

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/15/01 H3/19/01

A Bill

Act 1391 of 2001
HOUSE BILL 2502

5 By: Representatives Hunt, Schall, Bradford, Napper
6 By: Senator Baker
7

For An Act To Be Entitled

8
9
10 AN ACT TO PROVIDE FOR THE REGULATION AND
11 OPERATION OF CAPTIVE INSURANCE COMPANIES; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14
15 TO PROVIDE FOR THE LICENSING AND
16 REGULATION OF CAPTIVE INSURERS.
17

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Definitions. As used in this act:

22 (1) "Alien captive insurance company" means an insurance company
23 formed to write insurance business for its parents and affiliates and
24 licensed under the laws of an alien jurisdiction which imposes statutory or
25 regulatory standards in a form acceptable to the commissioner on companies
26 transacting the business of insurance in the alien jurisdiction;

27 (2) "Affiliated company" means a company in the same corporate system
28 as a parent, an industrial insured, or a member organization by virtue of
29 common ownership, control, operation, or management;

30 (3) "Association" means a legal association of individuals,
31 corporations, partnerships, or associations that has been in continuous
32 existence for at least one (1) year:

33 (A) The member organizations of which collectively, or which
34 does itself:

35 (i) Own, control, or hold with power to vote all of the
36 outstanding voting securities of an association captive insurance company

1 incorporated as a stock insurer; or

2 (ii) Have complete voting control over an association
3 captive insurance company incorporated as a mutual insurer; or

4 (B) The member organizations of which collectively constitute
5 all of the subscribers of an association captive insurance company formed as
6 a reciprocal insurer;

7 (4) "Association captive insurance company" means a company that
8 insures risks of the member organizations of the association and their
9 affiliated companies;

10 (5) "Branch business" means any insurance business transacted by a
11 branch captive insurance company in this state;

12 (6) "Branch captive insurance company" means an alien captive
13 insurance company licensed by the commissioner to transact the business of
14 insurance in this state through a business unit with a principal place of
15 business in this state;

16 (7) "Branch operations" means any business operations of a branch
17 captive insurance company in this state;

18 (8)(A) "Captive insurance company" means a producer reinsurance
19 captive insurance company, pure captive insurance company, association
20 captive insurance company, sponsored captive insurance company, or industrial
21 insured captive insurance company formed or licensed under this act.

22 (B) A branch captive insurance company must be a pure captive
23 insurance company with respect to operations in this state, unless permitted
24 by the commissioner.

25 (9) "Controlled unaffiliated business" means a company:

26 (A) That is not in the corporate system of a parent and
27 affiliated companies;

28 (B) That has an existing contractual relationship with a parent
29 or affiliated company; and

30 (C) Whose risks are managed by a pure captive insurance company;

31 (10) "Commissioner" means the Commissioner of the State Insurance
32 Department or the commissioner's designee;

33 (11) "Department" means the State Insurance Department;

34 (12)(A) "Industrial insured" means an insured:

35 (i) Which procures insurance by use of the services of a
36 full-time employee acting as a risk manager or insurance manager or utilizing

1 the services of a regularly and continuously qualified insurance consultant;

2 (ii) Whose aggregate annual premiums for insurance on all
3 risks total at least twenty-five thousand dollars (\$25,000); and

4 (iii) Which has at least twenty-five (25) full-time
5 employees.

6 (B) "Industrial insured" does not mean "industrial life
7 insurance" as used in Arkansas Code 23-82-101 through 23-82-118;

8 (13)(A) "Industrial insured captive insurance company" means a company
9 that insures risks of the industrial insureds that comprise the industrial
10 insured group and their affiliated companies.

11 (B) "Industrial insured captive insurance company" does not
12 encompass "industrial life insurance" as used in Arkansas Code 23-82-101
13 through 23-82-118;

14 (14)(A) "Industrial insured group" means a group that meets either of
15 the following criteria:

16 (1) A group of industrial insureds that collectively:

17 (a) Own, control, or hold with power to vote all of
18 the outstanding voting securities of an industrial insured captive insurance
19 company incorporated as a stock insurer; or

20 (b) Have complete voting control over an industrial
21 insured captive insurance company incorporated as a mutual insurer; or

22 (2) A group which is created under the Product Liability
23 Risk Retention Act of 1981, 15 U.S.C. §§ 3901 through 3906, as it existed
24 January 1, 2001, or the Risk Retention and Purchasing Groups Act, Arkansas
25 Code 23-94-201 through 23-94-215, as a corporation or other limited liability
26 association taxable as a stock insurance company or a mutual insurer under
27 the Arkansas Insurance Code.

28 (B) "Industrial insured group" does not encompass "industrial
29 life insurance" as used in Arkansas Code 23-82-101 through 23-82-118;

30 (15) "Member organization" means an individual, corporation,
31 partnership, or association that belongs to an association;

32 (16) "Parent" means a corporation, partnership, or individual that
33 directly or indirectly owns, controls, or holds with power to vote more than
34 fifty percent (50%) of the outstanding voting securities of a pure captive
35 insurance company;

36 (17) "Participant" means an entity as defined in Section 21 of this

1 act, and any affiliates of that entity, that are insured by a sponsored
2 captive insurance company, where the losses of the participant are limited
3 through a participant contract to the assets of a protected cell;

4 (18) "Participant contract" means a contract by which a sponsored
5 captive insurance company insures the risks of a participant and limits the
6 losses of the participant to the assets of a protected cell;

7 (19) "Producer reinsurance captive insurance company" means a company
8 that is wholly owned by a resident licensed insurance producer and that acts
9 only as an assuming reinsurer in a retrocession of risks written by or placed
10 through its parent or an affiliate of its parent;

11 (20) "Protected cell" means a separate account established and
12 maintained by a sponsored captive insurance company for one participant or by
13 a producer reinsurance captive insurance company;

14 (21) "Pure captive insurance company" means a company that insures
15 risks of its parent and affiliated companies or controlled unaffiliated
16 business;

17 (22) "Retrocession" means a transaction whereby an accredited
18 reinsurer under Arkansas Code 23-62-305 through 23-62-308, or an authorized
19 insurer cedes to another reinsurer all or part of the reinsurance it has
20 previously assumed;

21 (23) "Sponsor" means an entity that meets the requirements of Section
22 20 of this act and is approved by the commissioner to provide all or part of
23 the capital and surplus required by applicable law, and to organize and
24 operate a sponsored captive insurance company;

25 (24) "Sponsored captive insurance company" means a captive insurance
26 company:

27 (A) In which the minimum capital and surplus required is
28 provided by one or more sponsors;

29 (B) That is formed or licensed under this act;

30 (C) That insures the risks of separate participants through the
31 contract; and

32 (D) That segregates each participant's liability through one or
33 more protected cells.

34
35 SECTION 2. Application for license.

36 (a) A captive insurance company, when permitted by its articles of

1 incorporation or charter, may apply to the commissioner for a license to do
2 any and all insurance, including workers' compensation insurance, authorized
3 by the Arkansas Insurance Code; however:

4 (1) A pure captive insurance company may not insure any risks
5 other than those of its parent and affiliated companies or controlled
6 unaffiliated business;

7 (2) An association captive insurance company may not insure any
8 risks other than those of the member organizations of its association and
9 their affiliated companies;

10 (3) An industrial insured captive insurance company may not
11 insure any risks other than those of the industrial insureds that comprise
12 the industrial insured group and their affiliated companies;

13 (4) A captive insurance company may not provide personal motor
14 vehicle or homeowner's insurance coverage or any component of these
15 coverages;

16 (5) A captive insurance company may not accept or cede
17 reinsurance except as authorized by Section 11 of this act; and

18 (6) A producer reinsurance captive insurance company may not
19 accept retrocession of any risks other than those written by or placed
20 through its parent or affiliated licensed insurance producer and written by
21 authorized insurers.

22 (b) To conduct insurance business in this state a captive insurance
23 company shall:

24 (1) Obtain from the commissioner a license authorizing it to
25 conduct insurance business in this state;

26 (2) Hold at least one (1) Board of Directors meeting, or in the
27 case of a reciprocal insurer, a Subscriber's Advisory Committee meeting, each
28 year in this state;

29 (3) Maintain its principal place of business in this state, or
30 in the case of a branch captive insurance company, maintain the principal
31 place of business for its branch operations in this state; and

32 (4)(A) Appoint a resident registered agent to accept service of
33 process and to act on its behalf in this state.

34 (B) In the case of a captive insurance company:

35 (i) Formed as a corporation, the commissioner must
36 be an agent of the captive insurance company upon whom any process, notice,

1 or demand may be served whenever the registered agent cannot, with reasonable
2 diligence, be found at the registered office of the captive insurance
3 company;

4 (ii) Formed as a reciprocal insurer, the
5 commissioner must be an agent of the captive insurance company upon whom any
6 process, notice, or demand may be served whenever the registered agent
7 cannot, with reasonable diligence, be found at the registered office of the
8 captive insurance company,

9 (c)(1) Before receiving a license, a captive insurance company:

10 (A) Formed as a corporation, shall file with the
11 commissioner;

12 (i) A certified copy of its charter and bylaws;

13 (ii) A statement under oath of its president and
14 secretary showing its financial condition; and

15 (iii) Any other statements or documents required by
16 the commissioner;

17 (B) Formed as a reciprocal shall file with the
18 commissioner:

19 (i) A certified copy of the power of attorney of its
20 attorney in fact;

21 (ii) A certified copy of its subscribers' agreement;

22 (iii) A statement under oath of its attorney in fact
23 showing its financial condition; and

24 (iv) Any other statements or documents required by
25 the commissioner;

26 (C) Formed as a reciprocal shall obtain the commissioner's
27 approval of its coverages, deductibles, coverage limits, and rates;

28 (i) If there is a subsequent material change
29 in an item in the description, the reciprocal captive insurance company shall
30 submit to the commissioner for approval an appropriate revision and may not
31 offer any additional kinds of insurance until a revision of the description
32 is approved by the commissioner.

33 (ii) The reciprocal captive insurance company
34 shall inform the commissioner of any material change in rates within thirty
35 (30) days of the adoption of the change.

36 (2) In addition to the information required by subsection (c)(1)

1 of this section, an applicant captive insurance company shall file with the
2 commissioner evidence of:

3 (A) The amount and liquidity of its assets relative to the
4 risks to be assumed;

5 (B) The adequacy of the expertise, experience, and
6 character of the person or persons who will manage it;

7 (C) The overall soundness of its plan of operation;

8 (D) The adequacy of the loss prevention programs of its
9 parent, member organizations, or industrial insureds, as applicable; and

10 (E) Other factors considered relevant by the commissioner
11 in ascertaining whether the proposed captive insurance company will be able
12 to meet its policy obligations.

13 (3) In addition to the information required by subsections
14 (c)(1) and (c)(2) of this section, an applicant producer reinsurance captive
15 insurance company or a sponsored captive insurance company shall file with
16 the commissioner:

17 (A) A business plan demonstrating how the applicant will
18 account for the loss and expense experience of each protected cell at a level
19 of detail found to be sufficient by the commissioner, and how it will report
20 the experience to the commissioner;

21 (B) A statement acknowledging that all financial records
22 of the captive insurance company, including records pertaining to any
23 protected cells, must be made available for inspection or examination by the
24 commissioner;

25 (C) Evidence that expenses will be allocated to each
26 protected cell in an equitable manner.

27 (4) In addition to the information required by subsections
28 (c)(1), (c)(2), and (c)(3) of this section, an applicant sponsored captive
29 insurance company shall file with the commissioner all contracts between the
30 sponsored captive insurance company and any participants.

31 (5) Information submitted under this subsection (c) is
32 confidential and may not be made public by the commissioner or an agent or
33 employee of the commissioner without the written consent of the company,
34 except that:

35 (A) Information may be discoverable by a party in a civil
36 action or contested case to which the captive insurance company that

1 submitted the information is a party, upon a showing by the party seeking to
2 discover the information that:

3 (i) The information sought is relevant to and
4 necessary for the furtherance of the action or case;

5 (ii) The information sought is unavailable from
6 other non confidential sources; and

7 (iii) A subpoena issued by a judicial or
8 administrative officer of competent jurisdiction has been submitted to the
9 commissioner; however, subsection (c)(4) of this section does not apply to an
10 industrial insured captive insurance company insuring the risks of an
11 industrial insured group; and

12 (B) The commissioner may disclose the information to a
13 public officer having jurisdiction over the regulation of insurance in
14 another state if:

15 (i) The public official agrees in writing to
16 maintain the confidentiality of the information; and

17 (ii) The laws of the state in which the public
18 official serves require the information to be confidential.

19 (d)(1) A captive insurance company shall pay to the State Insurance
20 Department Trust Fund a nonrefundable fee in an amount and manner to be
21 prescribed by regulation.

22 (2) The commissioner may retain legal, financial, and
23 examination services from outside the department, the reasonable cost of
24 which may be charged against the applicant.

25 (3) Arkansas Code 23-61-208 applies to examinations,
26 investigations, and processing conducted under the authority of this section.

27 (4) In addition, a captive insurance company shall pay to the
28 State Insurance Department Trust Fund a license fee for the year of
29 registration and a renewal fee in an amount and manner to be prescribed by
30 regulation.

31 (e) If the commissioner is satisfied that the documents and statements
32 filed by the captive insurance company comply with this act, the commissioner
33 may grant a license authorizing the company to do insurance business in this
34 state until March 1, at which time the license may be renewed.

35
36 SECTION 3. Similar names.

1 A captive insurance company may not adopt a name that is the same as,
2 deceptively similar to, or likely to be confused with or mistaken for, any
3 other existing business name registered in this state.

4
5 SECTION 4. Capital requirements.

6 (a)(1) The commissioner may not issue a license to a producer
7 reinsurance captive insurance company, pure captive insurance company,
8 sponsored captive insurance company, association captive insurance company
9 incorporated as a stock insurer, or industrial insured captive insurance
10 company incorporated as a stock insurer unless the company possesses and
11 maintains unimpaired paid-in capital of:

12 (A) In the case of a producer reinsurance captive
13 insurance company or a pure captive insurance company, not less than one
14 hundred thousand dollars (\$100,000);

15 (B) In the case of an association captive insurance
16 company incorporated as a stock insurer, not less than four hundred thousand
17 dollars (\$400,000);

18 (C) In the case of an industrial insured captive insurance
19 company incorporated as a stock insurer, not less than two hundred thousand
20 dollars (\$200,000);

21 (D) In the case of a sponsored captive insurance company,
22 not less than five hundred thousand dollars (\$500,000).

23 (2) The capital may be in the form of cash or an irrevocable
24 letter of credit issued by a bank chartered by this state or a member bank of
25 the Federal Reserve System and approved by the commissioner.

26 (b)(1) The commissioner may prescribe additional capital based upon
27 the type, volume, and nature of insurance business transacted.

28 (2) This capital may be in the form of an irrevocable letter of
29 credit issued by a bank chartered by this state or a member bank of the
30 Federal Reserve System.

31 (c)(1) In the case of a branch captive insurance company, as security
32 for the payment of liabilities attributable to branch operations, the
33 commissioner shall require that a trust fund, funded by an irrevocable letter
34 of credit or other acceptable asset, be established and maintained in the
35 United States for the benefit of United States policyholders and United
36 States ceding insurers under insurance policies issued or reinsurance

1 contracts issued or assumed, by the branch captive insurance company through
2 its branch operations.

3 (2)(A) The amount of the security may be no less than the
4 capital and surplus required by this act and the reserves on these insurance
5 policies or reinsurance contracts, including reserves for losses, allocated
6 loss adjustment expenses, incurred but not reported losses and unearned
7 premiums with regard to business written through branch operations.

8 (B)(i) The commissioner may permit a branch captive
9 insurance company that is required to post security for loss reserves on
10 branch business by its reinsurer to reduce the funds in the trust account
11 required by this section by the same amount so long as the security remains
12 posted with the reinsurer.

13 (ii) If the form of security selected is a letter of
14 credit, the letter of credit must be established, issued, or confirmed by, a
15 bank chartered in this state or a member bank of the Federal Reserve System.

16 (d)(1) A captive insurance company may not pay a dividend out of, or
17 other distribution with respect to, capital or surplus, in excess of the
18 limitations set forth in Arkansas Code 23-63-515, without the prior approval
19 of the commissioner.

20 (2) Approval of an ongoing plan for the payment of dividends or
21 other distributions must be conditioned upon the retention, at the time of
22 each payment, of capital or surplus in excess of amounts specified by, or
23 determined in accordance with formulas approved by, the commissioner.

24 (3) Subsection (d) of this section shall not apply to producer
25 reinsurance captive insurance companies.

26
27 SECTION 5. Surplus requirements.

28 (a)(1) The commissioner may not issue a license to a captive insurance
29 company unless the company possesses and maintains free surplus of:

30 (A) In the case of a producer reinsurance captive
31 insurance company, not less than one hundred thousand dollars (\$100,000);

32 (B) In the case of a pure captive insurance company, not
33 less than one hundred fifty thousand dollars (\$150,000);

34 (C) In the case of an association captive insurance
35 company incorporated as a stock insurer, not less than three hundred fifty
36 thousand dollars (\$350,000);

1 (D) In the case of an industrial insured captive insurance
2 company incorporated as a stock insurer, not less than three hundred thousand
3 dollars (\$300,000);

4 (E) In the case of an association captive insurance
5 company incorporated as a mutual insurer, not less than seven hundred fifty
6 thousand dollars (\$750,000);

7 (F) In the case of an industrial insured captive insurance
8 company incorporated as a mutual insurer, not less than five hundred thousand
9 dollars (\$500,000); and

10 (G) In the case of a sponsored captive insurance company,
11 not less than five hundred thousand dollars (\$500,000).

12 (2) The surplus may be in the form of cash or an irrevocable
13 letter of credit issued by a bank chartered by this state or a member bank of
14 the Federal Reserve System and approved by the commissioner.

15 (b) Notwithstanding the requirements of subsection (a) of this
16 section, a captive insurance company organized as a reciprocal insurer under
17 this act may not be issued a license unless it possesses and maintains a free
18 surplus of one million dollars (\$1,000,000).

19 (c)(1) The commissioner may prescribe additional surplus based upon
20 the type, volume, and nature of insurance business transacted.

21 (2) This capital may be in the form of an irrevocable letter of
22 credit issued by a bank chartered by this state, or a member bank of the
23 Federal Reserve System.

24 (d)(1) A captive insurance company may not pay a dividend out of, or
25 other distribution with respect to, capital or surplus in excess of the
26 limitations set forth in Arkansas Code 23-63-515, without the prior approval
27 of the commissioner.

28 (2) Approval of an ongoing plan for the payment of dividends or
29 other distribution must be conditioned upon the retention, at the time of
30 each payment, of capital or surplus in excess of amounts specified by, or
31 determined in accordance with formulas approved by, the commissioner.

32 (3) Subsection (d) of this section shall not apply to a producer
33 reinsurance captive insurance company.

34
35 SECTION 6. Organization.

36 (a) A producer reinsurance captive insurance company, pure captive

1 insurance company or a sponsored captive insurance company must be
2 incorporated as a stock insurer with its capital divided into shares and held
3 by the stockholders.

4 (b) An association captive insurance company or an industrial insured
5 captive insurance company may be:

6 (1) Incorporated as a stock insurer with its capital divided
7 into shares and held by the stockholders;

8 (2) Incorporated as a mutual insurer without capital stock, the
9 governing body of which is elected by the member organizations of its
10 association; or

11 (3) Organized as a reciprocal insurer under Arkansas Code 23-70-
12 101 through 23-70-124.

13 (c) A captive insurance company may not have fewer than three (3)
14 incorporators of whom not fewer than two (2) must be residents of this state.

15 (d) Before the articles of incorporation of a captive insurance company
16 formed as a corporation are transmitted to the commissioner, the
17 incorporators shall petition the commissioner to issue a certificate setting
18 forth a finding that the establishment and maintenance of the proposed
19 corporation will promote the general good of the state. In arriving at this
20 finding the commissioner shall consider:

21 (1) The character, reputation, financial standing, and purposes
22 of the incorporators;

23 (2) The character, reputation, financial responsibility,
24 insurance experience, and business qualifications of the officers and
25 directors; and

26 (3) Other aspects as the commissioner considers advisable.

27 (e) The articles of incorporation, the certificate issued under
28 subsection (d) of this section, and the organization fees required by section
29 2(d) of this act, must be transmitted to the commissioner, who shall record
30 both the articles of incorporation and the certificate.

31 (f) The organizers of a captive insurance company formed as a
32 reciprocal insurer shall petition the commissioner to issue a certificate
33 setting forth the commissioner's finding that the establishment and
34 maintenance of the proposed association will promote the general good of the
35 state. In arriving at this finding the commissioner shall consider:

36 (1) The character, reputation, financial standing, and purposes

1 of the organizers;

2 (2) The character, reputation, financial responsibility,
3 insurance experience, and business qualifications of the attorney in fact;
4 and

5 (3) Other aspects the commissioner considers advisable.

6 (g)(1) The alien captive insurance company of a captive insurance
7 company licensed as a branch captive insurance company shall petition the
8 commissioner to issue a certificate setting forth the commissioner's finding
9 that, after considering the character, reputation, financial responsibility,
10 insurance experience, and business qualifications of the officers and
11 directors of the alien captive insurance company, the licensing and
12 maintenance of the branch operations will promote the general good of the
13 state.

14 (2) The alien captive insurance company may register to do
15 business in this state after the commissioner's certificate has been issued.

16 (h) The capital stock of a captive insurance company incorporated as a
17 stock insurer must be issued at not less than par value.

18 (i) At least one (1) of the members of the board of directors of a
19 captive insurance company formed as a corporation in this state must be a
20 resident of this state.

21 (j) At least one (1) of the members of the subscribers' advisory
22 committee of a captive insurance company formed as a reciprocal insurer must
23 be a resident of this state.

24 (k)(1) A captive insurance company formed as a corporation under this
25 act has the privileges and is subject to the general corporation law of this
26 state and applicable provisions of this act.

27 (2) If a conflict occurs between general corporation law and
28 this act, the latter controls.

29 (3)(A) The Arkansas Insurance Code concerning mergers,
30 consolidations, conversions, mutualizations, and redomestications apply in
31 determining the procedures to be followed by a captive insurance company in
32 carrying out any of those transactions.

33 (B) The commissioner may waive or modify the requirements
34 for public notice and hearing in accordance with regulations which the
35 commissioner may promulgate addressing categories of transactions.

36 (C) If a notice of public hearing is required, but no one

1 requests a hearing, the commissioner may cancel the hearing.

2 (1)(1)(A) A captive insurance company formed as a reciprocal insurer
3 under this act is subject to Arkansas Code 23-70-101 through 23-70-124 and
4 applicable provisions of this act.

5 (B) If a conflict occurs between Arkansas Code 23-70-101
6 through 23-70-124 and this act, the latter controls.

7 (C) To the extent a reciprocal insurer is made subject to
8 the Arkansas Insurance Code under Arkansas Code 23-70-101 through 23-70-124,
9 the Arkansas Insurance Code is not applicable to a reciprocal insurer formed
10 under this act unless expressly made applicable to a captive insurance
11 company by this act.

12 (2) In addition to subdivision (1)(1) of this subsection (1), a
13 captive insurance company organized as a reciprocal insurer that is an
14 industrial insured group is subject to Arkansas Code 23-70-101 through 23-70-
15 124 and applicable provisions of the Arkansas Insurance Code.

16 (m) The articles of incorporation or bylaws of a captive insurance
17 company may authorize a quorum of a Board of Directors to consist of no fewer
18 than one-third (1/3) of the fixed or prescribed number of directors under
19 Arkansas Code 4-27-824B.

20 (n) The subscribers' agreement or other organizing document of a
21 captive insurance company formed as a reciprocal insurer may authorize a
22 quorum of a subscribers' advisory committee to consist of no fewer than one-
23 third (1/3) of the number of its members.

24
25 SECTION 7. Reporting.

26 (a) A captive insurance company shall not be required to make an
27 annual report except as provided for under this act.

28 (b)(1) Before March 1 of each year, a captive insurance company shall
29 submit to the commissioner a report of its financial condition, verified by
30 oath of two (2) of its executive officers.

31 (2)(A) Except as provided in Sections 4 and 5 of this act, a
32 captive insurance company shall report using generally accepted accounting
33 principles unless the commissioner approves the use of statutory accounting
34 principles.

35 (B) The commissioner may require, approve or accept
36 necessary modifications or adaptations for the type of insurance and kinds of

1 insurers to be reported upon, supplemented by additional information.

2 (3)(A) Unless provided otherwise, an association captive
3 insurance company and an industrial insured group shall file its report in
4 the form required by Arkansas Code 23-63-216(a), and each industrial insured
5 group shall comply with the requirements set forth in Arkansas Code 23-63-
6 216(h).

7 (B) The commissioner, by regulation, shall prescribe the
8 forms in which producer reinsurance captive insurance companies, pure captive
9 insurance companies and industrial insured captive insurance companies shall
10 report.

11 (c) A producer reinsurance captive insurance company or a pure captive
12 insurance company may apply to file the required report on a fiscal year end
13 that is consistent with the parent company's fiscal year. If an alternative
14 reporting date is granted:

15 (1) The annual report is due sixty (60) days after the fiscal
16 year end; and

17 (2) In order to provide sufficient detail to support the premium
18 tax return, the pure captive insurance company shall file, before March 1 of
19 each year for each calendar year end, pages one (1), two (2), three (3), and
20 five (5) of the "Captive Annual Statement: Pure or Industrial Insured"
21 verified by oath of two (2) of its executive officers.

22 (d)(A) Sixty (60) days after the fiscal year end, a branch captive
23 insurance company shall file, with the commissioner, a copy of all reports
24 and statements required to be filed under the laws of the jurisdiction in
25 which the alien captive insurance company is formed, verified by oath by two
26 (2) of its executive officers.

27 (B)(1) If the commissioner is satisfied that the annual report
28 filed by the alien captive insurance company in its domiciliary jurisdiction
29 provides adequate information concerning the financial condition of the alien
30 captive insurance company, the commissioner may waive the requirement for
31 completion of the captive annual statement for business written in the alien
32 jurisdiction.

33 (2) The waiver must be in writing and subject to public
34 inspection.

35
36 SECTION 8. Examinations.

1 (a)(1) At least once every three (3) years, or whenever the
2 commissioner determines it to be prudent, the commissioner or a person
3 appointed by the commissioner shall visit each captive insurance company and
4 thoroughly inspect and examine its affairs to ascertain its financial
5 condition, its ability to fulfill its obligations, and whether it has
6 complied with this act.

7 (2) The commissioner, upon application, may enlarge the three-
8 year period to a five-year period if a captive insurance company is subject,
9 during that period, to a comprehensive annual audit by independent auditors
10 approved by the commissioner of a scope satisfactory to the commissioner.

11 (3) The expenses and charges of the examination must be paid to
12 the state by the company or companies examined, in accordance with the
13 Arkansas Insurance Code.

14 (b)(1) All examination reports, preliminary examination reports or
15 results, working papers, recorded information, and documents and copies of
16 documents produced by, obtained by, or disclosed to the commissioner or any
17 other person in the course of an examination made under this section, are
18 confidential and are not subject to subpoena, and may not be made public by
19 the commissioner or an employee or agent of the commissioner, without the
20 written consent of the company, except to the extent provided in this
21 subsection (b).

22 (2) Nothing in this subsection (b) prevents the commissioner
23 from using this information in furtherance of the commissioner's regulatory
24 authority under the Arkansas Insurance Code.

25 (3) The commissioner may grant access to this information under
26 Arkansas Code 23-61-107, or to public officers having jurisdiction over the
27 regulation of insurance in any other state or country, or to law enforcement
28 officers of this state or any other state or agency of the federal government
29 at any time, so long as the officers receiving the information agree in
30 writing to hold it in a manner consistent with this section.

31 (c)(1)(A) This section applies to all business written by a captive
32 insurance company.

33 (B) The examination for a branch captive insurance company
34 must be of branch business and branch operations only, as long as the branch
35 captive insurance company provides annually to the commissioner, a
36 certificate of compliance, or its equivalent, issued by or filed with the

1 licensing authority of the jurisdiction in which the branch captive insurance
2 company is formed, and demonstrates to the commissioner's satisfaction that
3 it is operating in sound financial condition in accordance with all
4 applicable laws and regulations of that jurisdiction.

5 (2) As a condition of licensure, the alien captive insurance
6 company shall grant authority to the commissioner for examination of the
7 affairs of the alien captive insurance company in the jurisdiction in which
8 the alien captive insurance company is formed.

9 (d) To the extent that Arkansas Code 23-61-201 through 23-61-208 does
10 not contradict this section, Arkansas Code 23-61-201 through 23-61-208
11 applies to captive insurance companies licensed under this act.

12
13 SECTION 9. Suspension and revocation

14 (a) The license of a captive insurance company to conduct an insurance
15 business in this state may be penalized, suspended, or revoked by the
16 commissioner for:

17 (1) Insolvency or impairment of capital or surplus;

18 (2) Failure to meet the requirements of Sections 4 and 5 of this
19 act;

20 (3) Refusal or failure to submit an annual report, as required
21 by Section 7 of this act, or any other report or statement required by law or
22 by lawful order of the commissioner;

23 (4) Failure to comply with its own charter, bylaws, or other
24 organizational document;

25 (5) Failure to submit to examination or any legal obligation
26 relative to an examination, as required by Section 8 of this act;

27 (6) Refusal or failure to pay the cost of examination as
28 required by Section 8 of this act;

29 (7) Use of methods that, although not specifically prohibited by
30 law, render its operation detrimental or its condition unsound with respect
31 to the public or to its policyholders; or

32 (8) Failure to comply with the laws of this state.

33 (b) If the commissioner finds, upon examination, hearing, or other
34 evidence, that a captive insurance company has committed any of the acts
35 specified in subsection (a) of this section, the commissioner may penalize,
36 suspend, or revoke the license if the commissioner considers it in the best

1 interest of the public and the policyholders of the captive insurance
2 company.

3
4 SECTION 10. Investments.

5 (a)(1) Except as provided in Section 14 of this act, an association
6 captive insurance company, a producer reinsurance captive insurance company,
7 a sponsored captive insurance company, and an industrial insured group shall
8 comply with the investment requirements contained in the Arkansas Insurance
9 Code.

10 (2) The commissioner may approve the use of alternative reliable
11 methods of valuation and rating.

12 (b)(1) A pure captive insurance company or industrial insured captive
13 insurance company is not subject to any restrictions on allowable investments
14 contained in the Arkansas Insurance Code.

15 (2) The commissioner may prohibit or limit an investment that
16 threatens the solvency or liquidity of the company.

17 (c)(1) Only a pure captive insurance company may make loans to its
18 parent company or affiliates with the prior written approval of the
19 commissioner and evidenced by a note in a form approved by the commissioner.

20 (2) Loans of minimum capital and surplus funds required by
21 Sections 4(a) and 5(a) of this act are prohibited.

22
23 SECTION 11. Reinsurance.

24 (a) A captive insurance company may provide reinsurance, under the
25 Arkansas Insurance Code, on risks ceded by any other insurer.

26 (b)(1) A captive insurance company may take credit for reserves on
27 risks or portions of risks ceded to reinsurers complying with the Arkansas
28 Insurance Code.

29 (2) A captive insurer may not take credit for reserves on risks
30 or portions of risks ceded to a reinsurer if the reinsurer is not in
31 compliance with the Arkansas Insurance Code.

32
33 SECTION 12. Rating organizations.

34 A captive insurance company may not be required to join a rating
35 organization.

36

1 SECTION 13. Pools, plans, associations, and guaranty or insolvency
2 funds.

3 (a) A captive insurance company, including a captive insurance company
4 organized as a reciprocal insurer under this act, shall not join or
5 contribute financially to a plan, pool, association, or guaranty or
6 insolvency fund in this state.

7 (b) A captive insurance company, or its insured, or its parent, or any
8 affiliated company, or any member organization of its association, or in the
9 case of a captive insurance company organized as a reciprocal insurer, a
10 subscriber of the company shall not receive a benefit from a plan, pool,
11 association, or guaranty or insolvency fund for claims arising out of the
12 operations of the captive insurance company.

13
14 SECTION 14. Premium tax.

15 (a) Except as provided in this section, a captive insurance company
16 shall pay to the commissioner by March 1 of each year, a tax at the rate of:

17 (1) Four-tenths of one percent (.4 of 1%) on the first twenty
18 million dollars (\$20,000,000);

19 (2) Three-tenths of one percent (.3 of 1%) on the next twenty
20 million dollars (\$20,000,000);

21 (3) Two-tenths of one percent (.2 of 1%) on the next twenty
22 million dollars (\$20,000,000); and

23 (4) Seventy-five thousandths of one percent (.075 of 1 %) on
24 each dollar thereafter on the direct premiums collected or contracted for on
25 policies or contracts of insurance written by the captive insurance company
26 during the year ending December 31 next preceding, after deducting from the
27 direct premiums subject to the tax the amounts paid to policyholders as
28 return premiums which shall include dividends on unabsorbed premiums or
29 premium deposits returned or credited to policyholders.

30 (b)(1) Except as provided in this section, a captive insurance company
31 shall pay to the commissioner by March 1 of each year, a tax at the rate of:

32 (A) Two hundred and twenty-five thousandths of one percent
33 (.225 of 1%) on the first twenty million dollars (\$20,000,000) of assumed
34 reinsurance premium;

35 (B) One hundred fifty thousandths of one percent (.150 of
36 1%) on the next twenty million dollars (\$20,000,000);

1 (C) Fifty thousandths of one percent (.050 of 1%) on the
2 next twenty million dollars (\$20,000,000); and

3 (D) Twenty-five thousandths of one percent (.025 of 1%) of
4 each dollar thereafter.

5 (2) No reinsurance tax applies to premiums for risks or portions
6 of risks which are subject to taxation on a direct basis under subsection (a)
7 of this section.

8 (3) A premium tax is not payable in connection with the receipt
9 of assets in exchange for the assumption of loss reserves and other
10 liabilities of another insurer under common ownership and control if the
11 transaction is part of a plan to discontinue the operations of the other
12 insurer and if the intent of the parties to the transaction is to renew or
13 maintain business with the captive insurance company.

14 (c) If the aggregate taxes to be paid by a captive insurance company
15 calculated under subsections (a) and (b) of this section amount to less than
16 five thousand dollars (\$5,000) in any year, the captive insurance company
17 shall pay a tax of five thousand dollars (\$5,000) for that year.

18 (d) A captive insurance company failing to make returns or to pay all
19 taxes required by this section is subject to relevant sanctions under the
20 Arkansas Insurance Code.

21 (e) Two (2) or more captive insurance companies under common ownership
22 and control must be taxed as though they were a single captive insurance
23 company.

24 (f) As used in this section, "common ownership and control" means:

25 (1) In the case of stock corporations, the direct or indirect
26 ownership of eighty percent (80%) or more of the outstanding voting stock of
27 two (2) or more corporations by the same shareholder or shareholders; and

28 (2) In the case of mutual corporations, the direct or indirect
29 ownership of eighty percent (80%) or more of the surplus and the voting power
30 of two (2) or more corporations by the same member or members.

31 (g) In the case of a branch captive insurance company, the tax under
32 this section applies only to the branch business of the company.

33 (h)(1) The tax under this section constitutes all taxes collectible
34 under the laws of this state from a captive insurance company.

35 (2) No other tax may be levied or collected from a captive
36 insurance company by this state, or a county, city, or municipality of this

1 state, except ad valorem taxes on real and personal property used in the
 2 production of income.

3 (i) This section shall not apply to any producer reinsurance captive
 4 insurance company that invests and continuously maintains not less than fifty
 5 percent (50%) of its assets in bonds, notes, warrants or other securities,
 6 not in default, which are:

7 (1) Direct obligations of this state;

8 (2) Direct obligations of any county, incorporated city or town,
 9 duly organized school district or other taxing district of this state if no
 10 default on the part of the obligor in payment of principal or interest on any
 11 of its obligations has occurred within five (5) years prior to the date of
 12 the proposed investment, or if the obligations were issued less than five (5)
 13 years prior to the date of investment, no default in payment of principal or
 14 interest has occurred on the obligations to be purchased or on any other
 15 public obligation of the obligor within five (5) years of the investment; or

16 (3) Direct obligations of any local improvement district in this
 17 state to finance local improvements authorized by law if the principal and
 18 interest of the obligations are payable from assessments on real property
 19 within the local improvement district and no default on the part of the
 20 obligor in payment of principal or interest on any of its obligations has
 21 occurred within five (5) years prior to the date of the proposed investment,
 22 or if the obligations were issued less than five (5) years prior to the date
 23 of investment, no default in payment of principal or interest has occurred on
 24 the obligations to be purchased or on any other public obligation of the
 25 obligor within five (5) years of the investment.

26
 27 SECTION 15. Regulations.

28 (a) The commissioner may promulgate regulations relating to captive
 29 insurance companies as are necessary to carry out this act.

30 (b)(1) The commissioner may promulgate regulations establishing
 31 standards to ensure that a parent or affiliated company is able to exercise
 32 control of the risk management function of any controlled unaffiliated
 33 business to be insured by the pure captive insurance company.

34 (2) Prior to these regulations being promulgated, the
 35 commissioner may, by temporary order, grant authority to a pure captive
 36 insurance company to insure risks.

1
2 SECTION 16. Limitations.

3 The Arkansas Insurance Code does not apply to captive insurance
4 companies except those provisions contained in or specifically referenced in
5 this act which are to be incorporated into the Arkansas Insurance Code.

6
7 SECTION 17. Reorganizations, receiverships, and injunctions.

8 Except as provided in this act, the terms and conditions in the
9 Arkansas Insurance Code pertaining to insurance reorganizations,
10 receiverships, and injunctions apply to captive insurance companies formed or
11 licensed under this act.

12
13 SECTION 18. Availability of funds.

14 In the case of a producer reinsurance captive insurance company or a
15 sponsored captive insurance company:

16 (1) The assets of the protected cell may not be used to pay any
17 expenses or claims other than those attributable to the protected cell; and

18 (2) Its capital and surplus must be available to pay any
19 expenses of or claims against the captive insurance company at all times.

20
21 SECTION 19. Conversions and mergers.

22 (a) An association captive insurance company or industrial insured
23 group formed as a stock or mutual corporation may be converted to or merged
24 with and into a reciprocal insurer in accordance with a plan and this
25 section.

26 (b) A plan for conversion or merger:

27 (1) Must be fair and equitable to the shareholders, in the case
28 of a stock insurer, or the policyholders, in the case of a mutual insurer;
29 and

30 (2) Shall provide for the purchase of the shares of any
31 nonconsenting shareholder of a stock insurer or the policyholder interest of
32 any nonconsenting policyholder of a mutual insurer in substantially the same
33 manner, and subject to the same rights and conditions as are accorded a
34 dissenting shareholder or a dissenting policyholder under Arkansas Code 4-26-
35 1007.

36 (c) In the case of a conversion authorized under subsection (a) of

1 this section:

2 (1) The conversion must be accomplished under a reasonable plan
3 and procedure as may be approved by the commissioner.

4 (2) The commissioner may not approve the plan of conversion
5 unless the plan:

6 (A) Satisfies subsection (b) of this section;

7 (B)(i) Provides for a hearing, of which notice has been
8 given to the insurer, its directors, officers and stockholders, in the case
9 of a stock insurer, or policyholders, in the case of a mutual insurer, all of
10 whom have the right to appear at the hearing.

11 (ii)(a) The commissioner may waive or modify the
12 requirements for the hearing.

13 (b) If a notice of hearing is required, but no
14 hearing is requested, the commissioner may cancel the hearing;

15 (C) Provides for the conversion of existing stockholder or
16 policyholder interests into subscriber interests in the resulting reciprocal
17 insurer proportionate to stockholder or policyholder interests in the stock
18 or mutual insurer; and

19 (D) Is approved;

20 (i) In the case of a stock insurer, by a majority of
21 the shares entitled to vote represented in person or by proxy at a duly
22 called regular or special meeting at which a quorum is present; or

23 (ii) In the case of a mutual insurer, by a majority
24 of the voting interests of policyholders represented in person or by proxy at
25 a duly called regular or special meeting at which a quorum is present;

26 (3) The commissioner shall approve the plan of conversion if the
27 commissioner finds that the conversion will promote the general good of the
28 state in conformity with those standards set forth in Section 6(f) of this
29 act;

30 (4) If the commissioner approves the plan the commissioner shall
31 amend the converting insurer's certificate of authority to reflect conversion
32 to a reciprocal insurer and issue the amended certificate of authority to the
33 company's attorney in fact;

34 (5) Upon issuance of an amended certificate of authority of a
35 reciprocal insurer by the commissioner, the conversion is effective; and

36 (6) Upon the effectiveness of the conversion the corporate

1 existence of the converting insurer shall cease.

2 (d) A merger authorized under subsection (a) of this section must be
3 accomplished substantially in accordance with the Arkansas Insurance Code.

4 For purposes of the merger:

5 (1) The plan or merger shall satisfy subsection (b) of this
6 section;

7 (2) The subscribers' advisory committee of a reciprocal insurer
8 must be equivalent to the Board of Directors of a stock or mutual insurance
9 company;

10 (3) The subscribers of a reciprocal insurer must be the
11 equivalent to the policyholders of a mutual insurance company;

12 (4) If a subscribers' advisory committee does not have a
13 president or secretary, the officers of the committee having substantially
14 equivalent duties are deemed to be the president and secretary of the
15 committee;

16 (5)(A) The commissioner shall approve the articles of merger if
17 the commissioner finds that the merger will promote the general good of the
18 state in conformity with those standards set forth in Section 6(f) of this
19 act.

20 (B) If the commissioner approves the articles of merger,
21 the commissioner shall endorse the articles;

22 (6)(A) Notwithstanding section 4 of this act, the commissioner
23 may permit the formation, without surplus, of a captive insurance company
24 organized as a reciprocal insurer into which an existing captive insurance
25 company may be merged for the purpose of facilitating a transaction under
26 this section.

27 (B) There may be no more than one (1) authorized insurance
28 company surviving the merger;

29 (7)(A) An alien insurer may be a party to a merger authorized
30 under subsection (a) of this section if the requirements for the merger
31 between a domestic and a foreign insurer under Arkansas Code 23-63-501
32 through 23-63-530 apply to a merger between a domestic and an alien insurer
33 under this subsection (d).

34 (B) The alien insurer must be treated as a foreign insurer
35 under Arkansas Code 23-63-501 through 23-63-530, and other jurisdictions must
36 be the equivalent of a state for purposes of Arkansas Code 23-63-501 through

1 23-63-530.

2 (e) A conversion or merger under this section has all the effects of a
3 conversion or merger under the Arkansas Insurance Code to the extent these
4 effects are not inconsistent with this act.

5
6 SECTION 20. Sponsorship requirements.

7 (a) One (1) or more sponsors may form a sponsored captive insurance
8 company under this act.

9 (b) A sponsor of a sponsored captive insurance company must be:

10 (1) An insurer licensed under the laws of any state;

11 (2) A reinsurer authorized or approved under the laws of any
12 state;

13 (3) A captive insurance company formed or licensed under this
14 act; or

15 (4) Any other corporation, if approved by the commissioner, in a
16 manner to be prescribed by regulation.

17 (c) The business written by a sponsored captive insurance company must
18 be fronted by an insurance company licensed under the laws of any state.

19 (d) A risk retention group may not be either a sponsor or a
20 participant of a sponsored captive insurance company.

21 (e) A sponsored captive insurance company formed or licensed under
22 this act may establish and maintain one (1) or more protected cells to insure
23 risks of one (1) or more participants, subject to the following conditions:

24 (1) The shareholders of a sponsored captive insurance company
25 must be limited to its participants and sponsors;

26 (2) Each protected cell must be accounted for separately on the
27 books and records of the sponsored captive insurance company to reflect the
28 financial condition, results of operations of the protected cell, net income
29 or loss, dividends or other distributions to participants, and other factors
30 provided for in the participant contract or required by the commissioner;

31 (3) The assets of a protected cell must not be chargeable with
32 liabilities arising out of any other insurance business the sponsored captive
33 insurance company may conduct;

34 (4) No sale, exchange, or other transfer of assets may be made
35 by the sponsored captive insurance company between or among any of its
36 protected cells without the consent of the protected cells;

1 (5)(A) No sale, exchange, transfer of assets, dividend, or
2 distribution may be made from a protected cell to a sponsor or participant
3 without the commissioner's approval

4 (B) In no event may the commissioner's approval be given
5 if the sale, exchange, transfer, dividend, or distribution would result in
6 insolvency or impairment with respect to a protected cell;

7 (6) A sponsored captive insurance company shall file annually
8 all the financial reports the commissioner requires which shall include, but
9 are not limited to, accounting statements detailing the financial experience
10 of each protected cell;

11 (7) A sponsored captive insurance company shall notify the
12 commissioner in writing within ten (10) business days of a protected cell
13 that is insolvent or unable to meet its claim or expense obligations;

14 (8)(A) No participant contract shall take effect without the
15 commissioner's prior written approval.

16 (B) The addition of each new protected cell and the
17 withdrawal of any participant of any existing protected cell constitute a
18 change in the business plan requiring the commissioner's prior written
19 approval.

20
21 SECTION 21. Participants.

22 (a) An association, corporation, limited liability company,
23 partnership, trust, or other business entity may be a participant in a
24 sponsored captive insurance company formed or licensed under this act.

25 (b) A sponsor may be a participant in a sponsored captive insurance
26 company.

27 (c) A participant need not be a shareholder of the sponsored captive
28 insurance company or an affiliate of the company.

29 (d) A participant shall insure only its own risks through a sponsored
30 captive insurance company.

31
32 SECTION 22. Producer reinsurance protected cell requirements.

33 A producer reinsurance captive insurance company formed or licensed
34 under this act may establish and maintain one (1) or more protected cells to
35 insure risks, subject to the following conditions:

36 (1) Each protected cell must be accounted for separately on the books

1 and records of the producer reinsurance captive insurance company to reflect
2 the financial condition, results of operations of the protected cell, net
3 income or loss, dividends or other distributions, and other factors as may be
4 required by the commissioner;

5 (2) The assets of a protected cell must not be chargeable with
6 liabilities arising out of any other insurance business the producer
7 reinsurance captive insurance company may conduct;

8 (3) No sale, exchange, or other transfer of assets may be made by the
9 producer reinsurance captive insurance company between or among any of its
10 protected cells without the consent of the protected cells;

11 (4) A producer reinsurance captive insurance company shall file
12 annually the financial reports the commissioner requires which shall include,
13 but are not limited to, accounting statements detailing the financial
14 experience of each protected cell; and

15 (5) A producer reinsurance captive insurance company shall notify the
16 commissioner in writing within ten (10) business days of a protected cell
17 that is insolvent or unable to meet its claim or expense obligations.

18
19 SECTION 23. Certificate of authority.

20 A licensed captive insurance company that meets the necessary
21 requirements of the Arkansas Insurance Code imposed upon an insurer may be
22 considered for issuance of a certificate of authority to act as an insurer in
23 this state.

24
25 SECTION 24. EMERGENCY CLAUSE. It is hereby found and determined by
26 the General Assembly of the State of Arkansas that captive insurers are
27 making a presence in Arkansas and are not currently subject to a
28 comprehensive, specialized regulatory scheme. Therefore, an emergency is
29 declared to exist and this act being immediately necessary for the
30 preservation of the public peace, health and safety shall become effective on
31 the date of its approval by the Governor. If the bill is neither approved
32 nor vetoed by the Governor, it shall become effective on the expiration of
33 the period of time during which the Governor may veto the bill. If the bill
34 is vetoed by the Governor and the veto is overridden, it shall become
35 effective on the date the last house overrides the veto.

36

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36

/s/ Hunt, et al.

APPROVED: 4/5/2001