



Introduction to

# **CAPTIVE INSURANCE**

In North Carolina

December 10, 2013



# Agenda

- Regulator Introduction
- Overview
- Commitments
- NCDOI Goals
- N.C. Competitive Advantages
- Key Provisions of the N.C. Captive Insurance Act
- Licensing Process
- Annual Reporting
- Ongoing Requirements
- Service Providers
- N.C. Captive Website
- Q&A



# REGULATOR INTRODUCTION



# Captive Insurance Regulatory Team

- **Wayne Goodwin**  
N.C. Insurance Commissioner
- **Raymond Martinez**  
Senior Deputy Commissioner
- **Jeffrey Trendel**  
Deputy Commissioner
- **Debra Walker**  
Acting Captive Insurance Director
- **Kevin Brodie**  
Senior Regulatory Specialist
- **Kathleen Short**  
Senior Regulatory Specialist
- **Jonathan Stark**  
Financial Analyst
- **Kathy Hart**  
Captive Administrative Assistant



# CAPTIVE INSURANCE - OVERVIEW



# Overview

- The N.C. Captive Insurance Act became effective October 14, 2013, upon funding by the General Assembly.
- Funding for the next 2-year period amounts to \$584,604.
- Our captive law is based on Tennessee's captive law; however, our law contains significant differences.
- We are firmly committed to making this program work.



# CAPTIVE INSURANCE - COMMITMENTS



# Commitments

- We will go out of our way to understand your needs and to serve you appropriately.
- We will make every reasonable effort to work with you so long as there is adherence to the legal requirements.
- We will exercise discretion in your favor wherever reasonably possible.



# CAPTIVE INSURANCE - NCDOI GOALS



# Goals

Goal #1: Accommodate the insurance needs of North Carolina businesses

Goal #2: Attract new business to North Carolina

Goal #3: Create a positive economic impact on the state of North Carolina

Goal #4: Become a respected, then leading, U.S. captive domicile



# CAPTIVE INSURANCE – N.C. COMPETITIVE ADVANTAGES



# N.C. Competitive Advantages

- No annual fees
- No application fees
- No mandatory Department of Insurance examinations
- Possible exemption from annual audit requirement for captives writing less than \$1.2 million in premium
- No “pre-approval” required for certified public accountants, actuaries or attorneys
- Premium tax capped at \$100,000
- We have put in place dedicated program staff



# KEY PROVISIONS OF THE NORTH CAROLINA CAPTIVE INSURANCE ACT

# North Carolina Captive Insurance Act

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

SESSION LAW 2013-116  
HOUSE BILL 473

AN ACT TO ENACT THE NORTH CAROLINA CAPTIVE INSURANCE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 58 of the North Carolina General Statutes is amended by adding a new Part to read:

"Part 9. Captive Insurance Companies.

"Subpart 1. General Provisions.

"§ 58-10-335. Purpose.

(a) This Part shall be known and may be cited as the "North Carolina Captive Insurance Act."

(b) The purpose of this Part is to establish the procedures for the organization and regulation of the operations of captive insurance companies transacting insurance business within this State and thereby promote the general welfare of the people of this State.

"§ 58-10-340. Definitions.

The following definitions apply in this Part:

- (1) **Affiliated company.** – Any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.
- (2) **Alien.** – An alien company as defined in G.S. 58-1-5.
- (3) **Alien captive insurance company.** – Any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in such jurisdiction.
- (4) **Association.** – Any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities that meets the criteria set forth in either sub-subdivision a. or b. of this subdivision.

- Session Law 2013-116
- Governor signed June 19, 2013
- Received unanimous support in all committees and both legislative chambers



# Types of Captives Allowed (G.S. 58-10-340)

- Pure Captives
- Association Captives
- Industrial Insured Captives
- Branch Captives
- Protected Cell / Incorporated Cell Captives
- Risk Retention Groups
- Special Purpose Financial Captives

# Captive Organizational Forms

(G.S. 58-10-380; 58-10-500; 58-10-570)

	Stock	Mutual	LLC	Reciprocal	Non-Profit	Other (partnership, etc.)
Pure	X		X		X	
Association	X	X	X	X		
Industrial Insured	X	X	X	X		
RRG	X	X	X	X		
Protected Cell / Incorporated Cell	X	X	X		X	
SPFC	X	X	X			X

- Must have at least three incorporators or organizers, one of which must be a N.C. resident (*Exception is SPFC, which must have 2 incorporators or organizers that are N.C. residents*)
- Corporations must have at least one N.C. resident on board of directors
- Reciprocals must have at least one N.C. resident on the subscribers' advisory committee
- LLCs must have at least one of the managers be a N.C. resident
- SPFCs must have at least one member of management that is a N.C. resident
- Captives are subject to all state laws, as applicable, but captive law controls in the event of a conflict

# Minimum Capital & Surplus

(G.S. 58-10-370; 58-10-375)

Type	Minimum Capital & Surplus
Pure	*\$250,000
Association	\$500,000
Industrial Insured	\$500,000
RRG	\$1,000,000
Protected Cell / Incorporated Cell	\$250,000
SPFC	\$250,000

\* Or other amount as determined by the Insurance Commissioner

# Tax on Captive Insurance Companies

(G.S. 58-10-455; 105-228)

Direct Premiums Collected	Premium Tax Rate
Up to \$20 million	.4%
\$20 million and more	.3%

Assumed Reinsurance Premiums Collected	Premium Tax Rate
Up to \$20 million	.225%
\$20 million to \$40 million	.150%
\$40 million to \$60 million	.050%
\$60 million and more	.025%



# Tax on Captive Insurance Companies

(G.S. 58-10-455; 105-228)

- Two or more captive insurance companies under common ownership and control are taxed as a single captive insurance company.
- Captives are not subject to:
  - Franchise taxes imposed by Article 3 of Chapter 105 of the N. C. General Statutes
  - Income taxes imposed by Article 4 of Chapter 105 of the N. C. General Statutes
  - Local privilege taxes or local taxes computed on the basis of gross premiums
  - Insurance regulatory charge imposed by G.S. 58-6-25
- \$5,000 minimum tax (excluding protected cell captives with more than 10 cells)
- \$100,000 maximum tax (excluding protected cell captives with more than 10 cells)
- Protected cell captives with more than 10 cells:
  - \$10,000 minimum tax
  - Maximum tax may not exceed the lesser of (i) \$100,000 plus \$5,000 times the number of cells over 10 and (ii) \$200,000.



# Examinations

(N.C.G.S. 58-10-422; 58-10-430)

- Examinations are not mandatory and will be performed only when the Insurance Commissioner determines it to be prudent.
- The NCDOI will rely heavily on independent certified public accountants' work.
- Exam reports, working papers and other information produced by, obtained by or disclosed to the Commissioner are confidential.
- Examination expenses and charges are paid by the captive insurance company.
- RRGs will be examined because of NAIC accreditation requirements.



# Investments (G.S. 58-10-440; 58-10-615)

- Only RRGs and association captive insurance companies have investment restrictions.
- The Insurance Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of a captive insurance company.
- Loans to parent or affiliates are allowed with the written permission of the Insurance Commissioner.

# Fees

- No application fees
- No annual fees
- Exception: Special Purpose Financial Captives must pay \$6,000 at the time of application and at a minimum, another \$6,000 at the time of licensure. The actual amount due will be dependent on the cost to examine and investigate the application. (G.S. 58-10-565(h))



# LICENSING PROCESS

# Forming a New Captive

All captives: G.S. 58-10-345 and 58-10-380; Protected Cell: G.S. 58-10-505 and 58-10-510; SPFC: G.S. 58-10-555, 58-10-565 and 58-10-570)



Primary NCDOT Involvement  
Goal is 2 weeks to 30 days

Several of the items shown above will be occurring simultaneously.

# Formation - Step 3

- Application
  - Draft Organizational Documents
  - Captive License Application (Form C-100)
  - Biographical Affidavits (Form C-101)
  - Consent to Service of Process (Form C-103)

Form C-100

Form C-101

Form C-103



# Step 3

- Application Process

- Two Phases

1. Completeness Review Phase

- NCDOT reviews application and related information to determine whether all documentation has been provided and is complete
- NCDOT will communicate with contact person

2. Substantive Review Phase

- NCDOT may request more information and documents on which to base licensing decision
- If approved, applicant will receive license



# Formation - Step 3

- Capitalization
  - Place required deposit with the Insurance Commissioner
- Licensing

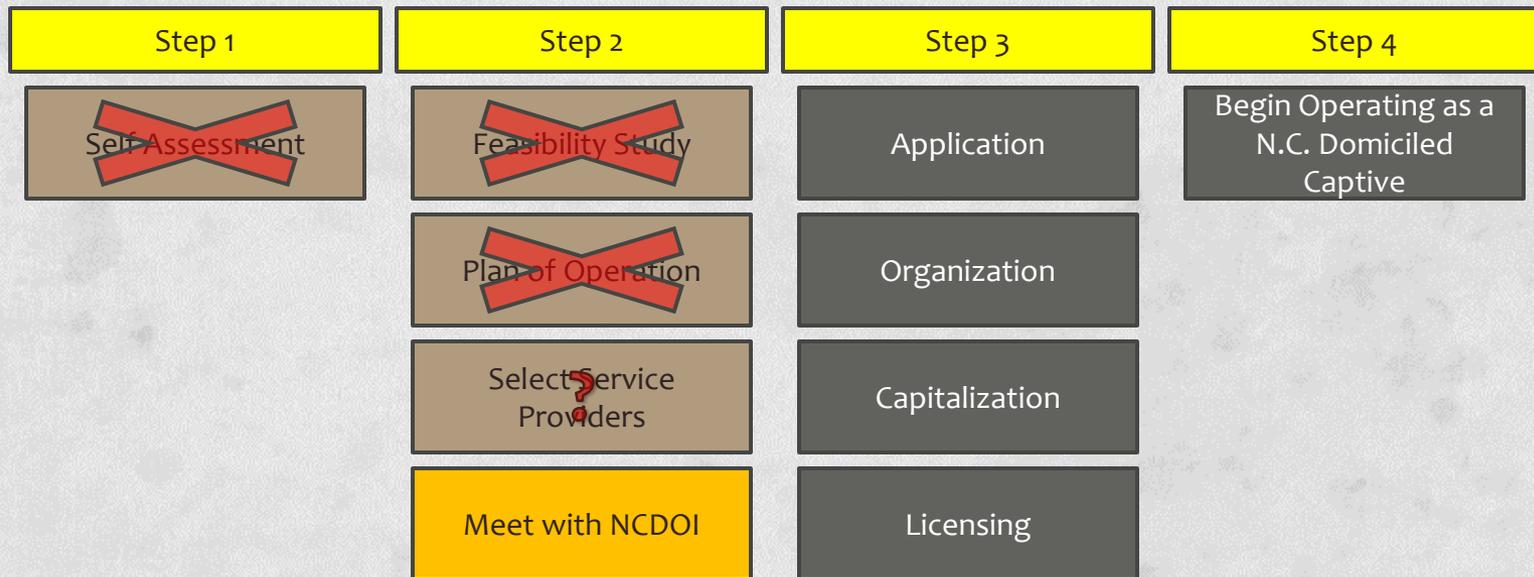


# Formation - Step 4

Begin Operating as North Carolina  
Domiciled Captive Insurance Company

# Redomestication

All captives: G.S. 58-10-345; Protected Cell: G.S. 58-10-505;  
SPFC: G.S. 58-10-565)



Redomestication to North Carolina is designed to be as simple and streamlined as possible

Several of the items shown above will be occurring simultaneously.



# Redomestication – Step 3

- Application

- Organizational Documents
- Captive Redomestication Application (Form C-106)
- Biographical Affidavits (Form C-101)
- Consent to Service of Process (Form C-103)



# Redomestication – Step 3

- Capitalization
  - Place required deposit with the Insurance Commissioner
- Licensing



# Redomestication – Step 4

Begin Operating as North Carolina  
Domiciled Captive Insurance Company



# ANNUAL REPORTING

# Annual Reporting

(G.S. 58-10-405; 58-10-420; 58-10-545; 58-10-625)

	N.C. Annual Report	NAIC Annual Report	Audited Financial Statement *
Pure	X		X
Association		X	X
Industrial Insured	X		X
RRG		X	X
Protected Cell / Incorporated Cell	X		X
SPFC	X		X
Branch Captive	**	**	X

\* An exemption from the audit requirements may be granted to captives writing less than \$1.2 million in premium annually.

\*\* A branch captive shall file a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed.



# Annual Reporting

(G.S. 58-10-405; 58-10-545; 58-10-625)

- Due March 1, except for pure captives and industrial insured captives
- Due March 15 for pure captives and industrial insured captives
- Verified by oath of two executive officers
- Use GAAP unless the Insurance Commissioner requires, approves or accepts SAP or some other comprehensive basis of accounting
- RRGs and association captives report using NAIC Model Financial Statement Blank
- RRGs must file annual and quarterly statements with the NAIC
- Information filed is confidential except for information filed by an RRG
- Branch captives shall file a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is licensed

# Annual Audit and Actuarial Certification

(G.S. 58-10-420; 58-10-625)

- Required for all captives
  - Captives with less than \$1.2 million in written premium may make a written request for exemption
    - Requests will be considered on a case-by-case basis
- Due on or before June 30 for the prior calendar year
  - Captives that have received approval to report on other than a calendar year must file within 180 days after the end of their fiscal year
- Must contain:
  - Opinion of independent certified public accountant
  - Report of evaluation of internal controls
    - An exemption may be granted on a case-by-case basis upon written request
  - Accountant's letter of qualifications
  - Financial statements
- Certification of loss reserves and loss expense reserves must be filed with annual audit



# OTHER ONGOING REQUIREMENTS

# Other Ongoing Requirements

- Maintain principal place of business in North Carolina (G.S. 58-10-345(b)(3) and 58-10-565(b)(4))
- Hold at least one board of directors, committee of managers or subscribers' advisory committee meeting in North Carolina each year (G.S. 58-10-345(b)(2) and 58-10-565(b)(3))
- Have at least one member of the board of directors (corporation), subscribers advisory committee (reciprocal), managers (LLC), or member of management (SPFC) be a resident of North Carolina (G.S. 58-10-380(e) and 58-10-570)
- Maintain registered agent for service of process (G.S. 58-10-345(b)(4) and 58-10-565(b)(5))
- Use only a Department of Insurance-approved captive manager (change in captive manager is considered a material change in business plan and must be approved by the Insurance Commissioner) (G.S. 58-10-360)



## Other Ongoing Requirements (cont.)

- Report within 30 days any change in executive officers or directors and include a biographical affidavit for each new officer or director (G.S. 58-10-385)
- Material changes in business plan (G.S. 58-10-395 and 58-10-625(a)), dividend payments (G.S. 58-10-375 and 58-10-620), loans or investments in affiliates (G.S. 58-10-440 (c)) and organization changes require prior approval (G.S. 58-10-345(d))
- Maintain conflict of interest statement for officers, directors and key employees - update annually and file disclosure to the Board of Directors (G.S. 58-10-390)
- Annual premium tax filing – Due on or before March 1 (G.S. 58-10-455)

*Captives*



# SERVICE PROVIDERS



# Service Providers

- Only captive managers must be preapproved by the Insurance Commissioner (G.S. 58-10-360; 58-10-395)
- After becoming licensed, captive insurance companies have 60 days to notify the Insurance Commissioner in writing of the name and address of the CPA who will be conducting annual audit (G.S. 58-10-422(a))

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# N.C. CAPTIVE WEBSITE



# NC Captive Website

[www.nccaptives.com](http://www.nccaptives.com)

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## Q&A



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