant to subsection (c) of this section, a captive insurer (except a protected cell captive insurer) authorized to do business in the District shall at all times maintain a minimum unimpaired capital of \$100,000.

“(2) The Commissioner shall, in the Commissioner’s discretion, establish the required minimum capital for a protected cell captive insurer, and for each protected cell, based on the type, volume, and nature of insurance that is transacted by the insurer and by the cell; provided, that the required minimum capital for a protected cell captive insurer may be zero so long as each of its protected cells maintains the minimum capital required for that cell.”.

(2) Subsection (c) is amended by striking the phrase “segregated account” and inserting the phrase “protected cell” in its place.

(3) Subsection (d) is amended by striking the phrase “segregated account” and inserting the phrase “protected cell” in its place.

(4) Subsection (e) is amended by striking the phrase “segregated account” wherever it appears and inserting the phrase “protected cell” in its place.

(5) Subsection (f)(6) is amended to read as follows:

“(6) For each protected cell captive insurer, and for each protected cell, not less than an amount to be established by the Commissioner in the Commissioner’s discretion; provided, that a

protected cell captive insurer that does not write any insurance business in the District shall not be required to maintain any surplus so long as each of its protected cells maintains the required surplus for that cell.”.

(6) Subsection (h) is amended by striking the phrase “segregated account” and inserting the phrase “protected cell” in its place.

(7) Subsection (i) is amended by striking the phrase “segregated account” and inserting the phrase “protected cell” in its place.

(8) Subsection (k) is amended by striking the phrase “segregated account” wherever it appears and inserting the phrase “protected cell” in its place.

(d) Section 8(b) (D.C. Official Code § 31-3931.07(b)) is amended by striking the phrase “segregated account” and inserting the phrase “protected cell” in its place.

(e) Section 9 (D.C. Official Code § 31-3931.08) is amended by striking the phrase “segregated account” wherever it appears and inserting the phrase “protected cell” in its place.

(f) Section 10 (D.C. Official Code § 31-3931.09) is amended as follows:

(1) Strike the phrase “segregated account” wherever it appears and insert the phrase “protected cell” in its place.

(2) Subsection (e) is amended by striking the phrase “segregated accounts” and inserting the phrase “protected cells” in its place.

(3) A new subsection (g) is added to read as follows:

“(g)(1) Documents, materials, and other information submitted pursuant to this section shall be confidential and shall be exempt from any otherwise applicable freedom of information law, including the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), public records law, public records disclosure law, or other similar statute and shall not be subject to subpoena or discovery or admissible in evidence in a private civil action, and shall not be divulged to any person except either as provided for in this subsection or with the written consent of the captive insurer or protected cell.

“(2) The Commissioner may use documents, materials, and other information submitted pursuant to this section in the furtherance of any regulatory or legal action brought as a part of the Commissioner’s official duties.

“(3) To assist in the performance of the Commissioner’s duties, the Commissioner may share documents, materials, or other information submitted pursuant to this section with state, federal, and international regulatory agencies, the National Association of Insurance Commissioners, including its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities; provided, that the recipient agrees in writing, and has the legal authority to so agree, to maintain the confidentiality of the documents, materials, and other information.”.

(g) Section 12 (D.C. Official Code § 31-3931.11) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “segregated account” and inserting the phrase “protected cell” in its place.

(2) Subsection (e) is repealed.

(h) Section 14(a) (D.C. Official Code § 31-3931.13(a)) is amended to read as follows:

“(a)(1) On or before March 2 of each year, a captive insurer, including, if applicable, each protected cell, shall submit to the Commissioner, on a form prescribed by the Commissioner, a report of its financial condition, as prepared by a certified public accountant. A captive insurer shall file a consolidated report on behalf of each of its protected cells.

“(2) A captive insurer, including, if applicable, each protected cell, shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations of these principles that have been approved or accepted by the Commissioner for the type of insurance and kinds of insurers to be reported upon, as supplemented by additional information required by the Commissioner.”

(i) Section 15 (D.C. Official Code § 31-3931.14) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “segregated account” and inserting the phrase “protected cell” in its place.

(2) Subsection (c) is amended to read as follows:

“(c) The provisions of the Law on Examinations Act of 1993, effective October 21, 1993 (D.C. Law 10-49; D.C. Official Code § 31-1401 *et seq.*) (“Examinations Act”), shall apply to examinations conducted pursuant to this section. The Commissioner may waive the requirement in section 3(a) of the Examinations Act that a captive insurer must be examined at least once every 5 years, if the:

“(1) Captive insurer has filed unqualified audited financial statements each year since the captive insurer’s last financial examination or the date of licensure;

“(2) Commissioner determines that the audited financial statements demonstrate that the captive insurer maintains sufficient surplus to satisfy all of its obligations to its policyholders and creditors;

“(3) Captive insurer is in compliance with all applicable District laws and regulations; and

“(4) Captive insurer is not a risk retention group licensed as a captive insurer.”

(3) Subsection (d) is amended by striking the phrase “segregated accounts” and inserting the phrase “protected cells” in its place.

(j) Section 16 (D.C. Official Code § 31-3931.15) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Strike the phrase “captive insurer” and insert the phrase “captive insurer, including, if applicable, a protected cell,” in its place.

(B) A new paragraph (6A) is added to read as follows:

“(6A) Has violated the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code § 31-2231.01 *et seq.*); provided, that this paragraph shall apply only to District-domiciled risk retention groups licensed as captive insurers;”

(2) Subsection (b) is amended by striking the phrase “captive insurer” and inserting the phrase “captive insurer, including, if applicable, a protected cell,” in its place.

(k) Section 17(b) (D.C. Official Code § 31-3931.16(b)) is amended to read as follows:

“(b) The terms and conditions set forth in the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*)

(“1993 Act”), pertaining to insurer rehabilitation, insolvency, and receiverships shall apply in full to captive insurers licensed under this act and shall apply to the protected cells of a captive insurer on a cell basis. If there is a conflict between the provisions of this act and the 1993 Act, the provisions of this act shall prevail, including the provisions of section 6 for liquidation and rehabilitation of protected cells.”.

(l) Section 19 (D.C. Official Code § 31-3931.18) is amended by striking the phrase “shall not” and inserting the phrase “shall not be” in its place.

(m) Section 24(b) (D.C. Official Code § 31-3931.23(b)) is amended by striking the phrase “segregated accounts” and inserting the phrase “protected cells” in its place.

Sec. 3. Section 3(a) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4102(a)), is amended as follows:

(a) Paragraph (1) is amended by striking the phrase “insurance companies” and inserting the word “insurers” in its place.

(b) Paragraph (2) is amended by striking the phrase “an annual statement” and inserting the phrase “annual and quarterly statements” in its place.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia