FINAL BILL REPORT
2SSB 5315

Brief Description: Concerning captive insurance.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Mullet and Dozier).

Senate Committee on Business, Financial Services & Trade
Senate Committee on Ways & Means
House Committee on Consumer Protection & Business
House Committee on Finance

Background: Captive Insurance. A captive insurance company (captive) is one created and wholly owned by one or more non-insurance companies to insure the risks of its owner or owners. They may be formed to supplement commercial insurance, or to provide insurance for risk they are unable to cover with commercial insurance.

A captive, once established, operates like any commercial insurer in that it issues policies, collects premiums, and pays claims. However, captives do not offer insurance to the public. There is no federal law regarding captive insurance and so captives are taxed and regulated at the state level. The ways in which states have approached regulating and taxing captives vary. The state, or country, where the captive is domiciled tends to be where the primary oversight of a captive insurer occurs. Federal tax advantages exist for captives. Premiums paid to a captive by a parent company qualify as an ordinary business expense and may be deducted from federal income tax.

There are various types of captive insurance structures. Types of captive insurance structures include, but are not limited to, single-owner captives, also known as pure captives, group/association captives, rent-a-captives, and agency captives.

Captive Insurance Companies in Washington State. There is currently no statutory framework to allow for the formation of captive insurance companies in Washington State.

In 2019, the Office of the Insurance Commissioner (OIC) began investigating Washington State based companies who formed their own captives and pursuing unpaid premium taxes, interest, and penalties. As part of the OIC's investigation, 16 captives self-reported to the

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OIC. Two of the 16 settled prior to the 2020 legislative session.

Legislation to set up a framework of taxation and regulation was considered in 2020, but did not pass. By legislative request, in March 2020, the OIC suspended litigation and enforcement action on captives to study and identify the number and type of captives that exist, the types of insurance being procured, and the volume of premium being held. The report's findings are expected in early 2021.

Summary: A framework for registering and imposing a premium tax on eligible captive insurers is established.

An eligible captive insurer is defined as an insurance company:
- partially or wholly owned by a corporation, company, nonprofit, or a public institution of higher education;
- that insures risk of their captive owner, the owner's affiliates, or both;
- has one or more insureds whose principal place of business is Washington State;
- has assets that exceed its liabilities by $1 million and can pay its debts when they come due, as verified by audited financial statements and prepared by an independent certified accountant; and
- is licensed as a captive insurer by the jurisdiction in which it is domiciled.

Eligible captive insurers must register with the OIC within 120 days of either the effective date of this bill or issuing a policy that covers Washington risks. An initial registration fee is $2,500, and a renewal fee may be set by the OIC not to exceed $2,500 per year. An eligible captive insurer who fails to register is subject to penalties and fines applicable to unlawful unauthorized insurers.

Registered eligible captive insurers may only provide property and casualty insurance to a captive owner or to the captive owner's affiliates and obtain or provide reinsurance for ceded or assumed risks insured in this state or elsewhere. They may assume or cede risks to other insurers through reinsurance without regard to those limitations.

On or before the first day of March, registered eligible captive insurers must pay a 2 percent premium tax for insurance directly procured by and provided to its parent or affiliate for Washington risks during the preceding calendar year. Eligible captive insurers affiliated with public institutions of higher education are not subject to the premium tax. Premium taxes are credited to the general fund.

If not previously paid to the OIC, premium taxes are due from an eligible captive insurer for any period after January 1, 2011, but are not subject to penalties and fees. As of July 1, 2021, penalties, interest, and fees may be imposed on registered eligible captive insurers. Penalties and fees are credited to the general fund.

Washington risks are defined as the share of risk covered by premiums allocable to this state, based on where underlying risks are located or where the losses or injuries giving rise to covered claims arise. Whether paid directly or by reimbursement, the timing or nature of a captive insurer's payment shall not determine Washington risks. Methodology to determine Washington risks by eligible captive insurers must be shared with the OIC.

Votes on Final Passage:

Senate	49	0
House	96	1

Effective: The bill contains an emergency clause and takes effect immediately.