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## OLR Bill Analysis

### sSB 11

## **AN ACT MAKING ADJUSTMENTS TO STATE REVENUE AND CONCERNING CAPTIVE INSURANCE COMPANIES.**

### TABLE OF CONTENTS:

#### SUMMARY

##### § 1 — PROPERTY TAX CREDIT INCREASE

*Beginning with the 2022 tax year, increases the property tax credit from \$200 to \$300 and expands the number of taxpayers who may claim it*

##### § 2 — PENSION AND ANNUITY TAX EXEMPTION ACCELERATION

*Accelerates the pension and annuity income tax exemption phase-in by allowing qualifying taxpayers to deduct 100% of this income beginning with the 2022 tax year*

##### § 2 — EARNED INCOME TAX CREDIT ENHANCEMENT PROGRAM

*Establishes a personal income tax exemption for income received through the 2020 and 2021 EITC enhancement program*

##### § 3 — STUDENT LOAN PAYMENT TAX CREDIT

*Expands the loans eligible for the student loan payment tax credit and allows “qualified small businesses” to apply to the DRS commissioner to exchange the credit for a refund*

##### § 4 — FY 23 TRANSFER OF AMERICAN RESCUE PLAN ACT FUNDS

*Eliminates the FY 22 transfer to the General Fund from designated ARPA funds and reduces, from \$1,194.9 million to \$944.9 million, the FY 23 transfer*

##### § 5 — ARPA HOME AND COMMUNITY-BASED SERVICES FUNDS

*Requires the comptroller to reserve \$83.2 million of General Fund revenue received under ARPA for home and community-based services and substance use disorders in FY 22 to be used for federal revenue collection in FY 23*

##### § 6 — SPONSORED CAPTIVE AND ASSOCIATION CAPTIVE INSURER DEFINITIONS

*Changes definitions as they relate to statutes governing captive insurers*

##### §§ 6 & 8-12 — FOREIGN BRANCH CAPTIVES

*Adds “foreign captive insurer” to the definition of “branch captive insurance company,” which allows a foreign captive to open a branch in Connecticut; Incorporates foreign captives into the statutes governing other captive branches*

##### § 7 — TAX AMNESTY PROGRAM

*Creates a tax amnesty program for insureds that open a branch captive in, or transfer an alien or foreign captive to, Connecticut by June 30, 2023, that waives the (1) taxes, interest, and penalties related to the independently procured insurance tax for tax periods*

*before July 1, 2019, and (2) penalties for tax periods between July 1, 2019, and July 1, 2022*

**§ 9 — MINIMUM CAPITAL AND SURPLUS REQUIREMENTS FOR CERTAIN CAPTIVES**

*Reduces the minimum capital and surplus requirement for certain captive insurers*

**§ 12 — EXAMINATIONS OF CAPTIVE INSURERS**

*Requires the insurance commissioner to examine captive insurers at least every five years, and allows him to waive the requirement for pure captives*

**§§ 13 & 16 — TECHNICAL CHANGES**

*Makes technical changes*

**§ 14 — REINSURANCE RISKS**

*Allows captive insurers to assume all types of reinsurance*

**§ 15 — CAPTIVE INSURER REGULATIONS**

*Expands the insurance commissioner's general authority to adopt regulations concerning captive insurers*

**§ 17 — CERTIFICATE OF DORMANCY FOR CAPTIVE INSURERS**

*Extends how long a certificate of dormancy is good before it must be removed and lowers certain capital requirements for dormant captives*

**§ 18 — CHILDREN'S TRUST ACCOUNT**

*Establishes the "children's trust account" and requires an amount equal to the percentage of revenue remaining after the revenue cap is calculated to be transferred to the account starting in FY 24*

**§ 19 — CHILD TAX CREDIT STUDY**

*Repeals the law requiring the OPM secretary to create a plan to establish a state-level child tax credit*

**BACKGROUND**

**SUMMARY**

This bill makes various changes related to taxation and revenue, including the following:

1. beginning with the 2022 tax year, increases the property tax credit from \$200 to \$300 and expands the number of people eligible for the credit by eliminating provisions restricting the credit to seniors and those with dependents;
2. allows foreign captive insurers to open a branch in Connecticut and creates an insurance premiums tax amnesty program for

captive insurers that establish a captive in, or transfer an alien or foreign captive to, the state;

3. accelerates the phase-in of the pension and annuity tax exemption by allowing qualifying taxpayers to deduct 100% of this income starting with the 2022 tax year;
4. expands the eligible loans for the purposes of the credit and allows “qualified small businesses” to apply to DRS commissioner to exchange the credit for a refund; and
5. establishes the “children’s trust account” and requiring an amount equal to the percentage of revenue remaining after the revenue cap is calculated (see BACKGROUND) to be transferred to the account starting in FY 24.

The bill also makes a number of technical and conforming changes.

EFFECTIVE DATE: July 1, 2022, unless otherwise noted below

## **§ 1 — PROPERTY TAX CREDIT INCREASE**

*Beginning with the 2022 tax year, increases the property tax credit from \$200 to \$300 and expands the number of taxpayers who may claim it*

Beginning with the 2022 tax year, the bill (1) increases the property tax credit against the personal income tax from \$200 to \$300 and (2) expands the number of people eligible to claim this credit. It does so by eliminating provisions under current law that limit the credit to residents who are age 65 or older or claim dependents on their federal tax return.

By law, taxpayers earn the credit for property taxes paid on their primary residences or motor vehicles, and the amount of property taxes paid that can be taken as a credit declines as adjusted gross income (AGI) increases, until it completely phases out.

EFFECTIVE DATE: Upon passage

## **§ 2 — PENSION AND ANNUITY TAX EXEMPTION ACCELERATION**

*Accelerates the pension and annuity income tax exemption phase-in by allowing qualifying taxpayers to deduct 100% of this income beginning with the 2022 tax year*

The bill accelerates the phase-in of the pension and annuity income tax exemption. Under current law, qualifying taxpayers may deduct (1) 56% of such income in the 2022 tax year, (2) 70% in the 2023 tax year, (3) 84% in the 2024 tax year, and (4) 100% in the 2025 tax year and beyond. Under the bill, pension and annuity income is fully tax exempt starting with the 2022 tax year.

By law, taxpayers are eligible for this exemption only if their federal AGI is below (1) \$75,000 for single filers, married people filing separately, or heads of households and (2) \$100,000 for married people filing jointly.

EFFECTIVE DATE: Upon passage

## **§ 2 — EARNED INCOME TAX CREDIT ENHANCEMENT PROGRAM**

*Establishes a personal income tax exemption for income received through the 2020 and 2021 EITC enhancement program*

The bill creates a personal income tax exemption for the 2022 tax year for any income a resident received through the 2020 and 2021 earned income tax credit (EITC) enhancement program, to the extent this income was includable in gross income for federal tax purposes.

Under the EITC enhancement program, taxpayers receive a payment equal to a certain percentage of the federal tax credit they received for the applicable income year. For the 2020 tax year, the EITC enhancement program was funded by the Coronavirus Aid, Relief, and Economic Security (CARES) Act funds and equaled 18.5% of a household's federal EITC for that year. sHB 5037 of this session proposes using a portion of American Rescue Plan Act (ARPA) funds for payments to households equal to approximately 9.5% of the federal EITC for the 2021 tax year.

By law, the state EITC is a refundable tax credit available to people who work and earn incomes below certain levels. The statutory credit equaled (1) 23% of the federal credit in the 2020 tax year and (2) 30.5% in the 2021 tax year.

EFFECTIVE DATE: Upon passage

### **§ 3 — STUDENT LOAN PAYMENT TAX CREDIT**

*Expands the loans eligible for the student loan payment tax credit and allows “qualified small businesses” to apply to the DRS commissioner to exchange the credit for a refund*

Existing law allows businesses that make payments on qualified employees’ eligible student loans to claim a tax credit equal to 50% of the payments made, up to an annual credit maximum of \$2,625 per employee. By law, “qualified employees” are generally those who (1) work fulltime for a Connecticut licensed corporation that is subject to state taxes, (2) earned their first bachelor’s degree in the last five years, and (3) live and work in the state. Tax credits may be applied against the corporation business or insurance premiums taxes.

#### ***Eligible Loans***

The bill expands the eligible loans for the purposes of the credit. Under current law, businesses may only claim this credit for payments made on refinancing loans made by the Connecticut Higher Education Supplemental Loan Authority (CHESLA). Under the bill, they may claim a credit for payments made on any CHESLA-issued loan.

#### ***Qualified Small Businesses***

The bill also allows “qualified small businesses” to apply to the Department of Revenue Services (DRS) commissioner to exchange the credit for a refund equal to the credit’s value. Under the bill, a qualified small business is one with gross receipts of \$5 million or less in the income or calendar year, as applicable, in which the credit is allowed.

Under the bill, applications for credit refunds must be filed on forms and with the information the commissioner prescribes by (1) the original deadline for the tax return for the income or calendar year in which the credit was earned or (2) the return’s extended deadline. Refund applications may not be filed after these deadlines have passed.

Any amounts refunded (1) must be refunded in accordance with existing corporation business tax or insurance premiums tax laws and procedures and (2) do not accrue interest. Refunds granted under the bill are subject to the law that allows applying partial payments to

outstanding state tax liability, penalties, and interest.

EFFECTIVE DATE: Upon passage, and applicable to calendar and income years beginning on or after January 1, 2022.

**§ 4 — FY 23 TRANSFER OF AMERICAN RESCUE PLAN ACT FUNDS**

*Eliminates the FY 22 transfer to the General Fund from designated ARPA funds and reduces the FY 23 transfer from \$1,194.9 million to \$944.9 million*

PA 21-2, § 453, June Special Session, requires the comptroller to transfer to the General Fund from the Coronavirus State Fiscal Recovery Fund under ARPA (1) \$559.9 million for FY 22 and (2) \$1,194.9 million for FY 23. The bill (1) eliminates the FY 22 transfer and (2) reduces the FY 23 transfer to \$944.9 million.

EFFECTIVE DATE: Upon passage

**§ 5 — ARPA HOME AND COMMUNITY-BASED SERVICES FUNDS**

*Requires the comptroller to reserve \$83.2 million of General Fund revenue received under ARPA for home and community-based services and substance use disorders in FY 22 to be used for federal revenue collection in FY 23*

The bill requires the comptroller to reserve \$83.2 million of General Fund revenue received under ARPA for home and community-based services and substance use disorders in FY 22 to be used for federal revenue collections in FY 23.

**§ 6 — SPONSORED CAPTIVE AND ASSOCIATION CAPTIVE INSURER DEFINITIONS**

*Changes definitions as they relate to statutes governing captive insurers*

Generally, existing law prohibits certain captive insurers from insuring risks other than those of its parent company, affiliated companies, or controlled unaffiliated businesses. (A captive insurer is an insurance company generally formed to insure or reinsure the risks of its parent or affiliated company. The law allows for several different types of captives to be licensed and operated in the state, such as pure captives, sponsored captives, and risk retention groups.)

The bill expands the definition of “controlled unaffiliated business” to incorporate sponsored captives. Specifically, it adds as a controlled unaffiliated business, any person who (1) is not in the participant’s

(presumably, the sponsored captive's) corporate system, or that of its affiliated business, (2) has a contractual relationship with the participant (presumably, the sponsored captive) or its affiliated businesses, and (3) has their risks managed by the sponsored captive. It makes corresponding changes, including by specifying that a "participant" includes a controlled unaffiliated business insured by a sponsored captive insurer.

The bill also removes a requirement that an "association" (for purposes of being insured by an association captive) be in continuous existence for at least one year.

EFFECTIVE DATE: July 1, 2022

### **§§ 6 & 8-12 — FOREIGN BRANCH CAPTIVES**

*Adds "foreign captive insurer" to the definition of "branch captive insurance company," which allows a foreign captive to open a branch in Connecticut; Incorporates foreign captives into the statutes governing other captive branches*

The bill adds "foreign captive insurance company" to the definition of "branch captive insurance company," therefore, allowing a foreign captive to open a Connecticut branch as the law currently allows for alien captives. Branch captives are licensed to transact business in Connecticut through a business unit with a principal place of business in the state (CGS § 38a-91ff). By law, an alien captive is licensed in another country; a foreign captive is licensed in another state.

The bill generally requires foreign captives to meet the same requirements as licensed alien captives (see below). Under the bill, a "foreign captive insurance company" is an insurer licensed in a state other than Connecticut with statutory or regulatory standards that the insurance commissioner deems acceptable.

EFFECTIVE DATE: July 1, 2022

### ***Premium Tax (§ 6)***

By law, captive insurers must pay an annual tax on direct premiums and reinsurance premiums collected or contracted, with a varying rate based on the amount of premiums (CGS § 38a-91nn(c)(1)). With some

exceptions, the minimum aggregate tax is \$7,500, and the maximum aggregate tax is \$200,000. Under the bill, a foreign branch captive is subject to the tax as it applies to the branch's business.

***Examinations (§§ 8 & 12)***

The bill prohibits the insurance commissioner from licensing a foreign branch captive insurer unless it allows him to examine the foreign captive in the jurisdiction that it was formed, operates, or maintains books and records.

The bill requires foreign branch captives to undergo a financial condition review by the commissioner or his designee at least every five years, though the examination is limited to branch business and operations as long as it (1) annually gives the commissioner a certificate of compliance or similar document issued by, or filed with, its domiciliary jurisdiction and (2) shows that it is operating in sound financial condition according to the laws and regulations of its domiciliary jurisdiction. (The bill also extends, from three to five years, the current requirement of these reviews for alien branch captives, see below).

***Minimum Capital and Surplus Requirements for Branch Captives (§ 9)***

As a condition of licensure, current law requires branch captives to maintain as security for its liabilities paid-in capital and surplus of at least \$250,000. The bill reduces the required capital and surplus amount to the greater of \$50,000 or another amount the commissioner determines necessary to secure the liabilities attributed to the captive's operations.

In addition to capital, existing law requires branch captives to have reserves on its insurance or reinsurance policies that it issues or assumes through its branch operations. The reserves must include reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums.

Under current law, the commissioner may allow a credit against the reserves for certain assets posted with a ceding insurer or posted by a

reinsurer. The bill instead allows a credit for assets belonging to:

1. the branch captive that are held in a trust for, or segregated or controlled by, a ceding insurer to secure the captive's reinsurance obligations to the ceding insurer or
2. a reinsurer that are held in trust for, or otherwise controlled by, the branch captive and secure the reinsurer for its obligations to the captive.

Branch captives' capital and reserves must be held according to law, which generally requires a trust or irrevocable letter of credit.

The bill allows the commissioner to exempt a foreign branch captive from the capital and reserve requirements if he determines that the branch captive is financially stable.

#### ***Incorporation (§§ 6 & 10)***

The bill requires foreign branch captives to maintain a principal place of business in Connecticut. Additionally, before conducting business in the state, the foreign captive insurer must petition the commissioner for a certificate stating that the branch's licensure and operations will promote the general good of the state. In making his finding, the commissioner must consider the insurer's character, reputation, financial responsibility, and insurance experience and its officers' and directors' business qualifications.

#### ***Annual Reporting (§ 11)***

Current law requires an alien branch captive insurer to, annually by March 1, submit to the insurance commissioner a copy of the reports and statements that must be submitted in the alien captive insurer's domiciliary jurisdiction. The bill instead requires all branch captives (alien and foreign) to file the copies and statements with the commissioner on the same day they must be filed in the domiciliary jurisdiction.

As with existing requirements for alien branch captives, the bill allows the commissioner to waive additional annual reporting if he

finds that the foreign captive's submitted material gives adequate information on its financial condition. If he does not, or if the branch captive is not required to file in its domiciliary jurisdiction, the bill requires the alien or foreign branch captive to submit additional reports, at a time and in a form and manner the commissioner prescribes, containing adequate information about its financial condition.

The bill also allows, as is already the case for alien branch captives, a foreign branch captive to apply to the commissioner to file annual reports at the end of its fiscal year (CGS § 38a-91gg(c)(2)).

## **§ 7 — TAX AMNESTY PROGRAM**

*Creates a tax amnesty program for insureds that open a branch captive in, or transfer an alien or foreign captive to, Connecticut by June 30, 2023, that waives the (1) taxes, interest, and penalties related to the independently procured insurance tax for tax periods before July 1, 2019, and (2) penalties for tax periods between July 1, 2019, and July 1, 2022*

By law, insureds that independently procure insurance (i.e., buy it directly from a nonadmitted insurer without a broker) must pay a 4% tax on the gross premiums. The tax applies to insureds with Connecticut as their "home state," meaning that they maintain their principal place of business in the state or, if the risks are all located out-of-state, or for an affiliated group covered by a single contract, Connecticut has the largest percentage of allocated premiums. An insured who fails to pay the tax is subject to penalties and interest (CGS § 38a-277).

The bill establishes a limited tax amnesty program for insureds liable for the tax. Under the program, qualified insureds are not liable for (1) the tax, interest, or penalties for tax periods before July 1, 2019, and (2) applicable tax penalties for tax periods between July 1, 2019, and July 1, 2022.

To qualify, an insured, by June 30, 2023, must (1) establish a branch captive in, or transfer the domicile of its alien or foreign captive to, Connecticut and (2) pay all independently procured insurance premium taxes and interest due for the tax periods between July 1, 2019, and July 1, 2022.

EFFECTIVE DATE: July 1, 2022

## § 9 — MINIMUM CAPITAL AND SURPLUS REQUIREMENTS FOR CERTAIN CAPTIVES

*Reduces the minimum capital and surplus requirement for certain captive insurers*

The bill makes similar reductions to the minimum capital and surplus requirement for certain other captives as it does for branch captives (described above), as shown in the table below.

**Table 1: Minimum Capital and Surplus Requirements for Certain Captives under Current Law and the Bill**

Captive Type	Current Law	The Bill
Pure Captive	\$250,000	The greater of \$50,000 or an amount the commissioner determines is necessary for the captive to meet its obligations
Association, Industrial, or Agency Captive	\$500,000	The greater of \$250,000 or an amount the commissioner determines is necessary for the captive to meet its obligations
Sponsored Captive	\$225,000	The greater of \$75,000 or an amount the commissioner determines is necessary for the captive to meet its obligations
Special Purpose Captive	\$250,000	The greater of \$250,000 or an amount the commissioner determines is necessary for the captive to meet its obligations
Sponsored Captive licensed as a Special Purpose Captive	\$500,000	The greater of \$250,000 or an amount the commissioner determines is necessary for the captive to meet its obligations

EFFECTIVE DATE: July 1, 2022

## § 12 — EXAMINATIONS OF CAPTIVE INSURERS

*Requires the insurance commissioner to examine captive insurers at least every five years, and allows him to waive the requirement for pure captives*

Current law requires the insurance commissioner to visit, inspect, and examine captive insurers at least once every three years and allows him to extend this period to five years if the insurer conducts annual audits. The bill instead requires him or his designee to inspect and examine the insurers at least once every five years, and allows him to waive the requirement for pure captives and their branches.

EFFECTIVE DATE: July 1, 2022

## **§§ 13 & 16 — TECHNICAL CHANGES**

*Makes technical changes*

The bill makes technical changes in the captive statutes.

EFFECTIVE DATE: July 1, 2022

## **§ 14 — REINSURANCE RISKS**

*Allows captive insurers to assume all types of reinsurance*

The bill allows captive insurers to assume all types of reinsurance from other insurers, instead of assuming reinsurance only on risks the company is authorized to write directly as under current law.

EFFECTIVE DATE: July 1, 2022

## **§ 15 — CAPTIVE INSURER REGULATIONS**

*Expands the insurance commissioner's general authority to adopt regulations concerning captive insurers*

Current law allows the commissioner to adopt regulations pertaining to the captive insurance statutes, as well as to set standards for a parent or affiliated company to manage risk of controlled unaffiliated businesses that are insured by pure captive insurers. The bill (1) expands his general authority to adopt regulations related to all related captive statutes (CGS §§ 38a-91aa - 91xx, excluding CGS § 38a-91vv) and (2) specifies that his regulatory authority over risk management standards includes controlled unaffiliated businesses insured by pure, industrial, or sponsored captives. It makes a corresponding change allowing him to approve coverage of these risks by industrial and sponsored captives until regulations are approved.

EFFECTIVE DATE: July 1, 2022

## **§ 17 — CERTIFICATE OF DORMANCY FOR CAPTIVE INSURERS**

*Extends how long a certificate of dormancy is good before it must be removed and lowers certain capital requirements for dormant captives*

By law, pure, sponsored, and industrial captive insurers that have stopped conducting business and have no more liabilities can apply to the commissioner for a certificate of dormancy. The bill (1) extends, from two to five years, the length of time before a certificate of dormancy

must be renewed and (2) lowers the minimum capital and surplus that a dormant captive must maintain from \$25,000 to \$15,000. It also allows a captive that was never capitalized to become dormant without adding more capital.

EFFECTIVE DATE: July 1, 2022

### **§ 18 — CHILDREN’S TRUST ACCOUNT**

*Establishes the “children’s trust account” and requires an amount equal to the percentage of revenue remaining after the revenue cap is calculated to be transferred to the account starting in FY 24*

The bill establishes the “children’s trust account” as a separate, nonlapsing General Fund account and requires that the account contain any money the law requires be deposited into it.

Beginning with FY 24, the bill requires an amount equal to the percentage of revenue remaining after the revenue cap is calculated (see BACKGROUND) be transferred to the children’s trust account annually.

EFFECTIVE DATE: July 1, 2023

### **§ 19 — CHILD TAX CREDIT STUDY**

*Repeals the law requiring the OPM secretary to create a plan to establish a state-level child tax credit*

The bill repeals the law requiring the Office of Policy and Management (OPM) secretary to create a plan to establish a state-level child tax credit.

Current law requires the secretary to create such a plan if certain changes to the federal child tax credit occur. Specifically, current law requires him to do so if the (1) credit is decreased from the amount in effect under ARPA as of June 23, 2021, or (2) eligibility criteria changes in a way that is less favorable to the taxpayer than the criteria in effect as of that date.

EFFECTIVE DATE: Upon passage

### **BACKGROUND**

**Related Bills**

SB 487, favorably reported by the Finance, Revenue and Bonding Committee, requires an amount equal to the percentage of revenue remaining after the revenue cap is calculated to be transferred to an account and used to fund the Infant and Toddler Early Care and Family Support initiative the bill establishes.

HB 5487, favorably reported by the Finance, Revenue and Bonding Committee, increases the property tax credit from \$200 to \$400 and expands eligibility by eliminating provisions that limit the credit to seniors and those with dependents.

**Revenue Cap and Bond Lock**

The “revenue cap” prohibits the legislature from authorizing General Fund and Special Transportation Fund appropriations in any fiscal year that exceed a specified percentage of the estimated revenues included in the budget act, except under specific conditions. The percentage decreases in steps from 99.5% in FY 20 to 98% in FY 26 and thereafter (CGS § 2-33c).

Under existing law, for each fiscal year during which state GO or credit revenue bonds issued from May 15, 2018, to June 30, 2020, are outstanding, the state must comply with the (1) budget reserve fund law, including the volatility cap; (2) revenue cap; (3) state spending cap; and (4) caps on GO and credit revenue bond authorizations, allocations, issuances, and expenditures. For bonds issued during this timeframe, the treasurer must include a pledge to bondholders that the state will not enact any laws taking effect from May 15, 2018, to June 30, 2023, that change the state's obligation to comply with the laws listed above until the bonds are fully paid off, except under certain circumstances. The pledge applies for five years from the bonds’ first issuance date (CGS § 3-20(aa)).

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 28 Nay 23 (04/06/2022)