



# Senate

General Assembly

**File No. 384**

January Session, 2023

Senate Bill No. 1038

*Senate, April 3, 2023*

The Committee on Insurance and Real Estate reported through SEN. CABRERA of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## ***AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 38a-91bb of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective October*  
3 *1, 2023*):

4 (a) Any captive insurance company, when permitted by its articles of  
5 association, charter or other organizational document, may apply to the  
6 commissioner for a license to do the business of insurance against any  
7 kind of loss, damage or liability properly a subject of insurance, if such  
8 insurance is not prohibited by law or disapproved by the commissioner  
9 as being contrary to public policy, including life insurance, annuities,  
10 health insurance, as defined in section 38a-469, and commercial risk  
11 insurance, as defined in section 38a-663, and may accept or transfer risk  
12 by means of a parametric contract, provided:

13 (1) No pure captive insurance company may insure any risks other  
14 than those of its parent and affiliated companies or controlled

15 unaffiliated business;

16 (2) No association captive insurance company may insure any risks  
17 other than those of its association, the member organizations of its  
18 association, and the member organizations' affiliated companies;

19 (3) No industrial insured captive insurance company may insure any  
20 risks other than those of (A) the industrial insureds that comprise the  
21 industrial insured group, (B) the industrial insureds' affiliated  
22 companies, or (C) the industrial insureds' controlled unaffiliated  
23 businesses;

24 (4) No risk retention group may insure any risks other than those of  
25 its members and owners;

26 (5) No captive insurance company may provide personal risk  
27 insurance, as defined in section 38a-663, for private passenger motor  
28 vehicle or homeowners insurance coverage or any component thereof;

29 (6) No captive insurance company may accept or cede reinsurance  
30 except as provided in section 38a-91kk;

31 (7) Any captive insurance company may provide excess workers'  
32 compensation insurance to its parent and affiliated companies, unless  
33 prohibited by the laws of the state having jurisdiction over the  
34 transaction or by federal law. Any captive insurance company may  
35 reinsure a workers' compensation qualified self-insured plan of its  
36 parent and affiliated companies, unless prohibited by federal law;

37 (8) Any captive insurance company that provides life insurance,  
38 annuities or health insurance shall comply with all applicable state and  
39 federal laws;

40 (9) Any captive insurance company that transfers risk by means of a  
41 parametric contract shall comply with all applicable state and federal  
42 laws and regulations. As used in this section, "parametric contract"  
43 means any agreement to make a payment upon the occurrence of one or  
44 more specified triggering events without proof of loss or obligation to

45 indemnify.

46 Sec. 2. Subsection (a) of section 38a-91rr of the general statutes is  
47 repealed and the following is substituted in lieu thereof (*Effective October*  
48 *1, 2023*):

49 (a) Each sponsored captive insurance company may establish and  
50 maintain one or more protected cells, subject to the following  
51 conditions:

52 (1) The stockholders of a sponsored captive insurance company shall  
53 be limited to its participants and sponsors, except that a sponsored  
54 captive insurance company may issue nonvoting securities to other  
55 persons on terms approved by the commissioner;

56 (2) Each sponsored captive insurance company shall account  
57 separately on the books and records of such company for each protected  
58 cell to reflect the financial condition and results of operations of such  
59 protected cell, net income or loss, dividends or other distributions to  
60 participants and such other factors as may be provided in the participant  
61 contract or required by the commissioner;

62 (3) No liabilities arising out of any other insurance business the  
63 sponsored captive insurance company may conduct shall be chargeable  
64 against the assets of a protected cell;

65 (4) No sponsored captive insurance company shall make any sale,  
66 exchange or other transfer of assets, dividend or distribution between  
67 or among any of its protected cells without the consent of such protected  
68 cells;

69 (5) No protected cell shall make any sale, exchange or other transfer  
70 of assets, dividend or distribution to a sponsor or participant without  
71 the commissioner's approval. The commissioner shall not approve such  
72 sale, exchange or other transfer if it would result in insolvency or  
73 impairment with respect to a protected cell;

74 (6) (A) Except as otherwise specified, each sponsored captive

75 insurance company shall attribute assets and liabilities to the protected  
76 cells and the general account in accordance with the plan of operation  
77 approved by the commissioner, and shall not attribute any other assets  
78 or liabilities between its general account and any protected cell or  
79 between any protected cells. For purposes of this subdivision, "general  
80 account" means all assets and liabilities of a sponsored captive insurance  
81 company that are not attributable to a protected cell.

82 (B) Each sponsored captive insurance company shall attribute all  
83 insurance obligations, assets and liabilities relating to a reinsurance  
84 contract entered into with respect to a protected cell to such protected  
85 cell. The performance under such reinsurance contract and any tax  
86 benefits, losses, refunds or credits allocated pursuant to a tax allocation  
87 agreement to which the sponsored captive insurance company is a  
88 party, including any payments made by or due to be made to the  
89 sponsored captive insurance company pursuant to the terms of such  
90 agreement, shall reflect such obligations, assets and liabilities relating to  
91 such reinsurance contract;

92 (7) Each sponsored captive insurance company shall file annually  
93 with the commissioner such financial reports as the commissioner shall  
94 require, including, but not limited to, accounting statements detailing  
95 the financial experience of each protected cell;

96 (8) Each sponsored captive insurance company shall notify the  
97 commissioner in writing not later than ten business days after any  
98 protected cell becomes insolvent or otherwise unable to meet its claim  
99 or expense obligations;

100 (9) No participant contract shall take effect without the  
101 commissioner's prior written approval. The addition of each new  
102 protected cell or the withdrawal of any participant or termination of any  
103 existing protected cell shall constitute a change in the sponsored captive  
104 insurance company's plan of operation and shall require the  
105 commissioner's prior written approval;

106 (10) If required by the commissioner, the business written by a

107 sponsored captive insurance company with respect to each protected  
108 cell shall be (A) fronted by an insurance company licensed under the  
109 laws of any state, (B) reinsured by a reinsurer authorized or approved  
110 by this state, or (C) secured by a trust fund in the United States for the  
111 benefit of policyholders and claimants or funded by an irrevocable letter  
112 of credit or other arrangement that is acceptable to the commissioner.  
113 The commissioner may require the sponsored captive insurance  
114 company to increase the funding of any security arrangement  
115 established under this subdivision. If the form of security is a letter of  
116 credit, the letter of credit shall be issued or confirmed by a bank  
117 approved by the commissioner. A trust maintained pursuant to this  
118 subdivision shall be established in a form and upon such terms  
119 approved by the commissioner; and

120 (11) A protected cell of a sponsored captive insurance company may,  
121 with the commissioner's prior written approval, establish one or more  
122 separate accounts and may allocate assets to such accounts to provide  
123 for the insurance risks of one or more participants, or controlled  
124 unaffiliated business of such participants, subject to the following:

125 (A) The income, gains and losses, realized or unrealized, from assets  
126 allocated to a separate account shall be credited to or charged against  
127 the account, without regard to other income, gains or losses of the  
128 protected cell;

129 (B) Amounts allocated to a separate account pursuant to this  
130 subdivision are owned by the protected cell and such protected cell shall  
131 not be, nor hold itself out to be, a trustee with respect to such amounts;

132 (C) Unless otherwise approved by the commissioner, assets allocated  
133 to a protected cell shall be valued in accordance with the rules otherwise  
134 applicable to the protected cell's assets;

135 (D) If, and to the extent provided under the applicable contracts, such  
136 portion of the assets of any such protected cell equal to the reserves and  
137 other contract liabilities with respect to such account shall not be  
138 chargeable with liabilities arising out of any other business the protected

139 cell may conduct;

140 (E) No sale, exchange or other transfer of assets may be made by any  
141 protected cell between any of such protected cell's separate accounts or  
142 between any other investment account and one or more of such  
143 protected cell's separate accounts unless, in the case of a transfer into a  
144 separate account, such transfer is made solely to establish the account  
145 or to support the operation of the contracts with respect to the separate  
146 account to which the transfer is made, and unless such transfer, whether  
147 into or from a separate account, is made (i) by a transfer of cash, or (ii)  
148 by a transfer of securities that has a readily determinable market value,  
149 provided such transfer of securities is approved by the commissioner.  
150 The commissioner may approve other transfers among such accounts if  
151 the commissioner determines such transfers would be equitable; and

152 (F) To the extent any protected cell deems it necessary for compliance  
153 with any applicable federal or state laws, such protected cell, with  
154 respect to any separate account, including, but not limited to, any  
155 separate account that is a management investment company or a unit  
156 investment trust, may provide for persons having an interest therein  
157 appropriate voting and other rights and special procedures for the  
158 conduct of the business of such account, including, but not limited to,  
159 special rights and procedures relating to investment policy, investment  
160 advisory services, selection of independent public accountants and the  
161 selection of a committee to manage the business of such account. Such  
162 committee members are not required to be affiliated with such protected  
163 cell.

164 Sec. 3. Section 38a-91uu of the general statutes is amended by adding  
165 subsection (d) as follows (*Effective October 1, 2023*):

166 (NEW) (d) A dormant captive insurance company shall not be subject  
167 to or liable for the payment of any tax under section 38a-91nn.

This act shall take effect as follows and shall amend the following sections:
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Section 1	<i>October 1, 2023</i>	38a-91bb(a)
Sec. 2	<i>October 1, 2023</i>	38a-91rr(a)
Sec. 3	<i>October 1, 2023</i>	38a-91uu(d)

**INS**      *Joint Favorable*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 24 \$</b>	<b>FY 25 \$</b>
Department of Revenue Services	GF - Revenue Loss	15,000	15,000
Insurance Dept.; Revenue Serv., Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which exempts dormant captive insurers from the insurance premiums tax, results in a General Fund revenue loss of \$15,000 annually beginning in FY 24.<sup>1</sup>

The bill also allows captives to accept or transfer risk through parametric contracts and allows sponsored captives to take certain actions related to their protected cells. These changes are anticipated to make the state more attractive as a domicile for captives. There are 45 captives currently in Connecticut.

To the extent the bill increases the number of captive insurance companies that are established in Connecticut, the bill could result in a General Fund revenue gain associated with the following for each captive:

<sup>1</sup> According to the Department of Insurance, there are currently two dormant captive insurers in the state each paying the minimum tax of \$7,500.



1. Application fee: \$800
2. Fee for initial license: \$375
3. Annual license renewal: \$375
4. Insurance premiums taxes.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future.

*Sources: Department of Insurance*

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**OLR Bill Analysis****SB 1038*****AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES.*****SUMMARY**

Generally, a captive insurer is an insurance company formed to insure or reinsure the risks of its owners, parent company, or affiliated company. The law allows several different types of captive insurers to be licensed and operate in the state.

This bill allows all captive insurers to accept or transfer risk through parametric contracts (i.e., any agreement to make a payment based on a specified triggering event rather than the value of the loss). It also expressly requires captive insurers that use these contracts to comply with applicable state and federal laws and regulations.

A sponsored captive is a captive insurance company (1) in which the minimum paid-in capital and surplus is provided by one or more sponsors, (2) that insures its participants through separate participant contracts, and (3) that funds its liability to each participant through protected cells, and separates each cell's assets from the assets of other cells and the captive insurer as a whole. The bill allows these protected cells to, with the insurance commissioner's prior written approval, establish separate accounts and allocate assets to them, subject to certain requirements.

Lastly, the bill exempts dormant captive insurers from captive insurance premium taxes. Captives must pay taxes on direct premiums and reinsurance premiums collected or contracted, with a varying rate based on the amount of premiums. The annual minimum aggregate tax is generally \$7,500. By law, pure, sponsored, and industrial captive insurers that have stopped doing business and have no more liabilities

can apply to the insurance commissioner for a certificate of dormancy. Dormant captive insurers have lower statutory minimum capital and surplus requirements.

EFFECTIVE DATE: October 1, 2023

### **SPONSORED CAPTIVE PROTECTED CELL SEPARATE ACCOUNTS**

Under the bill, a sponsored captive's protected cells can establish separate accounts and allocate assets to them to insure the risks of participants or participants' controlled unaffiliated business. The bill establishes several requirements that generally maintain the accounts' independence from other accounts and protected cells. Under the bill:

1. the income and gains and losses (realized or unrealized) from assets allocated to a separate account must be credited to or charged against the account, without regard to the protected cell's other income, gains, or losses;
2. the protected cell owns the allocations to a separate account and it cannot be, or hold itself out to be, a trustee of them;
3. assets allocated to a protected cell must be valued based on the rules otherwise applicable to the protected cell's assets, unless otherwise approved by the insurance commissioner; and
4. the portion of assets in any protected cell equal to the reserves and other contract liabilities of a particular account cannot be charged against liabilities from any of the protected cell's other business (pursuant to applicable contracts).

The bill prohibits selling, exchanging, or transferring assets between any of the protected cell's separate accounts or between any other investment account and the protected cell's separate accounts, unless the transfer is made:

1. into a separate account to establish it or support the operation of its contracts, and

2. whether into or from a separate account, in cash or by a transfer of securities that has a readily determinable market value and is approved by the commissioner.

The bill allows the commissioner to approve other transfers if he determines they are equitable.

**Governance**

A protected cell, if needed to comply with state or federal law, may allow people with interests in separate accounts (including an account that is a management investment company or unit investment trust) appropriate voting and other rights needed to conduct the account’s business. This includes special rights and procedures on investment policy, investment advisory services, and selecting (1) independent public accountants and (2) a committee to manage the account’s business. (The bill specifies that these committee members do not need to be affiliated with the protected cell.)

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 12    Nay 0    (03/16/2023)