
MEMORANDUM

TO: SENATE FINANCE COMMITTEE
FROM: DAVID PROVOST, DEPUTY COMMISSIONER, DEPARTMENT OF FINANCIAL REGULATION
SUBJECT: CAPTIVE REVISIONS TO H.719
DATE: APRIL 13, 2018
CC: HOUSE COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT
MMICHAEL S. PIECIAK, COMMISSIONER OF FINANCIAL REGULATION
RICHARD SMITH, VCIA
IAN DAVIS, DIRECTOR OF FINANCIAL SERVICES, ACCD

This proposed change to the captive statute will offer an onshore affiliated reinsurance alternative to insurance companies affected by the recent imposition of the Base Erosion Anti-Abuse Tax on reinsurance ceded to offshore affiliates.

Nearly all sections are copied from other parts of Title 8 (both traditional and captive chapters) with little or no substantive modification. It is expected that these companies will qualify as “multi-state” companies and will be subject to NAIC accreditation standards.

*****Captive Insurance Company definitions*****

Section 6001

This adds “affiliated reinsurance company” to the list of defined captives.

***** New: Subchapter 5: Affiliated Reinsurance Companies *****

Sec. 6049a

This applies all provisions of the captive law and related rules and regulations to the new captive.

Sec. 6049b

Definitions – self-explanatory.

Sec. 6049c

Part (a) limits the business of an affiliated reinsurance company (ARC) to reinsurance.

Part (b) allows the Commissioner to further limit or define the business allowed in the ARC by order.

Sec. 6049c (cont.)

Part (c) collects all the usual new company application information but specifically calls for (A) the source and form of capital and (B) the investment policy of the new company. **This is a new part and is the critical differentiator.** Traditional insurers must follow a prescriptive statute that substantially limits the company's investments. By instead requiring the company to develop its own investment strategy and policy for our approval, we can address the accreditation standards that call for diversity and liquidity in an investment portfolio, while allowing flexibility and adaptability in the company's investments. The parent companies of these affiliated reinsurers are currently receiving this treatment, possibly with more flexibility, with their off-shore reinsurance captives.

Part (c)(2) simply prescribes required information.

Part (d) applies the same confidentiality standard for application information as for other types of captives owned by commercial insurance companies.

Sec. 6049d

This section allows companies to be formed as stock companies (the expected form) but leaves the door open for unforeseen organizational forms.

Part (b) limits the company's activities to reinsurance.

Sec. 6049e

This section requires a minimum of \$5 million in capital, the traditional standard, gives the commissioner authority to require more, and applies the risk-based capital standard.

Sec. 6049f

Part (a) limits the company's activities to reinsurance of affiliates only. We may want to open this up in the future but believe it appropriate to start conservatively.

Part (b) ensures that the company considers the credit for reinsurance standards of the ceding company domicile.

Part (c) allows the company to purchase reinsurance (retrocede reinsurance), subject to the credit for reinsurance standards of Vermont.

Part (d) guards against cut-through clauses.

Part (e) requires notice of any foreclosure action threatened or taken by ceding companies

Sec. 6049g

Part (b) gives the commissioner explicit authority to limit a company's investments, same as for other captives,

Sec. 6049h

This requires the ARC to file its annual statement on the NAIC form, using NAIC statutory accounting practices, and file with the NAIC. It requires the company to keep books and records where we can access them, and (d) applies traditional model audit rules and CPA qualifications per traditional rules and NAIC accreditation standards.

Sec. 6049i through 6049l

These apply traditional requirements and NAIC accreditation standards.

Sec. 6049m

This applies the same confidentiality and information sharing standards as for other types of captives owned by commercial insurance companies.