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2 92nd General Assembly  
3 Regular Session, 2019  
4

As Engrossed: S2/27/19

# A Bill

SENATE BILL 310

5 By: Senator Rapert  
6

## For An Act To Be Entitled

8 AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT'S  
9 GENERAL OMNIBUS; TO AMEND THE ARKANSAS PREPAID  
10 FUNERAL BENEFITS LAW; TO REPEAL THE ANNUAL REPORT OF  
11 MALPRACTICE RATES; TO AMEND THE REQUIREMENTS FOR AN  
12 INSURER'S ANNUAL STATEMENT; CONCERNING THE LICENSING  
13 AND REGULATION OF CAPTIVE INSURERS; TO ESTABLISH THE  
14 CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT; TO REVISE  
15 THE PROCEDURE FOR THE APPOINTMENT OF AN INSURANCE  
16 AGENT; TO MODIFY THE PROCEDURE OF REMITTANCE OF  
17 PREMIUM TAXES BY A SURPLUS LINES BROKER; TO MODIFY  
18 THE REQUIREMENTS FOR A DOMESTIC STOCK INSURER TO  
19 OBTAIN REINSURANCE BY AN ASSUMPTION AGREEMENT;  
20 CONCERNING THE APPLICABILITY OF THE ARKANSAS  
21 INSURANCE CODE TO FARMERS' MUTUAL AID COMPANIES AND  
22 ASSOCIATIONS; TO MODIFY EXCEPTED BENEFITS; AND FOR  
23 OTHER PURPOSES.  
24

## Subtitle

25  
26 TO ENACT THE STATE INSURANCE DEPARTMENT'S  
27 GENERAL OMNIBUS.  
28  
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30  
31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
32

33 SECTION 1. Arkansas Code § 23-40-103 is amended to read as follows:  
34 23-40-103. Definitions.

35 As used in this chapter, ~~unless the context otherwise requires:~~

36 (1) "Annuity funding" means contract proceeds that are used by a



1 seller to purchase an annuity contract that names the seller as the  
2 beneficiary of the annuity contract, the proceeds of which shall be used to  
3 pay for the funeral benefits specified in a prepaid contract, or the  
4 purchaser may elect to purchase an annuity contract directly from an  
5 insurance carrier and either name the seller as the policy beneficiary or  
6 assign the death benefits to the seller to fund the prepaid funeral benefits  
7 contract;

8           (2) "Cash accommodation items" means flowers, honorariums, death  
9 certificates, sales taxes, grave opening and closing, cemetery charges, and  
10 other items incidental to the funeral and disposition of the beneficiary  
11 which are to be furnished or provided by a third party at the time of death;

12           ~~(2)~~(3) "Contract beneficiary" means any natural person  
13 designated in a prepaid funeral benefits contract upon whose death funeral  
14 services or funeral merchandise, or both, shall be performed, provided, or  
15 delivered;

16           (4)(A) "Contract funding methods" means contract proceeds.

17                   (B) "Contract funding methods" includes:

18                           (i) Annuity funding;

19                           (ii) Insurance funding; and

20                           (iii) Trust funding;

21           ~~(3)~~(5) "Contract price" means the aggregate moneys to be paid  
22 and the aggregate stated value of all other direct or indirect consideration  
23 to be assigned by purchasers of prepaid funeral benefits as provided in the  
24 contract, exclusive of any finance charge;

25           ~~(4)~~(6) "Contract proceeds" means the portion of the contract  
26 price collected by the seller from a contract for the sale of prepaid funeral  
27 benefits;

28           (7) "Insurance funding" means contract proceeds that are used by  
29 a seller to purchase a life insurance policy or certificate on the life of a  
30 contract beneficiary that names the seller as the beneficiary of the life  
31 insurance policy or certificate, the indemnity from which shall be used to  
32 pay for the funeral benefits specified in the prepaid contract, or the  
33 purchaser may elect to purchase a life insurance policy or certificate  
34 directly from an insurance carrier, and then either name the seller as the  
35 life insurance policy beneficiary or assign the death benefits to the seller  
36 to fund the prepaid funeral benefits contract;

1           ~~(5)~~(8) “Licensee” or “permittee” means a person holding a valid  
2 permit or license issued pursuant to this chapter;

3           ~~(6)~~(9) “Liquid investments” means investments which can be sold  
4 at cost or greater, liquidated without penalty, and collected within five (5)  
5 banking days;

6           ~~(7)~~(10) “Net investment income” means:

7                   (A) All revenue and earnings of the trust fund, including,  
8 but not limited to, interest, dividends, and capital gains; minus

9                   (B) Investment expenses, trustee’s fees, capital losses,  
10 and all revenue and earnings on cash accommodation funds;

11           ~~(8)~~(11) “Net worth” means the difference between the applicant’s  
12 total assets and total liabilities as reflected in a balance sheet prepared  
13 ~~in accordance with~~ according to accounting principles and procedures approved  
14 by the Insurance Commissioner;

15           ~~(9)~~(12) “Nonguaranteed prepaid contract” means a prepaid  
16 contract for the selection of merchandise or services that does not guarantee  
17 the price of the merchandise or services at the time of need;

18           ~~(10)~~(13) “Nonspecified prepaid contract” means a prepaid  
19 contract that:

20                   (A) Does not select specific funeral merchandise or  
21 funeral services when the contract is executed;

22                   (B) Permits the selection of funeral merchandise or  
23 funeral services at the time of need; and

24                   (C) Applies contract funds to the cost of funeral  
25 merchandise or funeral services selected at the time of need;

26           ~~(11)~~(A)~~(14)~~(A) “Prearrangement” means an arrangement whereby a  
27 person, for himself or herself or on behalf of some other person, makes  
28 arrangement for funeral and burial services prior to the death of the person,  
29 without consideration and without an agreement or itemization specifying any  
30 particular service or merchandise, or the cost thereof, through the  
31 assignment or transfer, including the conditions that the assignor or  
32 transferor may choose to impose, of ownership to a licensee of an insurance  
33 policy or annuity contract, or proceeds thereof, or by the designation of a  
34 licensee as beneficiary of any such insurance policy or annuity contract.

35                   (B) An assignment of an insurance policy or annuity or the  
36 proceeds thereof to a funeral home or the designation of a funeral home as

1 beneficiary as described in subdivision ~~(11)(A)~~(14)(A) of this section is not  
2 a prepaid funeral benefits contract;

3 ~~(12)(A)~~(15)(A) "Prepaid funeral benefits contract" or "prepaid  
4 contract" means a contract or agreement for the prepayment and sale in this  
5 state of funeral services or funeral merchandise, including without  
6 limitation caskets, grave vaults, and all other articles of merchandise and  
7 services incidental to funeral services, at an agreed-upon price, to be  
8 delivered at an undetermined future date depending upon the death of the  
9 contract beneficiary.

10 (B) "Prepaid funeral benefits contract" or "prepaid  
11 contract" includes a nonguaranteed prepaid contract and a nonspecified  
12 prepaid contract.

13 (C) "Prepaid funeral benefits contract" or "prepaid  
14 contract" does not include a prearrangement;

15 ~~(13)~~(16) "Seller" means the organization selling prepaid funeral  
16 benefits or owning any interest in any contract for prepaid funeral benefits  
17 pursuant to this chapter;

18 ~~(14)~~(17) "Surplus" means the funds or other property in excess  
19 of the undistributed net investment income and aggregate contract proceeds  
20 held in the trust fund; ~~and~~

21 (18) "Trust funding" means the depositing of contract proceeds  
22 into a trust account by a seller until such time as the funds are needed to  
23 pay for benefits specified in the prepaid funeral benefits contract; and

24 ~~(15)~~(19) "Trustee" means a state or national bank or savings and  
25 loan association in this state, or, in the reasonable discretion of the  
26 commissioner upon the terms and conditions that he or she may require, a  
27 securities brokerage firm licensed and in good standing with appropriate  
28 state and federal regulatory authorities.

29  
30 SECTION 2. Arkansas Code § 23-40-122, concerning the cancellation or  
31 transfer of a prepaid contract under the Arkansas Prepaid Funeral Benefits  
32 Law, is amended to add an additional subsection to read as follows:

33 (c)(1)(A) In the case of cancellations, reassignments, or transfers, a  
34 seller is entitled to retain any accrued interest income on a cash-funded  
35 prepaid funeral benefits contract that is being transferred to a substitute  
36 provider.

1                   (B) On an insurance-funded or annuity-funded prepaid  
2 funeral benefits contract that is being transferred to a substitute provider,  
3 a seller shall be entitled to retain any accrued interest income on the  
4 policy used to fund the insurance-funded or annuity-funded prepaid funeral  
5 benefits contract from the policy inception date up to the reassignment or  
6 transfer date.

7                   (2) A substitute provider shall be entitled to retain any  
8 accrued interest income on the funding mechanism from the completion date of  
9 the reassignment or transfer.

10  
11           SECTION 3. Arkansas Code § 23-61-114 is repealed.

12           ~~23-61-114. Annual report regarding malpractice rates.~~

13           ~~(a) The Insurance Commissioner shall conduct an annual study of~~  
14 ~~malpractice insurance rates in Arkansas and report the findings to the~~  
15 ~~Legislative Council and the chairs of both the House Committee on Insurance~~  
16 ~~and Commerce and the Senate Committee on Insurance and Commerce.~~

17           ~~(b) The study shall include:~~

18                   ~~(1) Any findings regarding any changes in medical malpractice~~  
19 ~~rates;~~

20                   ~~(2) Any other finding that is relevant to malpractice insurance~~  
21 ~~rates; and~~

22                   ~~(3) Any recommendations in respect to any law relating to~~  
23 ~~medical malpractice insurance.~~

24           ~~(c) The report shall be submitted no later than August 1 subsequent to~~  
25 ~~the year studied.~~

26  
27           SECTION 4. Arkansas Code § 23-63-216(b), concerning the requirements  
28 for an insured's annual statement, is amended to read as follows:

29           (b)(1)(A) ~~Except as provided under subdivision (b)(2) of this section,~~  
30 ~~in~~ In addition to the information required by subsection (a) of this section,  
31 ~~a market conduct annual statement shall be filed, when applicable, with the~~  
32 ~~commissioner if:~~ an authorized insurer reporting fifty thousand dollars  
33 (\$50,000) or more in annual gross premiums shall file for each line of  
34 business written in this state a market conduct annual statement, or  
35 successor product, in the general form and context, in the time frame  
36 required by, and according to instructions provided by the National

1 Association of Insurance Commissioners.

2 (B) If a particular line of business does not have an  
3 approved market conduct annual statement form, the authorized insurer is not  
4 required to file a report for that line of business until such time as the  
5 National Association of Insurance Commissioners adopts a market conduct  
6 annual statement form for that line of business.

7 ~~(A) A property and casualty insurer reports fifty thousand~~  
8 ~~dollars (\$50,000) or more in homeowner or private passenger automobile gross~~  
9 ~~premiums;~~

10 ~~(B) A life and annuity insurer reports fifty thousand~~  
11 ~~dollars (\$50,000) or more in individual life insurance premiums or annuity~~  
12 ~~gross premiums; or~~

13 ~~(C) An insurer reports fifty thousand dollars (\$50,000) or~~  
14 ~~more in premiums for:~~

15 ~~(i) Long term care policies;~~

16 ~~(ii) Lifelong term care hybrid policies; or~~

17 ~~(iii) Annuity long term care hybrid products.~~

18 (2) An insurer is not required to file a market conduct annual  
19 statement under subdivision (b)(1) of this section if the insurer:

20 (A) Sells prepaid funeral or prepaid legal products only;  
21 or

22 (B) Is licensed only in this state.

23 (3) ~~After review of the market conduct annual statement, the The~~  
24 ~~commissioner may, for good cause, require additional filing of other market~~  
25 ~~conduct functions information considered relevant~~ grant an extension of time  
26 for filing a market conduct annual statement, if a written application for an  
27 extension of time is received at least five (5) business days before the  
28 filing due date.

29  
30 SECTION 5. Arkansas Code § 23-63-1601 is amended to read as follows:  
31 23-63-1601. Definitions.

32 As used in this subchapter:

33 (1) "Affiliated company" means a company in the same corporate  
34 system as a parent, an industrial insured, or a member organization by virtue  
35 of common ownership, control, operation, or management;

36 (2) "Alien captive insurance company" means an insurance company

1 formed to write insurance business for its parents and affiliates and  
2 licensed under the laws of an alien jurisdiction that imposes statutory or  
3 regulatory standards in a form acceptable to the Insurance Commissioner on  
4 companies transacting the business of insurance in the alien jurisdiction;

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

8 (A) The member organizations of which collectively, or  
9 which does itself:

10 (i) Own, control, or hold with power to vote all of  
11 the outstanding voting securities of an association captive insurance company  
12 incorporated as a stock insurer; or

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

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

18 (4) "Association captive insurance company" means a company that  
19 insures risks of the member organizations of the association and their  
20 affiliated companies;

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

23 (6)(A) "Branch captive insurance company" means an alien captive  
24 insurance company licensed by the commissioner to transact the business of  
25 insurance in this state through a business unit with a principal place of  
26 business in this state.

27 (B) A branch captive insurance company shall be a pure  
28 captive insurance company with respect to operations in this state unless  
29 permitted by the commissioner;

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

32 (8) "Captive insurance company" means a producer reinsurance  
33 captive insurance company, pure captive insurance company, association  
34 captive insurance company, sponsored captive insurance company, special  
35 purpose captive insurance company, or industrial insured captive insurance  
36 company formed or licensed under this subchapter;

1 (9) "Commissioner" means the Insurance Commissioner;

2 (10) "Controlled unaffiliated business" or "controlled  
3 unaffiliated entity" means a company:

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

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

8 (C) Whose risks are managed by a pure captive insurance  
9 company or participant in a sponsored captive insurance company;

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

11 (12) "General account" means all assets and liabilities of the  
12 sponsored captive insurance company not attributable to a protected cell;

13 (13) "Incorporated protected cell" means a protected cell that  
14 is established as a corporation or other legal entity separate from the  
15 sponsored captive insurance company or producer reinsurance captive insurance  
16 company of which it is a part;

17 ~~(13)(A)~~(14)(A) "Industrial insured" means an insured:

18 (i) That procures insurance by use of the services  
19 of a full-time employee acting as a risk manager or insurance manager or  
20 utilizing the services of a regularly and continuously qualified insurance  
21 consultant;

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

24 (iii) That has at least twenty-five (25) full-time  
25 employees.

26 (B) "Industrial insured" does not mean "industrial life  
27 insurance" as used in § 23-82-101 et seq.;

28 ~~(14)(A)~~(15)(A) "Industrial insured captive insurance company"  
29 means a company that insures risks of the industrial insureds that compose  
30 the industrial insured group and their affiliated companies.

31 (B) "Industrial insured captive insurance company" does  
32 not encompass "industrial life insurance" as used in § 23-82-101 et seq.;

33 ~~(15)(A)~~(16)(A) "Industrial insured group" means a group that  
34 meets either of the following criteria:

35 (i) A group of industrial insureds that  
36 collectively:



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

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

7 (ii) A group which is created under the Product  
8 Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as it existed  
9 January 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201  
10 et seq., or as a corporation or other limited liability association taxable  
11 as a stock insurance company or a mutual insurer under the Arkansas Insurance  
12 Code.

13 (B) "Industrial insured group" does not encompass  
14 "industrial life insurance" as used in § 23-82-101 et seq.;

15 ~~(16)~~(17) "Member organization" means an individual, corporation,  
16 partnership, or association that belongs to an association;

17 ~~(17)~~(18) "Parent" means a corporation, partnership, or  
18 individual that directly or indirectly owns, controls, or holds with power to  
19 vote more than fifty percent (50%) of the outstanding voting securities of a  
20 pure captive insurance company;

21 ~~(18)~~(19) "Participant" means an entity as defined in § 23-63-  
22 1621 and any affiliates of that entity that are insured by a sponsored  
23 captive insurance company when the losses of the participant are limited  
24 through a participant contract to the assets of a protected cell;

25 ~~(19)~~(20) "Participant contract" means a contract by which a  
26 sponsored captive insurance company insures the risks of a participant and  
27 limits the losses of the participant to the assets of a protected cell;

28 ~~(20)~~(21) "Producer reinsurance captive insurance company" means  
29 a company that is wholly owned by a resident licensed insurance producer and  
30 that acts only as a reinsurer for risks written by or placed through its  
31 parent or an affiliate of its parent;

32 ~~(21)~~(22) "Protected cell" means a separate account established  
33 and maintained by a sponsored captive insurance company for one (1)  
34 participant or by a producer reinsurance captive insurance company and  
35 includes an incorporated protected cell;

36 ~~(22)~~(23) "Pure captive insurance company" means a company that

1 insures risks of its parent and affiliated companies or controlled  
2 unaffiliated business;

3 ~~(23)~~(24) “Special purpose captive insurance company” means a  
4 captive insurance company that is formed or licensed under this ~~chapter~~  
5 subchapter and does not meet the definition of any other type of captive  
6 insurance company defined in this section;

7 ~~(24)~~(25) “Sponsor” means an entity that meets the requirements  
8 of § 23-63-1620 and is approved by the commissioner to provide all or part of  
9 the capital and surplus required by applicable law and to organize and  
10 operate a sponsored captive insurance company; and

11 ~~(25)~~(26) “Sponsored captive insurance company” means a captive  
12 insurance company:

13 (A) In which the minimum capital and surplus required is  
14 provided by one (1) or more sponsors;

15 (B) That is formed or licensed under this subchapter;

16 (C) That insures the risks of separate participants  
17 through the contract; and

18 (D) That segregates each participant’s liability through  
19 one (1) or more protected cells.

20

21 SECTION 6. Arkansas Code § 23-63-1604(a), concerning unimpaired paid-  
22 in capital requirements, is amended to read as follows:

23 (a)(1) The Insurance Commissioner ~~may not~~ shall not issue a license to  
24 a producer reinsurance captive insurance company, pure captive insurance  
25 company, sponsored captive insurance company, association captive insurance  
26 company incorporated as a stock insurer, or industrial insured captive  
27 insurance company incorporated as a stock insurer unless the company  
28 possesses and maintains unimpaired paid-in capital of:

29 (A) In the case of a producer reinsurance captive  
30 insurance company, not less than three hundred thousand dollars (\$300,000);

31 (B) In the case of a pure captive insurance company, not  
32 less than one hundred thousand dollars (\$100,000);

33 (C) In the case of an association captive insurance  
34 company incorporated as a stock insurer, not less than four hundred thousand  
35 dollars (\$400,000);

36 (D) In the case of an industrial insured captive insurance

1 company incorporated as a stock insurer, not less than two hundred thousand  
2 dollars (\$200,000);

3 (E) In the case of a sponsored captive insurance company,  
4 not less than ~~five hundred thousand dollars (\$500,000)~~ two hundred fifty  
5 thousand dollars (\$250,000); or

6 (F) In the case of a special purpose captive insurance  
7 company, an amount determined by the commissioner after giving due  
8 consideration to the company's business plan, feasibility study, and pro  
9 formas, including the nature of the risks to be insured, but in no event less  
10 than three hundred thousand dollars (\$300,000).

11 (2) The capital may be in the form of:

12 (A) Cash;

13 (B) Other assets acceptable to the commissioner; or

14 (C) An irrevocable letter of credit issued by a bank  
15 chartered by this state or a member bank of the Federal Reserve System and  
16 approved by the commissioner.

17

18 SECTION 7. Arkansas Code § 23-63-1605(a), concerning the unimpaired  
19 surplus requirements for a captive insurance company license, is amended to  
20 read as follows:

21 (a)(1) The Insurance Commissioner ~~may not~~ shall not issue a license to  
22 a captive insurance company unless the company possesses and maintains  
23 unimpaired surplus of:

24 (A) In the case of a producer reinsurance captive  
25 insurance company, not less than three hundred thousand dollars (\$300,000);

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

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

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

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

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

4 (G) In the case of a sponsored captive insurance company,  
5 not less than ~~five hundred thousand dollars (\$500,000)~~ two hundred fifty  
6 thousand dollars (\$250,000); and

7 (H) In the case of a special purpose captive insurance  
8 company, an amount determined by the commissioner after giving due  
9 consideration to the company's business plan, feasibility study, and pro  
10 formas, including the nature of the risks to be insured, but in no event less  
11 than three hundred thousand dollars (\$300,000).

12 (2) The surplus may be in the form of:

13 (A) Cash;

14 (B) Other assets acceptable to the commissioner; or

15 (C) An irrevocable letter of credit issued by a bank  
16 chartered by this state or a member bank of the Federal Reserve System and  
17 approved by the commissioner.

18  
19 SECTION 8. Arkansas Code § 23-63-1606(f), concerning the privileges  
20 and regulation of captive insurers, is amended to read as follows:

21 (f)(1) A captive insurance company formed under this subchapter has  
22 the privileges of and is subject to the business organization law of this  
23 state and is subject to this subchapter.

24 (2) If a conflict occurs between business organization law and  
25 this subchapter, the latter controls.

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

30 (B) The commissioner may, upon request of an insurer that  
31 is a party to a merger authorized under subdivision (f)(3)(A) of this  
32 section, waive certain applicable requirements to the merger transaction.

33 (C) A conversion may be accomplished under a reasonable  
34 plan and procedure as may be approved by the commissioner and according to  
35 rules that the commissioner may promulgate.

36 (D) The commissioner may waive or modify the requirements

1 for public notice and hearing ~~in accordance with rules that the commissioner~~  
2 ~~may promulgate addressing categories of transactions.~~

3 ~~(G)(E)~~ If a notice of public hearing is required but no  
4 one requests a hearing, the commissioner may cancel the hearing.

5 (F) An alien insurer may be a party to a merger authorized  
6 under subdivision (f)(3)(A) of this section if the requirements for a merger  
7 between a captive insurance company and a foreign insurer under this chapter  
8 apply to the merger transaction.

9  
10 SECTION 9. Arkansas Code § 23-63-1607(b), concerning the reporting  
11 requirements for captive insurers, is amended to read as follows:

12 (b)(1) Before March 1 of each year, or within an extension of time if,  
13 upon good cause shown, has been granted by the commissioner, a captive  
14 insurance company shall submit to the Insurance Commissioner a report of its  
15 financial condition, verified by oath of two (2) of its executive officers.

16 (2)(A) Except as provided in §§ 23-63-1604 and 23-63-1605, a  
17 captive insurance company shall report using generally accepted accounting  
18 principles unless the commissioner approves the use of statutory accounting  
19 principles.

20 (B) The commissioner may require, approve, or accept  
21 appropriate modifications or adaptations for the type of insurance and kinds  
22 of insurers to be reported upon, supplemented by additional information.

23 (3)(A) Unless provided otherwise, an association captive  
24 insurance company and an industrial insured group shall file their reports in  
25 the form required by § 23-63-216(a).

26 (B) The commissioner shall prescribe by regulation the  
27 forms in which producer reinsurance captive insurance companies, pure captive  
28 insurance companies, and industrial insured captive insurance companies shall  
29 report.

30  
31 SECTION 10. Arkansas Code § 23-63-1610, concerning investments of  
32 captive insurance companies, is amended to add additional subsections to read  
33 as follows:

34 (d) Notwithstanding the provisions of § 23-63-1620, the assets of two  
35 (2) or more protected cells may be combined for purposes of investment, and  
36 the combination does not defeat the segregation of such assets for accounting

1 or other purposes.

2 (e)(1) Sponsored captive insurance companies shall comply with the  
3 investment requirements contained in § 23-63-801 et seq., as applicable.

4 (2) However, compliance with the investment requirements shall  
5 be waived for sponsored captive insurance companies to the extent that credit  
6 for reinsurance ceded to reinsurers is allowed under § 23-63-1611 or to the  
7 extent otherwise deemed reasonable and appropriate by the commissioner.

8 (f) Unless the commissioner requires or finds another method of  
9 valuation that is not inconsistent with the valuation method promulgated by  
10 the National Association of Insurance Commissioners and is reasonable under  
11 the circumstances, the valuation procedures established by the National  
12 Association of Insurance Commissioners shall apply to sponsored captive  
13 insurance companies except to the extent the valuation procedures are  
14 inconsistent with approved accounting standards in use by the company.

15 (g) Notwithstanding any other provision of this subchapter, the  
16 commissioner may approve the use of alternative reliable methods of valuation  
17 and rating.

18  
19 SECTION 11. Arkansas Code § 23-63-1615(b)(1), concerning the  
20 promulgation of regulations to establish standards for captive insurance  
21 companies, is amended to read as follows:

22 (b)(1) The commissioner may promulgate ~~regulations~~ rules establishing  
23 standards to ensure that a parent or affiliated company is able to exercise  
24 control of the risk management function of any controlled unaffiliated  
25 business to be insured by the pure captive insurance company or participant  
26 in a sponsored captive insurance company.

27  
28 SECTION 12. Arkansas Code § 23-63-1616, concerning the limitation of  
29 the applicability of the Arkansas Insurance Code on captive insurers, is  
30 amended to add additional subsections to read as follows:

31 (c) In addition to this subchapter, the following provisions of the  
32 Arkansas Insurance Code and applicable rules apply to a risk retention group  
33 formed under the Risk Retention and Purchasing Groups Act, § 23-94-201 et  
34 seq., and subject to this subchapter:

35 (1) Section 23-61-201 et seq., and the Arkansas Credit for  
36 Reinsurance Law, § 23-62-301 et seq., referring to the commissioner;

1 (2) The Reinsurance Intermediary Act, § 23-62-401 et seq.;

2 (3) Section 23-63-212 and § 23-63-213, referring to certificates  
3 of authority;

4 (4) Section 23-63-216(e) and the Property and Casualty Actuarial  
5 Opinion Law, § 23-63-1901 et seq., referring to actuarial opinions;

6 (5) The Insurance Holding Company Regulatory Act, § 23-63-501 et  
7 seq., and § 23-69-129, referring to dividends to stockholders;

8 (6) Section 23-63-601 et seq., referring to financial reporting  
9 standards;

10 (7) Section 23-63-701, referring to limits of risk;

11 (8) Section 23-63-801 et seq., referring to investments;

12 (9) The Business Transacted with Producer Controlled Property  
13 and Casualty Insurer Act, § 23-63-1101 et seq., referring to producer  
14 controlled business;

15 (10) With the exception of § 23-63-1304(f) and § 23-63-1311, the  
16 Risk-Based Capital Act, § 23-63-1301 et seq., referring to risk-based  
17 capital;

18 (11) Section § 23-64-201 et seq., and the Producer Licensing  
19 Model Act, § 23-64-501 et seq., referring to licensure;

20 (12) The Managing General Agents Act, § 23-64-401 et seq.,  
21 referring to managing general agents; and

22 (13) Section 23-68-101 et seq., and § 23-69-138, referring to  
23 impairment of capital or assets.

24 (d) If subsection (c) of this section is in conflict with this  
25 subchapter, subsection (c) of this section controls.

26 (e) Except as provided in this subchapter, the Risk Retention and  
27 Purchasing Groups Act, § 23-94-201 et seq., applies to a risk retention group  
28 formed as a captive insurer.

29 (f) In determining whether to take regulatory action under § 23-63-  
30 1304 – 1307, the commissioner may consider the adequacy of documentation  
31 evidencing the sound financial condition of the risk retention group's  
32 members or sponsoring organizations and intent to financially support the  
33 risk retention group, including:

34 (1)(A) A minimum of three (3) years of audited financial  
35 statements of the member or sponsor and one (1) year of projected financial  
36 information.

1                   (B) The projected financial information required in  
2 subdivision (f)(1)(A) of this section shall include:

3                   (i) An investment grade rating from a nationally  
4 recognized statistical rating organization or A.M. Best rating of A- or  
5 better;

6                   (ii) Equity equal to or greater than one hundred  
7 million dollars (\$100,000,000); and

8                   (iii) Equity equal to or greater than ten (10) times  
9 the risk retention group's largest net retained per occurrence limit; and

10                   (2)(A) Policyholder qualification as an industrial insured in  
11 this state or the policyholder's home state, depending upon which state has  
12 the more stringent requirements.

13                   (B) If the home state of the policyholder does not have an  
14 industrial insured exemption or its equivalent, the policyholder shall  
15 qualify under the industrial requirement of this state.

16  
17           SECTION 13. Arkansas Code § 23-63-1619 is repealed.

18           ~~23-63-1619. Conversions and mergers.~~

19           ~~(a) A captive insurance company may be converted to or merged with and~~  
20 ~~into another captive insurance company according to a plan and this section.~~

21           ~~(b) A plan for conversion or merger:~~

22                   ~~(1) Must be fair and equitable to the shareholders, in the case~~  
23 ~~of a stock insurer, or the policyholders, in the case of a mutual insurer;~~  
24 ~~and~~

25                   ~~(2) Shall provide for the purchase of the shares of any~~  
26 ~~nonconsenting shareholder of a stock insurer or the policyholder interest of~~  
27 ~~any nonconsenting policyholder of a mutual insurer in substantially the same~~  
28 ~~manner and subject to the same rights and conditions as are accorded a~~  
29 ~~dissenting shareholder or a dissenting policyholder under § 4-26-1011.~~

30           ~~(c) In the case of a conversion authorized under subsection (a) of~~  
31 ~~this section:~~

32                   ~~(1) The conversion must be accomplished under a reasonable plan~~  
33 ~~and procedure as may be approved by the Insurance Commissioner;~~

34                   ~~(2) The commissioner may not approve the plan of conversion,~~  
35 ~~unless the plan:~~

36                   ~~(A) Satisfies subsection (b) of this section;~~



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

5                   ~~(ii)(a) The commissioner may waive or modify the~~  
6 ~~requirements for the hearing.~~

7                   ~~(b) If a notice of hearing is required but no~~  
8 ~~hearing is requested, the commissioner may cancel the hearing;~~

9                   ~~(C) Provides for the conversion of existing stockholder or~~  
10 ~~policyholder interests into subscriber interests in the resulting reciprocal~~  
11 ~~insurer proportionate to stockholder or policyholder interests in the stock~~  
12 ~~or mutual insurer; and~~

13                   ~~(D) Is approved:~~

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

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

20                   ~~(3) The commissioner shall approve the plan of conversion, if~~  
21 ~~the commissioner finds that the conversion will promote the general good of~~  
22 ~~the state in conformity with those standards stated in § 23-63-1606(d);~~

23                   ~~(4) If the commissioner approves the plan, the commissioner~~  
24 ~~shall amend the converting insurer's certificate of authority to reflect~~  
25 ~~conversion to a reciprocal insurer and issue the amended certificate of~~  
26 ~~authority to the company's attorney in fact;~~

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

29                   ~~(6) Upon the effectiveness of the conversion, the corporate~~  
30 ~~existence of the converting insurer shall cease.~~

31                   ~~(d) A merger authorized under subsection (a) of this section must be~~  
32 ~~accomplished substantially in accordance with the Arkansas Insurance Code.~~  
33 ~~For purposes of the merger:~~

34                   ~~(1) The plan or merger shall satisfy subsection (b) of this~~  
35 ~~section;~~

36                   ~~(2) The subscribers' advisory committee of a reciprocal insurer~~

1 ~~must be equivalent to the board of directors of a stock or mutual insurance~~  
2 ~~company;~~

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

5 ~~(4) If a subscribers' advisory committee does not have a~~  
6 ~~president or secretary, the officers of the committee having substantially~~  
7 ~~equivalent duties are deemed to be the president and secretary of the~~  
8 ~~committee;~~

9 ~~(5)(A) The commissioner shall approve the articles of merger if~~  
10 ~~the commissioner finds that the merger will promote the general good of the~~  
11 ~~state in conformity with those standards stated in § 23-63-1606(d).~~

12 ~~(B) If the commissioner approves the articles of merger,~~  
13 ~~the commissioner shall endorse the articles;~~

14 ~~(6)(A) Notwithstanding § 23-63-1604, the commissioner may permit~~  
15 ~~the formation without surplus of a captive insurance company organized as a~~  
16 ~~reciprocal insurer into which an existing captive insurance company may be~~  
17 ~~merged for the purpose of facilitating a transaction under this section.~~

18 ~~(B) There may be no more than one (1) authorized insurance~~  
19 ~~company surviving the merger; and~~

20 ~~(7)(A) An alien insurer may be a party to a merger authorized~~  
21 ~~under subsection (a) of this section, if the requirements for the merger~~  
22 ~~between a domestic and a foreign insurer under the Insurance Holding Company~~  
23 ~~Regulatory Act, § 23-63-501 et seq., apply to a merger between a domestic and~~  
24 ~~an alien insurer under this subsection.~~

25 ~~(B) The alien insurer must be treated as a foreign insurer~~  
26 ~~under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and~~  
27 ~~other jurisdictions must be the equivalent of a state for purposes of the~~  
28 ~~Insurance Holding Company Regulatory Act, § 23-63-501 et seq.~~

29 ~~(e) A conversion or merger under this section has all the effects of a~~  
30 ~~conversion or merger under the Arkansas Insurance Code, to the extent these~~  
31 ~~effects are not inconsistent with this subchapter.~~

32  
33 SECTION 14. Arkansas Code § 23-63-1620 is amended to read as follows:

34 23-63-1620. Sponsorship requirements Sponsored captive insurance  
35 company - Requirements.

36 (a) One (1) or more sponsors may form a sponsored captive insurance

1 company under this subchapter.

2 (b)(1) A sponsor of a sponsored captive insurance company ~~must be~~ may  
3 be any person approved by the Insurance Commissioner, in his or her  
4 discretion, based on a determination that the approval of the person as a  
5 sponsor is consistent with the purposes of this section.

6 ~~(1)(2) An insurer licensed under the laws of any state In~~  
7 evaluating the qualifications of a proposed sponsor, the commissioner shall  
8 consider:

9 (A) The type and structure of the proposed sponsor entity;

10 (B) The experience in financial operations of the proposed  
11 sponsor entity;

12 (C) The financial stability and strength of the proposed  
13 sponsor entity;

14 (D) The business reputation of the proposed sponsor  
15 entity; and

16 (E) Other facts the commissioner deems relevant.

17 ~~(2) A reinsurer authorized or approved under the laws of any~~  
18 ~~state;~~

19 ~~(3) A captive insurance company formed or licensed under this~~  
20 ~~subchapter; or~~

21 ~~(4) Any other corporation, if approved by the Insurance~~  
22 ~~Commissioner, in a manner to be prescribed by regulation.~~

23 (c) In addition to the information required by § 23-63-1602, each  
24 applicant-sponsored captive insurance company shall file with the  
25 commissioner the following:

26 (1) Materials demonstrating how the applicant will account for  
27 the loss and expense experience of each protected cell at a level of detail  
28 found to be sufficient by the commissioner, and how it will report the  
29 experience to the commissioner;

30 (2) A statement acknowledging that all financial records of the  
31 sponsored captive insurance company, including records pertaining to any  
32 protected cells, shall be made available for inspection or examination by the  
33 commissioner or his or her designee;

34 (3) All contracts or sample contracts between the sponsored  
35 captive insurance company and any participants; and

36 (4) Evidence that expenses shall be allocated to each protected

1 cell in a fair and equitable manner.

2 (d) In his or her discretion, the commissioner may require that the  
3 business written by a sponsored captive insurance company, with respect to  
4 each protected cell, be ~~fronted by an insurance company licensed under the~~  
5 ~~laws of any state.~~

6 (1) Fronted by an insurance company licensed under the laws of  
7 any state;

8 (2) Reinsured by a reinsurer authorized or approved by the  
9 commissioner; or

10 (3)(A) Secured by a trust fund in the United States for the  
11 benefit of policyholders and claimants or funded by an irrevocable letter of  
12 credit or other arrangement that is acceptable to the commissioner.

13 (B) The commissioner may require the sponsored captive  
14 insurance company to increase the funding of any security arrangement  
15 established under subdivision (d)(3)(A) of this section.

16 (C) If the form of security is a letter of credit, the  
17 letter of credit shall be issued or confirmed by a bank approved by the  
18 commissioner.

19 (D) A trust maintained under subdivision (d)(3)(A) of this  
20 section shall be established in a form and upon the terms approved by the  
21 commissioner.

22 ~~(d)~~(e) A risk retention group may not shall not be either a sponsor or  
23 a participant of a sponsored captive insurance company.

24 ~~(e)~~(f) A sponsored captive insurance company formed or licensed under  
25 this subchapter may establish and maintain one (1) or more protected cells to  
26 insure risks of one (1) or more participants, subject to the following  
27 conditions:

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

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

35 (3) The assets of a protected cell must not be chargeable with  
36 liabilities arising out of any other insurance business the sponsored captive

1 insurance company may conduct;

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

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

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

11 (6)(A) All attributions of assets and liabilities to the  
12 protected cells and the general account shall be according to the plan of  
13 operation approved by the commissioner.

14 (B) Other attribution of assets or liabilities shall not  
15 be made by a sponsored captive insurance company between its general account  
16 and a protected cell or between protected cells.

17 (C) The sponsored captive insurance company shall  
18 attribute all insurance obligations, assets, and liabilities relating to a  
19 reinsurance contract entered into with respect to a protected cell to the  
20 protected cell.

21 (D) The performance under the reinsurance contract and any  
22 tax benefits, losses, refunds, or credits allocated under a tax allocation  
23 agreement to which the sponsored captive insurance company is a party,  
24 including any payments made by or due to be made to the sponsored captive  
25 insurance company under the terms of the agreement, shall reflect the  
26 insurance obligations, assets, and liabilities relating to the reinsurance  
27 contract that are attributed to the protected cell;

28 (7) A sponsored captive insurance company shall file annually  
29 all the financial reports the commissioner requires, which shall include, ~~but~~  
30 ~~are not limited to,~~ without limitation accounting statements detailing the  
31 financial experience of each protected cell;

32 ~~(7)(8)~~ (8) A sponsored captive insurance company shall notify the  
33 commissioner in writing within ten (10) business days of a protected cell  
34 that is insolvent or unable to meet its claim or expense obligations; and

35 ~~(8)(A)(9)(A)~~ (9)(A) No participant contract shall take effect without  
36 the commissioner's prior written approval.

1 (B) The addition of each new protected cell and the  
2 withdrawal of any participant of any existing protected cell constitute a  
3 change in the business plan requiring the commissioner's prior written  
4 approval.

5 ~~(f)~~(g) A protected cell of a sponsored captive insurance company may  
6 be formed as an incorporated protected cell subject to subsection ~~(e)~~(f) of  
7 this section and the following conditions:

8 (1)(A) Subject to the prior written approval of the sponsored  
9 captive insurance company and of the commissioner, an incorporated protected  
10 cell may enter into contracts and undertake obligations in its own name and  
11 for its own account.

12 (B) In the case of a contract or obligation to which the  
13 sponsored captive insurance company is not a party, either in its own name  
14 and for its own account or on behalf of a protected cell, the counterparty to  
15 the contract or obligation does not have a right or recourse against the  
16 sponsored captive insurance company and its assets other than against assets  
17 properly attributable to the incorporated protected cell that is a party to  
18 the contract or obligation;

19 (2)(A) The articles of incorporation or articles of organization  
20 of an incorporated protected cell shall refer to the sponsored captive  
21 insurance company for which it is a protected cell and shall state that the  
22 protected cell is incorporated or organized for the limited purposes  
23 authorized by the sponsored captive insurance company's license.

24 (B) A copy of the prior written approval of the  
25 commissioner to add the incorporated protected cell shall be attached to and  
26 filed with the articles of incorporation or the articles of organization; and

27 (3) An incorporated protected cell shall have its own distinct  
28 name or designation, which shall include the words "Incorporated Cell".

29 ~~(g)~~~~(1)~~(h)(1) A protected cell of a sponsored captive insurance company  
30 may be converted into an incorporated protected cell subject to the following  
31 conditions:

32 (A) Subject to the prior written approval of the  
33 commissioner, on application of the sponsor and with the prior consent of  
34 each participant of the affected protected cell or as otherwise permitted  
35 pursuant to a participation agreement, a sponsored captive insurance company  
36 may convert a protected cell into an incorporated protected cell without

1 affecting the protected cell's assets, rights, benefits, obligations, and  
2 liabilities; and

3 (B) ~~Any such~~ The conversion shall be deemed:

4 (i) For all purposes to be a continuation of the  
5 protected cell's existence together with all of its assets, rights, benefits,  
6 obligations, and liabilities, as an incorporated protected cell of the  
7 sponsored captive insurance company; and

8 (ii) To occur without any transfer or assignment of  
9 ~~any such~~ assets, rights, benefits, obligations, or liabilities and without  
10 the creation of any reversionary interest in, or impairment of, ~~any such~~  
11 assets, rights, benefits, obligations, and liabilities.

12 (i) A protected cell of a sponsored captive insurance company may be  
13 sold, transferred, or assigned subject to the following conditions:

14 (1) Subject to the prior written approval of the commissioner,  
15 on application of the sponsor and with the prior consent of each participant  
16 of the affected protected cell, or as otherwise permitted under a  
17 participation agreement, or with the consent of the affected incorporated  
18 protected cell, a sponsored captive insurance company may sell, transfer,  
19 assign, and otherwise convey a protected cell or incorporated protected cell  
20 together with all of the protected cell's assets, rights, benefits,  
21 obligations, and liabilities to a new or existing sponsored captive insurance  
22 company, under a plan of operation that is approved by the commissioner;

23 (2) The sale, transfer, assignment, or conveyance is a  
24 continuation of the protected cell's existence together with all of its  
25 assets, rights, benefits, obligations, and liabilities, as a protected cell  
26 of the transferee; and

27 (3) The sale, transfer, assignment, or conveyance shall not be  
28 construed to limit any rights or protections applicable to the transferred  
29 protected cell or incorporated protected cell and the transferor sponsored  
30 captive insurance company that existed immediately before the sale, transfer,  
31 assignment, or conveyance.

32 (j) A protected cell of a sponsored captive insurance company may be  
33 converted to a new entity subject to the following conditions:

34 (1) Subject to the prior written approval of the commissioner,  
35 on application of the sponsor and with the prior consent of each participant  
36 in the affected protected cells or as otherwise permitted under a

1 participation agreement and the consent of each affected incorporated  
2 protected cell, a sponsored captive insurance company may convert one (1) or  
3 more protected cells or incorporated protected cells into a:

4 (A) Single protected cell or incorporated protected cell;

5 (B) New sponsored captive insurance company;

6 (C) New pure captive insurance company;

7 (D) New risk retention group;

8 (E) New industrial insured captive insurance company; or

9 (F) New association captive insurance company;

10 (2)(A) The conversion shall be subject to this section as well  
11 as to a plan of operation approved by the commissioner, without affecting any  
12 protected cell's or incorporated protected cell's assets, rights, benefits,  
13 obligations, and liabilities.

14 (B) The conversion is a continuation of each protected  
15 cell's or incorporated protected cell's existence together with all of its  
16 assets, rights, benefits, obligations, and liabilities, as a new protected  
17 cell or incorporated protected cell, a licensed sponsored captive insurance  
18 company, a pure captive insurance company, a risk retention group, an  
19 industrial insured captive insurance company, or an association captive  
20 insurance company, as applicable.

21 (C) The conversion shall occur without any transfer or  
22 assignment of assets, rights, benefits, obligations, or liabilities and  
23 without the creation of any reversionary interest in, or impairment of,  
24 assets, rights, benefits, obligations, and liabilities; and

25 (3) The conversion shall not be construed to limit any rights or  
26 protections applicable to any converted protected cell or incorporated  
27 protected cell and the sponsored captive insurance company, as applicable,  
28 that existed immediately before the date of the conversion.

29 (k)(1) Upon an order of supervision, rehabilitation, or liquidation of  
30 a sponsored captive insurance company, the receiver shall manage the assets  
31 and liabilities of the sponsored captive insurance company under this  
32 subsection.

33 (2) In connection with the conservation, rehabilitation, or  
34 liquidation of a sponsored captive insurance company, the assets and  
35 liabilities of a protected cell shall at all times be kept separate from, and  
36 shall not be commingled with, those of other protected cells and the



1 sponsored captive insurance company.

2 (3) The assets of a protected cell shall not be used to pay any  
3 expenses or claims other than those attributable to the protected cell.

4 (4)(A) Unless the sponsor consents and the commissioner has  
5 granted prior written approval, the assets of the sponsored captive insurance  
6 company's general account shall not be used to pay any expenses or claims  
7 attributable solely to a protected cell of the sponsored captive insurance  
8 company.

9 (B) If the assets of the sponsored captive insurance  
10 company's general account are used to pay expenses or claims attributable  
11 solely to a protected cell of the sponsored captive insurance company, the  
12 sponsor is not required to contribute additional capital and surplus to the  
13 sponsored captive insurance company's general account, notwithstanding the  
14 provisions of §§ 23-63-1604 and 23-63-1605.

15 (5) A sponsored captive insurance company's capital and surplus  
16 shall at all times be available to pay any expenses of or claims against the  
17 sponsored captive insurance company.

18 (6) In the event of the insolvency of a sponsored captive  
19 insurance company in which the commissioner determines that one (1) or more  
20 protected cells remain solvent, the commissioner may separate the cells from  
21 the sponsored captive insurance company and, on application of the sponsor,  
22 may allow for the conversion of the protected cells into one (1) or more new  
23 or existing sponsored captive insurance companies, or one (1) or more other  
24 captive insurance companies, under a plan of operation approved by the  
25 commissioner.

26 (1)(1)(A) A creditor of a sponsored captive insurance company shall  
27 have recourse against the assets attributable to a protected cell only if it  
28 is a creditor of the protected cell.

29 (B) A creditor of a protected cell shall not be entitled  
30 to recourse against the assets attributable to another protected cell or to  
31 the assets in the sponsored captive insurance company's general account.

32 (2) When a sponsored captive insurance company has an obligation  
33 to a creditor arising from a transaction or otherwise imposed with respect to  
34 a protected cell, the obligation shall:

35 (A) Extend only to the assets attributable to that  
36 protected cell, and the creditor shall be entitled to recourse only against

1 the assets attributable to that protected cell; and

2 (B) Not extend to the assets of another protected cell or  
3 to the assets in the sponsored captive insurance company's general account,  
4 and the creditor shall not be entitled to recourse against the assets  
5 attributable to another protected cell or to the assets of the sponsored  
6 captive insurance company's general account.

7 (3) When an obligation of a sponsored captive insurance company  
8 relates solely to its general account, a creditor shall have recourse only  
9 against the assets in the general account.

10 (4) The establishment of one (1) or more protected cells alone,  
11 and without more, shall not constitute or be deemed to be a fraudulent  
12 conveyance, an intent by the sponsored captive insurance company to defraud  
13 creditors, or the carrying out of business by the sponsored captive insurance  
14 company for any other fraudulent purpose.

15 ~~(2)(A)(m)~~ It is the intent of the General Assembly under this section  
16 to provide sponsored captive insurance companies with the option to establish  
17 one (1) or more protected cells as a separate legal entity.

18 ~~(B)(n)~~ This section does not limit any rights or protections  
19 applicable to protected cells that are not established as separate legal  
20 entities.

21  
22 SECTION 15. Arkansas Code § 23-63-1621(d), concerning a participant in  
23 a sponsored captive insurance company, is amended to read as follows:

24 (d) A participant shall not insure ~~only its own~~ any risks ~~through a~~  
25 ~~sponsored captive insurance company~~ other than its own, its affiliated  
26 entities, or of controlled unaffiliated entities.

27  
28 SECTION 16. Arkansas Code Title 23, Chapter 63, is amended to add an  
29 additional subchapter to read as follows:

30 Subchapter 20 – Corporate Governance Annual Disclosure Act

31  
32 23-63-2001. Title.

33 This subchapter shall be known and may be cited as the “Corporate  
34 Governance Annual Disclosure Act”.

35  
36 23-63-2002. Purpose – Intent.

1 (a) The purpose of this subchapter is to:

2 (1) Provide the Insurance Commissioner a summary of the  
3 corporate governance structure, policies, and practices of an insurer or  
4 insurance group to allow the commissioner an opportunity to gain and maintain  
5 a better understanding of the corporate governance framework of an insurer  
6 operating in this state;

7 (2) Outline the requirements for completing a corporate  
8 governance annual disclosure; and

9 (3) Provide assurance for the confidential treatment of the  
10 corporate governance annual disclosure and related information due to the  
11 confidential and sensitive information it will reveal as it relates to the  
12 internal operations and proprietary and trade secret information of an  
13 insurer or insurance group which, if made public, could potentially cause the  
14 insurer or insurance group competitive harm or disadvantage.

15 (b) It is the intent of the General Assembly that this subchapter:

16 (1) Shall not be construed to prescribe or impose  
17 corporate governance standards and internal procedures beyond that which is  
18 required under applicable state corporate law;

19 (2) Shall not be construed to limit the commissioner's  
20 authority or the rights or obligations under § 23-61-201 et seq.; and

21 (3) Applies to an insurer domiciled in this state.

22  
23 23-63-2003. Definitions.

24 As used in this subchapter:

25 (1) "Corporate governance annual disclosure" means a  
26 confidential report filed by an insurer or insurance group made according to  
27 this subchapter;

28 (2) "Insurance group" means those insurers and affiliates  
29 included within an insurance holding company system as defined in the  
30 Insurance Holding Company Regulatory Act, § 23-63-501 et seq.;

31 (3)(A) "Insurer" means a person engaged as indemnitor, surety,  
32 or contractor in the business of entering into contracts of insurance.

33 (B) "Insurer" does not include agencies, authorities, or  
34 instrumentalities of the United States, its possessions and territories, the  
35 Commonwealth of Puerto Rico, the District of Columbia, or a state or  
36 political subdivision of a state; and

1           (4) "Person" includes an individual, insurer, company,  
2 association, organization, Lloyd's, society, reciprocal or inter-insurance  
3 exchange, partnership, syndicate, business trust, corporation, and every  
4 legal entity.

5  
6           23-63-2004. Submission of corporate governance annual disclosure to  
7 Insurance Commissioner required.

8           (a)(1) On or before June 1 of each calendar year, an insurer, or the  
9 insurance group of which the insurer is a member, shall submit a corporate  
10 governance annual disclosure to the Insurance Commissioner.

11           (2) The corporate governance annual disclosure required under  
12 subdivision (a)(1) of this section shall contain the information described in  
13 § 23-63-2005.

14           (3) Notwithstanding any request from the commissioner made under  
15 subsection (c) of this section, if the insurer is a member of an insurance  
16 group, the insurer shall submit according to the laws of the lead state the  
17 corporate governance annual disclosure required under this section to the  
18 commissioner or regulator of the lead state for the insurance group as  
19 determined by the procedures outlined in the most recent Financial Analysis  
20 Handbook adopted by the National Association of Insurance Commissioners.

21           (b) A corporate governance annual disclosure shall include the  
22 signature of the chief executive officer or corporate secretary of the  
23 insurer or insurance group attesting that to the best of that individual's  
24 belief and knowledge the insurer has implemented the corporate governance  
25 practices and that a copy of the corporate governance annual disclosure has  
26 been provided to the insurer's board of directors or the appropriate  
27 committee.

28           (c) An insurer that is not required to submit a corporate governance  
29 annual disclosure under this section shall do so upon the request of the  
30 commissioner.

31           (d)(1) For purposes of completing the corporate governance annual  
32 disclosure, an insurer or insurance group may provide information regarding  
33 corporate governance at the ultimate controlling parent level, an  
34 intermediate holding company level, or the individual legal entity level,  
35 depending upon how the insurer or insurance group has structured its system  
36 of corporate governance.

1           (2) The insurer or insurance group is encouraged to make the  
2 corporate governance annual disclosure filing at the level that:

3                   (A) The insurer's or insurance group's risk appetite is  
4 determined;

5                   (B) The earnings, capital, liquidity, operations, and  
6 reputation of the insurer are overseen collectively, and at which the  
7 supervision of those factors is coordinated and exercised; or

8                   (C) Legal liability for failure of general corporate  
9 governance duties would be placed.

10           (3) When the insurer or insurance group determines the level of  
11 reporting based on the criteria described under subdivision (d)(2) of this  
12 section, the insurer or insurance group shall indicate which of the three (3)  
13 criteria described under subdivision (d)(2) of this section was used to  
14 determine the level of reporting and explain any subsequent changes in the  
15 level of reporting.

16           (e) The review of the corporate governance annual disclosure and any  
17 additional requests for information shall be made through the lead state as  
18 determined by the procedures within the most recent Financial Analysis  
19 Handbook adopted by the National Association of Insurance Commissioners.

20           (f) An insurer that provides information substantially similar to the  
21 information required by this subchapter in other documents that are submitted  
22 to the commissioner, including without limitation proxy statements filed in  
23 conjunction with Form B requirements or other state or federal filings that  
24 are provided to the State Insurance Department, shall not be required to  
25 duplicate that information in the corporate governance annual disclosure but  
26 is required to document and cross reference the document that the relevant  
27 information is included with the corporate governance annual disclosure.

28  
29           23-63-2005. Corporate governance annual disclosure.

30           (a)(1) The insurer or insurance group shall have discretion over the  
31 responses to the corporate governance annual disclosure inquiries or  
32 questions if the corporate governance annual disclosure contains the material  
33 information necessary to permit the Insurance Commissioner to gain an  
34 understanding of the insurer's or insurance group's corporate governance  
35 structure, policies, and practices.

36           (2) The commissioner may request additional information that he

1 or she deems material and necessary to provide the commissioner with a clear  
2 understanding of the corporate governance policies, the reporting or  
3 information system, or controls implementing those policies.

4 (b) Notwithstanding subsection (a) of this section, the corporate  
5 governance annual disclosure shall be prepared consistent with any rule  
6 promulgated under § 23-63-2010.

7 (c) Documentation and supporting information shall be maintained and  
8 made available upon examination or upon request of the commissioner.

9  
10 23-63-2006. Confidentiality.

11 (a) Documents, materials, or other information, including the  
12 corporate governance annual disclosure, in the possession or control of the  
13 State Insurance Department and obtained by, created by, or disclosed to the  
14 Insurance Commissioner or any other person under this subchapter, is  
15 recognized by this state as being proprietary and containing trade secrets.

16 (b)(1) The information required under subsection (a) of this section:

17 (A) Is confidential by law and privileged and is not  
18 subject to:

19 (i) Public disclosure;

20 (ii) Subpoena; and

21 (iii) Discovery; and

22 (B) Is not admissible in evidence in any private civil  
23 action.

24 (2) The commissioner is authorized to use the documents,  
25 materials, or other information in the furtherance of any regulatory or legal  
26 action brought as a part of the commissioner's official duties.

27 (3) The commissioner shall not otherwise make the documents,  
28 materials, or other information public without the prior written consent of  
29 the insurer.

30 (c) This section does not require written consent of the insurer  
31 before the commissioner may share or receive confidential documents,  
32 materials, or other corporate governance annual disclosure-related  
33 information under subsection (e) of this section to assist in the performance  
34 of the commissioner's regular duties.

35 (d) The commissioner or any person who receives documents, materials,  
36 or other corporate governance annual disclosure-related information, through

1 examination or otherwise, while acting under the authority of the  
2 commissioner, or with whom such documents, materials, or other information is  
3 shared under this subchapter shall not be permitted or required to testify in  
4 any private civil action concerning any confidential documents, materials, or  
5 information subject to subdivision (b)(2) of this section.

6 (e) In order to assist in the performance of the commissioner's  
7 regulatory duties, the commissioner may:

8 (1)(A) Upon request, share documents, materials, or other  
9 corporate governance annual disclosure-related information including the  
10 confidential and privileged documents, materials, or information subject to  
11 subsection (a) of this section, including proprietary and trade secret  
12 documents and materials, with:

13 (i) Other state, federal, and international  
14 financial regulatory agencies, including members of any supervisory college  
15 as defined in § 23-63-531;

16 (ii) The National Association of Insurance  
17 Commissioners; and

18 (iii) Third party consultants under § 23-63-2007.

19 (B) In order to obtain information under subdivision  
20 (e)(1)(A) of this section, the recipient agrees in writing to maintain the  
21 confidentiality and privileged status of the corporate governance annual  
22 disclosure-related documents, material, or other information and has verified  
23 in writing the legal authority to maintain confidentiality; and

24 (2)(A) Receive documents, materials, or other corporate  
25 governance annual disclosure-related information, including otherwise  
26 confidential and privileged documents, materials, or information, including  
27 proprietary and trade-secret information or documents, from:

28 (i) Regulatory officials of other state, federal,  
29 and international financial regulatory agencies, including members of any  
30 supervisory college as defined in § 23-63-531; and

31 (ii) The National Association of Insurance  
32 Commissioners.

33 (B) In order to obtain information under subdivision  
34 (e)(2)(A) of this section, the commissioner shall maintain as confidential or  
35 privileged any documents, materials, or information received with notice or  
36 the understanding that it is confidential or privileged under the laws of the

1 jurisdiction that is the source of the document, material, or information.

2 (f) The sharing of information and documents by the commissioner under  
3 this subchapter shall not constitute a delegation of regulatory authority or  
4 rulemaking, and the commissioner is solely responsible for the  
5 administration, execution, and enforcement of this subchapter.

6 (g) A waiver of any applicable privilege or claim of confidentiality  
7 in the documents, proprietary and trade-secret materials, or other corporate  
8 governance annual disclosure-related information shall not occur as a result  
9 of disclosure of any corporate governance annual disclosure-related  
10 information or documents to the commissioner under this section or as a  
11 result of sharing as authorized under this subchapter.

12  
13 23-63-2007. Third-party consultants.

14 (a) The Insurance Commissioner may retain, at the insurer's expense,  
15 third-party consultants, including attorneys, actuaries, accountants and  
16 other experts not otherwise a part of the commissioner's staff, as may be  
17 reasonably necessary to assist the commissioner in reviewing the corporate  
18 governance annual disclosure and related information or the insurer's  
19 compliance with this subchapter.

20 (b) A person retained under subsection (a) of this section shall be  
21 under the direction and control of the commissioner and shall act in a purely  
22 advisory capacity.

23 (c) The National Association of Insurance Commissioners and third-  
24 party consultants shall be subject to the same confidentiality standards and  
25 requirements as the commissioner.

26 (d) As part of the retention process, a third-party consultant shall  
27 verify to the commissioner, with notice to the insurer, that it:

28 (1) Is free of a conflict of interest;

29 (2) Has internal procedures in place to monitor compliance with  
30 a conflict of interest; and

31 (3) Shall comply with the confidentiality standards and  
32 requirements of this subchapter.

33 (e) A written agreement with the National Association of Insurance  
34 Commissioners or a third-party consultant governing sharing and use of  
35 information provided under this subchapter shall contain the following  
36 provisions and require the written consent of the insurer before making



1 public any information provided under this subchapter:

2 (1) Specific procedures and protocols for maintaining the  
3 confidentiality and security of corporate governance annual disclosure-  
4 related information shared with the National Association of Insurance  
5 Commissioners or the third-party consultant under this subchapter;

6 (2)(A) Procedures and protocols for sharing by the National  
7 Association of Insurance Commissioners only with other state regulators from  
8 states in which the insurance group has domiciled insurers.

9 (B) The agreement shall provide that the recipient agrees  
10 in writing to maintain the confidentiality and privileged status of the  
11 corporate governance annual disclosure-related documents, materials, or other  
12 information and has verified in writing the legal authority to maintain  
13 confidentiality;

14 (3) A provision specifying that ownership of the corporate  
15 governance annual disclosure-related information shared with the National  
16 Association of Insurance Commissioners or the third-party consultant remains  
17 with the State Insurance Department and that the National Association of  
18 Insurance Commissioners' or third-party consultant's use of the information  
19 is subject to the direction of the commissioner;

20 (4) A provision that prohibits the National Association of  
21 Insurance Commissioners or the third-party consultant from storing the  
22 information shared under this subchapter in a permanent database after the  
23 underlying analysis is complete;

24 (5) A provision requiring the National Association of Insurance  
25 Commissioners or the third-party consultant to provide prompt notice to the  
26 commissioner and to the insurer or insurance group regarding any subpoena,  
27 request for disclosure, or request for production of the insurer's corporate  
28 governance annual disclosure-related information; and

29 (6) A requirement that the National Association of Insurance  
30 Commissioners or the third-party consultant consent to intervention by an  
31 insurer in any judicial or administrative action in which the National  
32 Association of Insurance Commissioners or the third-party consultant may be  
33 required to disclose confidential information about the insurer that has been  
34 shared with the National Association of Insurance Commissioners or the third-  
35 party consultant under this subchapter.

36

1           23-63-2008. Penalties.

2           (a) An insurer failing, without just cause, to timely file the  
3 corporate governance annual disclosure as required under this subchapter  
4 shall be required, after notice and hearing, to pay a penalty of one hundred  
5 dollars (\$100) for each day's delay, payable to the Insurance Commissioner,  
6 and the penalty recovered shall be paid into the General Revenue Fund Account  
7 of the State Apportionment Fund.

8           (b) The maximum penalty under subsection (a) of this section is ten  
9 thousand dollars (\$10,000).

10           (c) The commissioner may reduce the penalty if the insurer  
11 demonstrates to the commissioner that the imposition of the penalty would  
12 constitute a financial hardship to the insurer.

13  
14           23-63-2009. Nonseverability clause.

15           (a) Except for § 23-63-2007 or the application of § 23-63-2007 to any  
16 person or circumstance, if any provision of this subchapter is held invalid,  
17 the determination shall not affect the provisions of this subchapter that can  
18 be given effect without the invalid provision or application.

19           (b) With the exception of § 23-63-2007, this subchapter is severable.

20  
21           23-63-2010. Rules.

22           (a)(1) The Insurance Commissioner shall promulgate rules necessary to  
23 implement this subchapter.

24           (2)(A) When adopting the initial rules to implement this  
25 subchapter, the final rule shall be filed with the Secretary of State for  
26 adoption under § 25-15-204(f):

27                   (i) On or before January 1, 2020; or

28                   (ii) If approval under § 10-3-309 has not occurred  
29 by January 1, 2020, as soon as practicable after approval under § 10-3-309.

30           (B) The commissioner shall file the proposed rule with the  
31 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,  
32 2020, so that the Legislative Council may consider the rule for approval  
33 before January 1, 2020.

34  
35           SECTION 17. Arkansas Code § 23-64-219(a), concerning the procedure to  
36 appoint an agent by an insurer, is amended to read as follows:

1 (a)(1)(A) Each insurer appointing an agent in this state shall file  
2 with the Insurance Commissioner the initial agent appointment ~~setting out the~~  
3 ~~kinds of insurance to be transacted by the agent~~ and pay the fee.

4 (B) The appointment means the notification filed with the  
5 commissioner that an insurer has established an agency relationship with a  
6 producer.

7 (2) The appointing insurer's appointment of an agent shall be an  
8 indication to the commissioner that the insurer has reviewed the agent's  
9 *background and fitness to be an agent.*

10  
11 *SECTION 18. Arkansas Code § 23-65-306 is amended to read as follows:*  
12 *23-65-306. Brokers' affidavits reports.*

13 (a) *At the time of the procuring of surplus lines insurance in this*  
14 *state, when this state is considered the home state of the insured, the*  
15 *surplus lines broker shall file a report with the Insurance Commissioner*  
16 *within sixty (60) days following the end of the calendar quarter stating the*  
17 *facts referenced in §§ 23-65-313 and 23-65-314 and any additional information*  
18 *the commissioner shall require.*

19 ~~*(1) Execute an affidavit on a form prescribed by the Insurance*~~  
20 ~~*Commissioner;*~~

21 ~~*(2) Provide any information that the commissioner shall require;*~~

22 ~~*(3) State facts referred to in §§ 23-65-313 and 23-65-314; and*~~

23 ~~*(4) File the affidavit with the commissioner within sixty (60)*~~  
24 ~~*days following the end of the month in which the insurance was procured.*~~

25 (b) ~~*Affidavits or reports*~~ Reports *filed under this section are not*  
26 *subject to public inspection unless the commissioner determines that the*  
27 *public interest or the welfare of the filing broker requires otherwise.*

28  
29 *SECTION 19. Arkansas Code § 23-65-315(a), regarding the timing of*  
30 *remittance of premium taxes by a surplus lines broker, is amended as follows:*

31 (a) No later than sixty (60) days following the end of the ~~month~~  
32 calendar quarter in which surplus lines insurance was procured, the surplus  
33 lines broker shall remit to the Treasurer of State through the Insurance  
34 Commissioner a tax of four percent (4%) on the direct premiums written, less  
35 return premiums and exclusive of sums collected to cover state or federal  
36 taxes, on surplus lines insurance subject to tax transacted by the surplus

1 lines broker during the preceding months as shown by his or her affidavit  
2 filed with the commissioner calendar quarter for the privilege of transacting  
3 business as a surplus lines broker in this state.

4  
5 SECTION 20. Arkansas Code § 23-69-149(a), concerning assumption  
6 reinsurance agreements by stock insurers, is amended to read as follows:

7 (a)(1) A domestic stock insurer may reinsure all or substantially all  
8 of its insurance in force or a major class thereof with another insurer by an  
9 agreement of assumption reinsurance.

10 (2) However, ~~no~~ an agreement shall not become effective unless  
11 filed with the Insurance Commissioner and approved by him or her in writing  
12 ~~after a hearing thereon.~~

13 (3) With regard to proposed transactions between a domestic  
14 stock insurer which is a subsidiary or affiliate of a depository institution,  
15 and another insurer, the ~~hearing shall be concluded and the order~~  
16 determination of the commissioner shall be issued within the period required  
17 by federal law, ~~and the order shall be final upon entry.~~

18  
19 SECTION 21. Arkansas Code § 23-73-104, regarding the Insurance Code  
20 provisions applicable to farmers' mutual aid companies and associations, is  
21 amended as follows:

22 (15) Section 23-63-201 et seq., authority to do business.

23  
24 SECTION 22. Arkansas Code § 23-79-101 is amended to read as follows:  
25 23-79-101. Definitions.

26 As used in this ~~section and §§ 23-79-102—23-79-128, 23-79-131—23-~~  
27 ~~79-134, and 23-79-202—23-79-210~~ chapter:

28 (1) "Excepted benefits" means benefits under one (1) or more, or  
29 any combination thereof, of the following:

30 (A) Benefits not subject to requirements, including  
31 without limitation:

32 (i) Coverage only for accident or disability income  
33 insurance, or any combination thereof;

34 (ii) Coverage issued as a supplement to liability  
35 insurance;

36 (iii) Liability insurance, including general

1 liability insurance and automobile liability insurance;

2 (iv) Workers' compensation or similar insurance;

3 (v) Automobile medical payment insurance;

4 (vi) Credit-only insurance; and

5 (vii) Other similar insurance coverage, specified in  
6 regulations, under which benefits for medical care are secondary or  
7 incidental to other insurance benefits;

8 (B) Limited-scope dental or vision benefits;

9 (C) Benefits for long-term care, nursing home care, home  
10 health care, community-based care, or any combination thereof;

11 (D) Coverage only for a specified disease or illness;

12 (E) Hospital indemnity or other fixed indemnity insurance;

13 and

14 (F) Medicare supplemental health insurance as defined  
15 under section 1882(g)(1) of the Social Security Act, 42 U.S.C. §  
16 1395ss(g)(1), coverage supplemental to the coverage provided under 10 U.S.C.  
17 § 1071 et seq., and similar supplemental coverage;

18 (2) "Policy" means the written contract of or written agreement  
19 for or effecting insurance, by whatever name called, and includes all  
20 clauses, riders, endorsements, and papers made a part thereof; and

21 ~~(2)~~(3)(A) "Premium" is the consideration for insurance, by  
22 whatever name called.

23 (B) Any assessment, or any membership, policy, survey,  
24 inspection, service, or similar fee or charge in consideration for a policy  
25 is deemed part of the premium.

26  
27 SECTION 23. Arkansas Code Title 23, Chapter 79, Subchapter 1, is  
28 amended to add an additional section to read as follows:

29 23-79-162. Excepted benefits.

30 Excepted benefits are not subject to the requirements of this  
31 subchapter regarding coverage of a specific person, provider, treatment,  
32 service, condition, or disease unless that coverage is required by law.

33  
34  
35 /s/Rapert

36 **APPROVED: 3/20/19**