



## CAPTIVE INSURANCE BULLETIN NO. 6

**TO: All Captive Managers, Auditors, and Actuaries Accredited in Delaware, and all Members of the Delaware Captive Insurance Association**

**RE: Change of Ownership for Captive Insurance Companies Making the Internal Revenue Code section 831(b) Election**

**DATE: October 13, 2016**

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Last year Congress passed the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act").<sup>1</sup> The PATH Act provisions become effective December 31, 2016. Among other things, the PATH Act affects small insurance companies, including captive insurance companies, which make the Internal Revenue Code section 831(b)<sup>2</sup> tax election. The Commissioner has determined that many Delaware captive insurance company owners desire to retain the benefits of captive insurance, but are concerned that their captive insurer will not satisfy the new requirements of the PATH Act.<sup>3</sup>

The purpose of this bulletin is to inform Delaware captive insurance company owners affected by the PATH Act, that the Commissioner has approved two limited and streamlined application procedures relating to ownership changes for retaining those captive insurance companies in Delaware. All submissions seeking approval for one or the other of the changes set forth herein must be received by the Department no later than December 1, 2016. The submission will be considered a material transaction in the form of an ownership business plan change. Per section 6922, the Department of Insurance has 30 days to review material transactions. This means that any submission received after December 1, 2016 is subject to approval after December 31, 2016.

### Procedure 1 -- Change Ownership Structure of Existing Captive

The first procedure relates to a change in ownership structure of an existing captive. For such ownership structure changes, the requesting captive must submit the following:

1. A revised business plan reflecting the new ownership structure;
2. Biographical affidavits for any new owners. Affidavits for existing owners are not required; and
3. A written explanation as to how the new captive insurer complies with the applicable provisions of the PATH Act.

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<sup>1</sup> P.L. 114-113.

<sup>2</sup> 26 U.S.C. 831(b).

<sup>3</sup> The Department has no statutory authority to regulate insurance companies with respect to the application of federal tax laws. Delaware captive insurers are strongly encouraged to seek legal, tax and/or regulatory advice to determine if they are affected by the PATH Act and whether they are eligible to take advantage of these limited application procedures.

## Procedure 2 -- Change Ownership by Forming a New Captive


If changing the ownership structure of the existing captive insurer is not feasible or desired, the second procedure is to relinquish the certificate of authority for the existing non-compliant captive<sup>4</sup> and form a new captive with different ownership, which will require a new tax identification number and certificate of authority. In all respects other than ownership, the new captive must be identical to the old captive. For this procedure, the requesting captive insurer must submit the following:

1. A revised business plan reflecting the ownership change;
2. A notarized statement signed by the captive owner stating that the risks assumed by the new captive insurer are identical in terms of risk and premiums assumed;
3. Biographical affidavits for all new owners. Affidavits for existing owners are not required;
4. A written explanation as to how the new captive insurer complies with the applicable provisions of the PATH Act; and
5. Application Fee of \$300.00. The \$3,200 application processing fee is waived so long as the new captive insurer is the same as the former captive insurer in all respects including no changes in the business plan other than the ownership change in #1. Any submission received after December 1, 2016 will require the payment of both the \$300 application and \$3,200 processing fees.

Questions concerning applications and implementation of these new procedures shall be directed in writing to Steve Kinion at [Steve.Kinion@state.de.us](mailto:Steve.Kinion@state.de.us). Thank you for domiciling your captive insurance company in Delaware.

PLEASE NOTE: While the PATH Act allows new captive insurers to write up to \$2.2 million of premium in 2017, the Department strongly recommends that applicants submit any proposed premium increase in 2017 as a business plan change, and not before December 31, 2016 or as part of the procedures set forth in this Bulletin.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

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<sup>4</sup> The Department requires that both the former and new captive insurers pay the mandated annual premium tax. *See* 18 *Del. C.* §6914. Consequently, before the former captive insurer is allowed to relinquish its certificate of authority, all tax obligations must be satisfied in calendar year 2016.