

[215 Ill. Comp. Stat. §§ 5/123C-1, 123C-8 through 123C-14.]

§§ 5/123C-1, 123C-8 through 123C-14: Domestic Captive Insurance Companies

§ 123C-1. Definitions.

As used in this Article:

A. “Affiliate” or “Affiliated company” includes a parent entity that controls a captive insurance company and:

(1) is an affiliate of another entity if the entity directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the other entity.

(2) is an affiliate of another entity if the entity is an affiliate of and is controlled by the other entity directly or indirectly through one or more intermediaries.

A subsidiary or holding company of an entity is an affiliate of that entity.

B. “Association” means any entity meeting the requirements set forth in either of the following paragraphs (1), (2) or (3):

(1) any organized association of individuals, legal representatives, corporations (whether for profit or not for profit), partnerships, trusts, associations, units of government or other organizations, or any combination of the foregoing, that has been in continuous existence for at least one year, the member organizations of which collectively:

(a) own, control, or hold with power to vote (directly or indirectly) all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(b) have complete voting control (directly or indirectly) over an association captive insurance company organized as a mutual insurer;

(2) any organized association of individuals, legal representatives, corporations (whether for profit or not for profit), partnerships, trusts, associations, units of government or other organizations, or any combination of the foregoing:

(a) whose member organizations are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(b) whose member organizations:

(i) directly or indirectly own or control, and hold with power to vote, at least 80% of all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(ii) directly or indirectly have at least 80% of the voting control over an association captive insurance company organized as a mutual insurer; or

(3) any risk retention group, as defined in subsection (11) of Section 123B-2, domiciled in this State and organized under this Article; however, beginning 6 months after the effective date of this amendatory Act of 1995, a risk retention group shall no longer qualify as an association under this Article.

Provided, however, that with respect to each of the associations described in paragraphs (1), (2) and (3) above, no member organization may (i) own, control, or hold with power to vote in excess of 25% of the voting securities of an association captive insurance company incorporated as a stock insurer, or (ii) have more than 25% of the voting control of an association captive insurance company organized as a mutual insurer.

C. “Association captive insurance company” means any company that insures risks of (i) the member organizations of an association, and (ii) their affiliated companies.

D. “Captive insurance company” means any pure captive insurance company, association captive insurance company or industrial insured captive insurance company organized under the provisions of this Article.

E. “Director” means the Director of the Department of Insurance.

F. “Industrial insured” means an insured which (together with its affiliates) at the time of its initial procurement of insurance from an industrial insured captive insurance company:

(1) has available to it advice with respect to the purchase of insurance through the use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; and

(2) pays aggregate annual premiums in excess of \$100,000 for insurance on all risks except for life, accident and health; and

(3) either (i) has at least 25 full-time employees, or (ii) has gross assets in excess of \$3,000,000, or (iii) has annual gross revenues in excess of \$5,000,000.

G. “Industrial insured captive insurance company” means any company that insures risks of industrial insureds that are members of the industrial insured group, and their affiliated companies.

H. “Industrial insured group” means any group of industrial insureds that collectively:

(1) directly or indirectly (including ownership or control through a company which is wholly owned by such group of industrial insureds) own or control, and hold with power to vote, all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(2) directly or indirectly (including control through a company which is wholly owned by such group of industrial insureds) have complete voting control over an industrial insured captive insurance company organized as a mutual insurer; provided, however, that no member organization may (i) own, control, or hold with power to vote in excess of 25% of the voting securities of an industrial insured captive insurance

company incorporated as a stock insurer, or (ii) have more than 25% of the voting control of an industrial insured captive insurance company organized as a mutual insurer.

I. “Member organization” means any individual, legal representative, corporation (whether for profit or not for profit), partnership, association, unit of government, trust or other organization that belongs to an association or an industrial insured group.

J. “Parent” means a corporation, partnership, individual or other legal entity that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a company.

K. “Personal risk liability” means liability to other persons for (i) damage because of injury to any person, (ii) damage to property, or (iii) other loss or damage, in each case resulting from any personal, familial, or household responsibilities or activities, but does not include legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:

(i) any business (whether for profit or not for profit), trade, product, services (including professional services), premises, or operations; or

(ii) any activity of any state or local government, or any agency or political subdivision thereof.

L. “Pure captive insurance company” means any company that insures only risks of its parent or affiliated companies or both.

M. “Unit of government” includes any state, regional or local government, or any agency or political subdivision thereof, or any district, authority, public educational institution or school district, public corporation or other unit of government in this State or any similar unit of government in any other state.

N. “Control” means the power to direct, or cause the direction of, the management and policies of an entity, other than the power that results from an official position with or corporate office held in the entity. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or non-management services.

O. “Qualified independent actuary” means a person that is either:

(1) a member in good standing with the Casualty Actuarial Society; or

(2) a member in good standing with the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

P. “Controlled unaffiliated business” means an entity:

(1) that is not an affiliate;

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

(3) whose risks are managed by a captive insurance company under Section 123C-24 of this Code.

Q. “Operational risk” means any potential financial loss of an affiliate, except for a loss arising from an insurance policy issued by a captive or insurance affiliate.

R. “Captive management company” means an entity providing administrative services to a captive insurance company.

S. “Safety-Net Hospital” means an Illinois hospital that qualifies as a Safety-Net Hospital under Section 5-5e.1 of the Illinois Public Aid Code.

§ 123C-8. Merger, Consolidation, Plans of Exchange and Reorganization

A. The provisions of Article X shall apply to captive insurance companies; provided, however, that:

(1) if the surviving or new company is to be a domestic captive insurance company,

(a) the Director shall, in determining whether such company meets the requirements set forth in paragraph (b) of subsection (2) of Section 162, refer only to the provisions of this Article VIIC and the other provisions of Article X;

(b) the Director shall, in determining whether such company meets the requirements of Sections 123C-3 and 123C-4, take into account the capital and surplus of the company to be merged into the domestic captive insurance company or the companies to be consolidated into the domestic captive insurance company (but any approval by the Director of such merger or consolidation shall be contingent upon the receipt of such capital and surplus by the domestic captive insurance company and satisfactory evidence thereof being presented to the Director);

(c) notwithstanding the provisions of paragraph (c) of subsection (1) of Section 166, such surviving or new company shall have all of the rights, privileges, immunities and powers and shall be subject to all of the duties and liabilities granted or imposed by this Article VIIC (and not by the entire Code); and

(2) in the event that such merger or consolidation is to be effected in conjunction with the formation and licensing of a new domestic captive insurance company in this State, the Director shall follow procedures for the contemporaneous and expeditious review of the materials presented to the Director for his approval of such formation, licensing and merger or consolidation.

B. (1) Any domestic, foreign or alien stock company, mutual company, or reciprocal company, authorized or which may be authorized to do business in this State, may reorganize as a domestic captive insurance company under the laws of this State, by complying with the provisions of Article XII. Domestic companies are hereby authorized to reorganize as domestic captive insurance companies.

(2) In the event that such reorganization is to be effected in conjunction with the formation and licensing of a new captive insurance company in this State, the Director shall follow procedures for the contemporaneous and expeditious review of the materials presented to the Director for his approval of such formation, licensing and reorganization.

§ 123C-9. Reports, statements and mandatory reserves.

A. Captive insurance companies shall not be required to make any annual report except as provided in this Article.

B. (1) On or before March 1 of each year, each captive insurance company shall submit to the Director a report of its financial condition, verified by oath of 2 of its executive officers and including (i) a balance sheet reporting assets, liabilities, capital and surplus, (ii) a statement of gain or loss from operations, (iii) a statement of changes in financial position, (iv) a statement of changes in capital and surplus, (v) in the case of industrial insured captive insurance companies, an analysis of loss reserve development, information on risks ceded and assumed under reinsurance agreements, on forms prescribed by the Director, and a schedule of its invested assets on forms prescribed by the Director, and (vi) a statement of actuarial opinion by a qualified independent actuary concerning the reasonableness of the captive insurance company's loss and loss adjustment expense reserves in such form and of such content as specified in the National Association of Insurance Commissioners Annual Statement Instructions: Property and Casualty.

(2) In addition, prior to March 1 of each year, each association captive insurance company shall submit to the Director such additional data or information, which the Director may from time to time require, on a form specified by the Director.

(3) On or before June 1 of each year, each captive insurance company shall submit to the Director a report of its financial condition at last year's end with an independent certified public accountant's opinion of the company's financial condition.

(4) Unless the Director permits otherwise, the reports of financial condition referred to in paragraphs (1) and (3) of this subsection B are to be prepared in accordance with the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners. The Director shall have authority to extend the time for filing any report or statement by any company for reasons which he considers good and sufficient.

C. In addition, any captive insurance company may be required by the Director, when he considers such action to be necessary and appropriate for the protection of policyholders, creditors, shareholders or claimants, to file, within 60 days after mailing to the company of a notice that such is required, a supplemental summary statement as of the last day of any calendar month occurring during the 100 days next preceding the mailing of such notice designated by him on forms prescribed and furnished by the Director. No company shall be required to file more than 4 supplemental summary statements during any consecutive 12 month period.

D. Every captive insurance company shall, at all times, maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which such company may be liable, and to provide for the expenses of adjustment or

settlement of such losses and claims. The aggregate reserves shall be reduced by reinsurance ceded which meets the requirements of Section 123C-13. For the purpose of such reserves, the company shall keep a complete and itemized record showing all losses and claims on which it has received notice, including all notices received by it of the occurrence of any event which may result in a loss. Such record shall be opened in chronological receipt order, with each notice of loss or claim identified by appropriate number or coding.

E. Every captive insurance company shall maintain an unearned premium reserve on all policies in force which reserve shall be charged as a liability. The portions of the gross premiums in force, after deducting reinsurance qualifying under Section 123C-13, which shall be held as a premium reserve, shall never be less in the aggregate than the company's actual liability to all its insureds for the return of gross unearned premiums. In the calculation of the company's actual liability to all its insureds, the reserve shall be computed pursuant to the method commonly referred to as the monthly pro rata method; provided, however, that the Director may require that such reserve shall be equal to the unearned portions of the gross premiums in force, after deducting reinsurance qualifying under Section 123C-13, in which case the reserve shall be computed on each respective risk from the date of the issuance of the policy.

E-5. A captive insurance company may make a written application to the Director for filing its annual report required under this Section on a fiscal year's end. If an alternative filing date is granted, the company shall file:

(1) the annual report, including a statement of actuarial opinion by a qualified independent actuary concerning the reasonableness of the captive insurance company's loss and loss adjustment expense reserves in such form and of such content as specified in the National Association of Insurance Commissioners Annual Statement Instructions: Property and Casualty, no later than the 60th day after the date of the company's fiscal year's end;

(2) the report of its financial condition at last year's end with an independent certified public accountant's opinion of the company's financial condition; and

(3) its balance sheet, income statement, and statement of cash flows, verified by 2 of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

F. The reports required by this Section shall be prepared and filed on a calendar year basis.

G. Notwithstanding the requirements of this Section, a captive insurance company may prepare and issue financial statements prepared in accordance with generally accepted accounting principles.

§ 123C-10. Examinations and investigations; fees.

A. The provisions of Sections 132 through 132.7 shall apply to captive insurance companies. The expenses and charges of any examination conducted pursuant to those Sections shall be paid by the company examined.

B. When necessary to supplement its evaluation or examination procedures, the Department may retain independent actuaries deemed competent by the Director, qualified loss reserve consultants, independent risk managers, independent certified public accountants, or qualified examiners of insurance companies deemed competent by the Director, or any combination of the foregoing. The Director may also accept as a part of the Department's examination of any company or person (a) a report by an independent actuary

deemed competent by the Director or (b) a report of an audit made by an independent certified public accountant. Neither those persons so designated nor any members of their immediate families shall be officers of, connected with, or financially interested in any company other than as policyholders, nor shall they be financially interested in any other corporation or person affected by the examination, investigation or hearing. The reasonable expenses and charges of persons so retained or designated shall be paid directly by the company.

§ 123C-11. Grounds and procedures for suspension or revocation of certificate of authority.

A. The certificate of authority of a captive insurance company to do an insurance business in this State may be suspended or revoked by the Director for any of the following reasons:

- (1) insolvency or impairment of required capital or surplus to policy holders;
- (2) failure to meet the requirements of Sections 123C-3 or 123C-4;
- (3) refusal or failure to submit an annual report, as required by Section 123C-9, or any other report or statement required by law or by lawful order of the Director;
- (4) failure to comply with the provisions of its own charter or bylaws (or, in the case of an industrial insured captive, with the provisions of the investment policy set forth in its plan of operation as approved from time to time by the Director);
- (5) failure to submit to examination or any legal obligation relative thereto, as required by Section 123C-10;
- (6) refusal or failure to pay expenses, charges, and taxes as required by Sections 408, 409, 123C-10, and 123C-17;
- (7) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (8) failure otherwise to comply with the laws of this State.

B. If the Director finds, upon examination, hearing, or other evidence, that any captive insurance company has committed any of the acts specified in subsection A, he may suspend or revoke such certificate of authority if he deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this Article.

C. The provisions of Articles XIII and XIII ½1 shall apply to and govern the conservation, rehabilitation, liquidation and dissolution of captive insurance companies.

§ 123C-12. Legal investments.

A. The provisions of Article VIII and of Sections 131.2 and 131.3 shall apply to association captive insurance companies.

B. No pure captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Articles VIII and VIII 1/2; provided, however, that the Director may prohibit or limit any investment or type of investment that threatens the solvency or liquidity of any such company; and provided further that an industrial insured captive insurance company must adhere to the investment policy set forth in its plan of operation as approved from time to time by the Director.

C. A captive insurance company may make loans to its affiliates with the prior approval of the Director. Each loan must be evidenced by a note approved by the Director. A captive insurance company may not make a loan of the minimum capital and surplus funds required by this Article.

D. The Director may prohibit or limit an investment that threatens the solvency or liquidity of a captive insurance company.

§ 123C-13. Reinsurance.

A. Any captive insurance company may provide reinsurance on risks ceded by any other insurer; provided, however, that the risks so assumed are the same as the captive insurance company could legally insure on a direct basis.

The provisions of Section 174.1 shall not apply to any captive insurance company providing reinsurance.

B. Subject to the provisions of Article XI, any captive insurance company may cede, and may take credit for in the establishment of reserves, all or any part of its risks. Furthermore, in addition to Section 173.1, any pure or industrial insured captive insurance company may take credit, as either an asset or a deduction from liability, for reinsurance so ceded to the extent:

(1) The reinsurer satisfies all of the following (a) through (g):

(a) the principal business of the reinsurer (other than investments in subsidiaries and other investment activities) is to accept reinsurance from captive insurance companies organized under Article VIIC, of which the company accepting the reinsurance directly or indirectly owns, controls, or holds with power to vote more than 80% of the outstanding voting securities if organized as a stock company or more than 80% of the voting control if organized as a mutual company and to provide insurance related services;

(b) is licensed to transact insurance or reinsurance in its jurisdiction of domicile;

(c) submits to this State's authority to examine its books and records and agrees to pay the cost thereof;

(d) files annually with the Director a copy of its most recent audited financial statements;

(e) maintains a surplus as regards policyholders in an amount that is not less than \$20,000,000;

(f) files with the Department the following:

(i) evidence of its submission to the jurisdiction of any court of competent jurisdiction in any state of the United States and its agreement to comply with all requirements necessary to give the court jurisdiction and to abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) an instrument designating the Director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company;

(g) has not been the subject of an order of the Director entered after notice and hearing prohibiting the reinsurer from utilizing this paragraph (1); or

(2) the taking of credit by the captive insurance company has otherwise received the prior approval of the Director.

C. A captive insurance company shall provide notice to the Director of a reinsurance agreement to which the company becomes a party not later than the 30th day after the date of the execution of the agreement.

D. A captive insurance company shall provide notice of a termination of a previously filed reinsurance agreement to the Director not later than the 30th day after the date of termination.

E. Notwithstanding Section 123C-15 of this Code, a captive insurance company, with the Director's approval, may accept risks from and cede risks to or take credit for reserves on risks ceded to:

(1) a captive reinsurance pool composed only of other captive insurance companies holding a certificate of authority under this Article or a similar law of another jurisdiction; or

(2) an affiliated captive insurance company holding a certificate of authority under this Article or a similar law of another jurisdiction.

§ 123C-14. Rating Organizations; Memberships; Rate or Policy Filing.

No captive insurance company shall be required to join a rating organization. No captive insurance company shall be required to file its premium rates or policy forms with, or to seek approval of such rates or forms from, the Director or any other authority of this State.