

Comments Regarding Proposed Captive Insurance Regulations (R 2021-12)

The Center for Better Insurance, LLC (CBI) is an independent organization focused on optimizing the value the insurance industry delivers to all stakeholders (including policyholders, employees, and society at large). CBI does so by making available unbiased analysis and insights about key regulatory issues facing the industry for use by insurance professionals, regulators, and policymakers. As part of a transparency initiative, CBI maintains www.captiveinfo.org identifying some 2000 captive insurers and their corporate parents.

CBI submits the following comments for your consideration in connection with the implementation of the act relating to Captive Insurance (2SSB 5315).

Definitions

As currently drafted, it may not be clear that the proposed regulation incorporates certain statutory definitions by reference and adds additional defined terms. The following formulation would provide clarification:

The definitions in section 2, chapter 281, Laws of 2021, apply in this regulation unless otherwise specified or unless the context clearly requires otherwise. The following additional definitions apply to this chapter:

Eligible Lines of Insurance

Captive insurance companies do not file public financial statements and rarely receive a financial rating. While the financial condition of a captive insurer is considered during licensing by the captive's domestic insurance regulator, that regulator is typically bound by strict secrecy laws limiting or forbidding the sharing of information about the financial condition of the captive insurer. In addition, a captive insurance company does not participate in guaranty funds which are intended to protect claimants, at least in part, from insurer default.

As a result, the Commissioner and the public the Commissioner protects have no practical means to evaluate the financial viability of a registered eligible captive insurer. Further, the Commissioner has no power to refuse registration based on a lack of financial viability relative to the captive's insurance commitments to its parent and affiliates (i.e., an eligible captive insurer need only show a thin buffer to solvency).

Washington has deemed financial responsibility for certain exposures so important to the people of the State that proof of financial responsibility must be provided. In most cases, that proof of financial responsibility is satisfied by a policy of insurance. A captive insurer, with the potential of thin capitalization, secretive domestic regulatory supervision, and inherent absence of arm's length interests is an inappropriate vehicle for establishing proof of financial responsibility.

Further, there is some risk a registered eligible captive insurer, its owner, or affiliates may mischaracterize the significance of registration with the Commissioner such as by claiming the approval of registration signifies the Commissioner's active supervision of the captive.

In order to protect the people of the State, WAC 284-2XX-230 should include within paragraph (1) the following limitations:

(c) Insurance issued by a captive insurer may not be used as proof of financial responsibility or offered to satisfy any financial responsibility requirement set forth in the laws and regulations of the State.

(d) No registered eligible captive insurer, its captive owner, or the captive owner's affiliates may represent that the registered eligible captive insurer, or any aspect of the registered eligible captive insurer including its financial condition, is regulated, supervised, overseen, or monitored by the Commissioner.

Public Access to Registrations

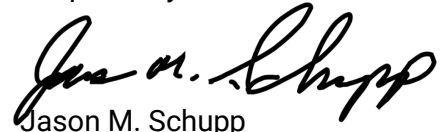
The Office of the Insurance Commissioner makes available information regarding insurers and reinsurers on its website. The registration approvals granted by the Commissioner to eligible captive insurers are public documents and not exempt from disclosure. For the convenience of the public, the Office of the Insurance Commissioner should regularly publish registration status of registered eligible captive insurers on its website.

The regulations should specify that certain information regarding registered eligible captive insurers will be made available on the website of the Office of the Insurance Commissioner including:

- Name of the registered eligible captive insurer
- Name of the captive owner
- Complaint history of the registered eligible captive insurer
- Orders issued with respect to the registered eligible captive insurer
- Premium tax filings by tax year made by the registered eligible captive insurer

The regulations should also specify that remedial premium tax filings will also be published including for those captive insurers not required to register.

Respectfully submitted,



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