

§6706. Formation of captive insurance companies in this State

1. Pure captive insurance company. A pure captive insurance company must be:

A. Incorporated as a stock insurer with capital divided into shares and held by the stockholders; [PL 2009, c. 335, §12 (AMD).]

B. Incorporated as a nonprofit corporation whose votes of membership interest are held by a parent organization formed under a nonprofit law or by such nonprofit corporation with one or more members; or [PL 2009, c. 335, §12 (AMD).]

C. Organized as a limited liability company with a limited liability company agreement approved by the superintendent. [PL 2017, c. 169, Pt. G, §4 (AMD).]
[PL 2017, c. 169, Pt. G, §4 (AMD).]

2. Association captive insurance company. An association captive insurance company or an industrial insured captive insurance company may be:

A. Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; [RR 2009, c. 1, §17 (COR).]

B. Incorporated as a mutual insurer without capital stock, the governing body of which must be elected by the member organizations of its association; [PL 2009, c. 335, §12 (AMD).]

C. Organized as a reciprocal insurer in accordance with this Title; or [PL 2009, c. 335, §12 (NEW).]

D. Organized as a limited liability company with a limited liability company agreement approved by the superintendent. [PL 2017, c. 169, Pt. G, §5 (AMD).]
[PL 2017, c. 169, Pt. G, §5 (AMD).]

2-A. Association captive insurance company providing health insurance. An association captive insurance company that provides health insurance may elect to require, in its plan of operation, that all association members who participate in the health insurance be jointly and severally liable for the health insurance obligations of the association captive insurance company and meet the financial criteria and employer required wellness criteria established in the plan of operation. The wellness criteria may not have the effect of making health status a condition of eligibility for any association member. The superintendent may not require joint and several liability as a condition of approval of an application.
[PL 2011, c. 90, Pt. I, §4 (NEW).]

3. Incorporators. A captive insurance company, other than a limited liability company, may not have fewer than 3 incorporators or 3 organizers of whom at least one must be a resident of this State. If the captive insurance company is a limited liability company, its certificate of formation must be executed by a resident of this State.
[PL 2017, c. 169, Pt. G, §6 (AMD).]

4. Applicability of chapter 47. To the extent consistent with this chapter, a captive insurance company is subject to the procedures applicable to domestic insurers pursuant to chapter 47 except that, if the surviving entity after a merger, consolidation, conversion or mutualization is a captive insurance company, a captive insurance company is subject to this chapter. With respect to mergers, consolidations, conversions and mutualizations, the superintendent, in the superintendent's discretion, may:

A. Waive any public hearing requirement; [PL 2009, c. 335, §12 (NEW).]

B. Permit an alien insurer as a party to a merger as long as the requirements for a merger between a captive insurance company and a foreign insurer apply. For the purposes of this paragraph, an

alien insurer must be treated as a foreign insurer and the jurisdiction of the alien insurer is considered a state; or [PL 2009, c. 335, §12 (NEW).]

C. Approve the conversion of a captive insurance company organized as a stock insurer to a nonprofit corporation with one or more members or a limited liability company. [PL 2009, c. 335, §12 (NEW).]
[PL 2011, c. 90, Pt. I, §5 (AMD).]

5. Issuance of stock. If the capital stock of a captive insurance company incorporated as a stock insurer is issued at par value, stock may not be issued at less than par value.
[PL 2009, c. 335, §12 (AMD).]

6. Board of directors. If a captive insurance company incorporated in this State is formed as a corporation, then at least one of the members of the board of directors of the company incorporated in this State must be a resident of this State. If the company is formed as a reciprocal insurer, then at least one of the members of the subscribers' advisory committee must be a resident of this State. If the company is organized as a limited liability company, then at least one member of its governing body must be a resident of this State.
[PL 2017, c. 169, Pt. G, §7 (AMD).]

7. Captive insurance company. A captive insurance company formed under this chapter, except for a pure nonprofit captive insurance company, has the privileges granted by and is subject to Title 13-C and this chapter. In the event of conflict between Title 13-C and this chapter, this chapter controls.
[RR 2001, c. 2, Pt. B, §45 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

8. Pure nonprofit captive insurance company. A pure nonprofit captive insurance company formed under this chapter has the privileges granted by and is subject to Title 13-B and this chapter. In the event of conflict between Title 13-B and this chapter, this chapter controls.
[PL 1997, c. 435, §1 (NEW).]

9. Quorum. If formed as a corporation, the articles of incorporation or bylaws of a captive insurance company may authorize a quorum of its board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under Title 13-B or 13-C. If formed as a reciprocal insurer, the subscribers' agreement or other organizing document may authorize a quorum of its subscribers' advisory committee to consist of no fewer than 1/3 of the number of its members.
[PL 2009, c. 335, §12 (NEW).]

SECTION HISTORY

PL 1997, c. 435, §1 (NEW). RR 2001, c. 2, §B45 (COR). RR 2001, c. 2, §B58 (AFF). RR 2009, c. 1, §17 (COR). PL 2009, c. 335, §12 (AMD). PL 2011, c. 90, Pt. I, §§4, 5 (AMD). PL 2013, c. 588, Pt. A, §30 (AMD). PL 2017, c. 169, Pt. G, §§4-7 (AMD).

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