

SENATE BILL 1157

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 56,
relative to captive insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-4-101(a), is amended by deleting subdivision (8) and substituting the following:

(8) For receiving and reviewing a change of ownership or a second or subsequent change of business plan in a calendar for a captive insurance company, four hundred dollars (\$400); and

SECTION 2. Tennessee Code Annotated, Section 56-13-103(b)(3), is amended by deleting the subdivision and substituting the following:

(3) It maintains its principal place of business in this state unless waived by the commissioner; and

SECTION 3. Tennessee Code Annotated, Section 56-13-103(e), is amended by deleting the subsection and substituting the following:

(e) If the commissioner is satisfied that the documents and statements filed by an applicant captive insurance company comply with this chapter, then the commissioner may grant a license authorizing it to do insurance business in this state. In order to allow applicants to properly plan for continuity of coverage, the license, if granted, shall be effective as of the date the application was filed with the department.

SECTION 4. Tennessee Code Annotated, Section 56-13-103, is amended by inserting the following as a new subsection:

(1) Notwithstanding this chapter, the commissioner may issue a provisional license to an applicant captive insurance company for a period not to exceed sixty (60)

days if the commissioner deems that the public interest will be served by the issuance of the provisional license.

(2) An applicant business entity may petition the commissioner to extend the provisional time if the petition is received in writing not less than ten (10) days before expiration of the provisional time and provides sufficient detail to permit the commissioner to make an informed decision. Extensions may be granted by the commissioner for thirty-day periods upon a showing by the applicant business entity of the reasons for requesting an extension and a determination by the commissioner of good cause for the extension.

(3) As a condition precedent to the issuance of a provisional license under this subsection, the applicant has filed a complete application containing all information required by this section and pays all fees required for licensure, and the commissioner makes a preliminary finding that the expertise, experience, and character of the person or persons who will control and manage the captive insurer are acceptable.

(4) The commissioner, by order, may limit the authority of any provisional licensee in any way deemed necessary to protect insureds and the public. The commissioner, by order, may revoke a provisional license if the interests of insureds or the public are endangered. If the applicant fails to complete the regular licensure application process within the sixty-day provisional period, the provisional license terminates automatically at the end of the sixty-day period, and any policy issued during the provisional period is cancelled as of the termination date and any premium unearned must be refunded to the policyholder within ten (10) days.

SECTION 5. Tennessee Code Annotated, Section 56-13-104, is amended by designating the existing language as subsection (a) and inserting the following as a new subsection:

(b) A license issued pursuant to this chapter must be issued in the form of a "Certificate of Authority".

SECTION 6. Tennessee Code Annotated, Section 56-13-105, is amended by deleting subsection (c) and substituting the following:

(c) Capital and surplus must be in the form of cash, cash equivalent, marketable securities, a trust approved by the commissioner and of which the commissioner is a beneficiary, or an irrevocable letter of credit issued by a bank approved by the commissioner.

SECTION 7. Tennessee Code Annotated, Section 56-13-105, is amended by redesignating the current subsection (d) as subsection (e) and inserting the following as a new subsection (d):

(d) The minimum capital and surplus required in subsection (a), and any additional capital required pursuant to subsection (b), must be segregated and maintained in a separate account and, notwithstanding any accrued gains or interest earned, must not be commingled with any other assets owned by the captive insurance company.

SECTION 8. Tennessee Code Annotated, Section 56-13-106, is amended by deleting the section and substituting the following:

(a) No captive insurance company shall pay a dividend or make any other distribution to its shareholders until:

(1) Five (5) business days after the department has received notice of the declaration thereof and has not within the period disapproved the payment; or

(2) The department has approved the payment within the five-business-day period described in subdivision (a)(1).

(b) Notwithstanding this chapter, a captive insurance company may declare a dividend or distribution that is conditional upon the commissioner's approval thereof, and the declaration must confer no rights upon shareholders until:

(1) The commissioner has approved the payment of the dividend or distribution; or

(2) The commissioner has not disapproved the payment within the five-business-day period described in subdivision (a)(1).

(c) Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by the commissioner. A captive insurance company may otherwise make distributions as are in conformity with its purposes and approved by the commissioner.

(d) This section does not apply to risk retention groups.

SECTION 9. Tennessee Code Annotated, Section 56-13-112(a), is amended by inserting the following after the language "risks ceded by any other insurer":

, including risks ceded by a ceding insurer that is its parent or affiliate

SECTION 10. Tennessee Code Annotated, Section 56-13-112(d), is amended by deleting the subsection and substituting the following:

(d) Except where specifically provided otherwise, insurance by a captive insurance company of any workers' compensation or accident and health qualified self-insured plan of its parent and affiliates, and the assumption of risk by a captive insurance company under any service contract issued by a parent or affiliate, are deemed to be reinsurance.

SECTION 11. Tennessee Code Annotated, Title 56, Chapter 13, Part 1, is amended by adding the following as a new section:

56-13-118.

(a) No captive insurance company shall make any material change or changes to its plan of operation that was filed with the department at the time of the initial application pursuant to § 56-13-103(c) and any subsequent material change or changes to the plan until:

(1) Five (5) business days after the department has received notice of the material change or changes to the plan of operations and has not within the period disapproved the change or changes; or

(2) The department has approved the change or changes within the five-business-day period described in subdivision (a)(1).

(b) Notwithstanding § 56-4-101(8), each captive insurance company is entitled to file one (1) material change of plan of operation each year free of charge. However, each subsequent material change of plan of operation filed during each year is subject to the fee described in § 56-4-101(8).

(c) For purposes of this section and § 56-4-101(8), the "plan of operation" and "business plan" have the same meaning.

(d) A change in any information filed with the application that does not constitute a material change as identified in § 56-13-103(c)(2)(B) or § 56-13-416, or a change requiring commissioner approval in § 56-13-204(14), must be filed with the commissioner within thirty (30) days but does not require prior approval under this section.

(e) This section does not apply to a plan of operation change filed by protected cell captive insurance companies for the purposes of creating a new unincorporated or incorporated protected cell. This section applies to all other plan of operation changes filed by protected cell captive insurance companies on their own behalf or on behalf of an unincorporated or incorporated protected cell.

SECTION 12. Tennessee Code Annotated, Section 56-13-120, is amended by designating the existing language as subsection (a) and inserting the following as a new subsection:

(b) Section 56-13-103(c)(3) applies to any action taken by the commissioner pursuant to this section.

SECTION 13. Tennessee Code Annotated, Section 56-13-124, is amended by adding the following as a new subsection:

(1) The commissioner may waive the requirements of subdivision (a)(2) in the commissioner's sole discretion.

(2) Notwithstanding this section to the contrary, if the commissioner waives the requirements of subdivision (a)(2), then the commissioner may impose actuarial reporting requirements and additional capital and surplus requirements on the dormant captive in the commissioner's sole discretion.

SECTION 14. Tennessee Code Annotated, Title 56, Chapter 13, Part 1, is amended by inserting the following as a new section:

(a) For purposes of this section:

(1) "Foreign" means outside the United States, its territories, or possessions;

(2) "Foreign currency" means currency issued by a government outside the United States that is recognized by the United States as a legitimate government and is freely exchangeable with United States currency;

(3) "Foreign securities" means securities that are ordinarily traded on an exchange outside the United States; and

(4) "Cryptocurrency" means units of value that are not issued by the United States or any foreign government but are freely exchangeable with United

States currency and whose exchanges are made via electronic networks and secured by blockchain technology.

(b) A captive insurance company or an individual cell of a captive insurance company may, with the approval of the commissioner, include within its plan of operation that the company will:

(1) Receive payments of premium in a specified foreign currency, foreign securities, or cryptocurrency and will pay claims on insured losses in a specified currency, foreign securities, or cryptocurrency;

(2) Authorize the payment of claims in a specified foreign currency, foreign securities, or cryptocurrency; and

(3) Hold foreign currency, foreign securities, or cryptocurrency as surplus for the payment of future claims.

(c) For the purpose of calculating the amount of premium tax due under § 56-13-114, a policy issued by a captive payable in foreign currency, foreign securities, or cryptocurrency is deemed to be of an equivalent value in United States currency as of the date that coverage is bound and is payable in United States currency when due under § 56-13-114. In determining the exchange rate between United States currency and the foreign currency, foreign securities, or cryptocurrency, the captive insurance company shall identify in its approved plan of operation a publicly available and reliable exchange rate index that will be used to determine the equivalent value for premium tax purposes. If the exchange rate index identified in the plan of operation is not available, then the commissioner must determine the appropriate exchange rate for the purpose of calculating the amount of premium tax due.

(d) For good cause shown, the commissioner may waive the application of § 56-13-103(b)(3) for a captive insurance company that is predominately insuring risks outside the United States.

SECTION 15. Tennessee Code Annotated, Section 56-13-204(1)(A), is amended by deleting the subdivision and substituting the following:

(A) A protected cell captive insurance company may establish one (1) or more protected cells if the commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation must include, but is not limited to, the specific business objectives and investment guidelines of the protected cell. However, the commissioner may require additional information in the plan of operation. In order to allow protected cell captive insurance companies to properly plan for continuity of coverage, the approval in writing of a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company, if granted, is effective as of the date the plan of operation or amendments to the plan of operation were filed with the department.

SECTION 16. Tennessee Code Annotated, Section 56-13-204(1)(E), is amended by deleting the subdivision and substituting the following:

(E) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner, including, but not limited to, an individual series of a limited liability company as provided for in title 48, chapter 249. Each incorporated protected cell of a protected cell captive insurer must be treated as a captive insurer for purposes of this chapter and has the power to issue contracts, including an individual series of a limited liability company. Unless otherwise permitted by the organizational documents of a protected cell captive insurer, each incorporated

protected cell of the protected cell captive insurer must have the same directors, secretary, and registered office as the protected cell captive insurer;

SECTION 17. Tennessee Code Annotated, Section 56-13-204, is amended by adding the following as new subdivisions:

(17) Biographical affidavits are not required for participants in unincorporated cells. However, biographical affidavits are required for owners of incorporated cells, including series members of a series LLC; and

(18) A protected cell captive insurance company formed or licensed under this chapter may establish and operate both unincorporated and incorporated protected cells;

SECTION 18. Tennessee Code Annotated, Section 56-13-209, is amended by redesignating the current subsection (d) as subsection (e) and inserting the following as a new subsection (d):

(d) With the consent of the affected protected cell captive insurance company or companies, the owners or the participants of the protected cells, and the commissioner, an individual protected cell of a captive insurance company may merge with another individual protected cell of a protected cell captive insurance company. The commissioner may require the affected protected cell captive insurance companies and the individual protected cells to make necessary changes to their business plans, organizational documents, participation agreements, or other governing documents prior to approving the change in affiliation. The formation date of a protected cell that merges with another protected cell captive insurance company is the date of the original formation of the surviving protected cell. The surviving protected cell must acquire all of the assets and liabilities, including outstanding insurance liabilities, of the merging

protected cell. A hearing is not required for mergers of protected cells effectuated under this section.

SECTION 19. This act shall take effect upon becoming a law, the public welfare requiring it.