

## *Missouri bill modifies rules to attract captive insurance companies*

June 28, 2013

### *In brief*

A Missouri bill, S.B. 287, sponsored by Missouri Sen. Scott Rupp (R) and signed by Missouri Gov. Jay Nixon (D) on May 16, allows for sponsored captive insurance companies and respective protected cells to be organized and operate in the state effective August 28. The bill also contains ancillary provisions that streamline and simplify the captive insurance statutes to make the establishment of captives in Missouri more attractive to business.

### *In detail*

#### ***Sponsored Captive Insurance Company***

With the passage of this Act, Missouri now allows six types of captive insurance companies in the state. The types of captive insurance structures allowed are: pure captive, association captive, industrial insured captive, branch captive, special purpose life insurance captive, and sponsored captive insurance companies. A sponsored captive is created by a legal entity that is not an insured of the sponsored captive, nor do the insureds have any ownership interest in or control of the sponsored captive.

Under the Act, a sponsored captive insurance company must be incorporated as a stock insurer with its capital dividend into shares and held by the stockholders, as a mutual corporation, a nonprofit

corporation with one or more members, or a manager-managed limited liability company. Similar to the new lower standard for association captives, sponsored captives will be required to possess and maintain an unimpaired paid-in capital and surplus of at least \$500,000 in order to be licensed.

The Act allows sponsored captive insurance companies to establish and maintain one or more protected cells to insure risks under certain conditions. The protected cell is a separate account maintained for the insureds, and may be incorporated itself as a corporation or limited liability company. Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or

loss, dividends or other distributions to participants, and other factors. The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct. The act prohibits the sale, exchange, transfer of assets, dividend or distribution by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells. No sale, exchange, transfer of assets, dividend or distribution may be made from a protected cell to a sponsor or participant without the director's approval and in no event shall such approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell.

The legislation sets forth the annual minimum aggregate tax for any sponsored captive insurance company to be \$7,500, which applies to the company as a whole and not to each protected cell. To determine such company's annual maximum tax, the Act requires the company to aggregate the tax liabilities of each protected cell. In addition to annual taxes, the Act also requires each sponsored captive insurance company to annually file financial reports with the director. The financial reports shall include accounting statements detailing the financial experience of each protected cell. The Act requires each sponsored captive insurance company shall be subject to certain examination and investigation powers of the department. Further, the Act requires each sponsored captive insurance company to notify the director in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations.

An interested applicant should file the following items with the director: (1) materials demonstrating how it will

account for the loss and expense experience of each protected cell; (2) a statement acknowledging that all of its financial records will be made available for inspection or examination; (3) all contracts or sample contracts between the applicant and any participants; and (4) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

#### ***Ancillary Provisions***

The unimpaired paid-in capital and surplus requirement for an association captive insurance company is decreased from \$750,000 to \$500,000.

Under current law, the director may cancel a hearing regarding certain captive insurance transactions if no one requests a hearing. Under the Act, this provision is modified so that if no one requests a hearing 10 days before the day set for the hearing, then the director may cancel the hearing.

The Act allows the Director of the Department of Insurance, Financial Institutions and Professional

Registration to issue a certificate of general good to permit the formation of a captive insurance company for the sole purpose of consolidating or merging with or assuming existing insurance or reinsurance business from an existing Missouri licensed captive insurance company. The act allows the director to waive or modify certain captive insurance licensing requirements (description of the coverages, deductibles, coverage limits, rates, liquidity, etc.) if requested by the newly formed captive insurance company.

#### ***The takeaway***

Missouri continues to modify its laws to attract more captive insurance companies to its state. Sponsored captive insurance companies wishing to establish protected cells in Missouri should take advantage of such laws as they may create a favorable business opportunity.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

#### ***Financial Services - Insurance***

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