

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 84th General Assembly
3 Regular Session, 2003
4

A Bill

Act 466 of 2003
SENATE BILL 424

5 By: Senators Baker, T. Smith, Miller, Higginbothom, Horn, Altes
6 By: Representatives P. Bookout, Hathorn, Creekmore
7

For An Act To Be Entitled

10 AN ACT TO AMEND CERTAIN PROVISIONS OF THE
11 ARKANSAS CAPTIVE INSURER STATUTE; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 AN ACT TO AMEND CERTAIN PROVISIONS OF
15 THE ARKANSAS CAPTIVE INSURER STATUTE.
16
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18

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

21 SECTION 1. Arkansas Code § 23-63-1601 is amended to read as follows:
22 23-63-1601. Definitions.

23 As used in this subchapter, unless the context otherwise requires:

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

27 (2) "Alien captive insurance company" means an insurance company
28 formed to write insurance business for its parents and affiliates and
29 licensed under the laws of an alien jurisdiction which imposes statutory or
30 regulatory standards in a form acceptable to the Insurance Commissioner on
31 companies transacting the business of insurance in the alien jurisdiction;

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

35 (A) The member organizations of which collectively, or which
36 does itself:



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

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

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

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

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

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

18 (B) A branch captive insurance company must be a pure captive
19 insurance company with respect to operations in this state, unless permitted
20 by the commissioner;

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

23 (8) "Captive insurance company" means a producer reinsurance captive
24 insurance company, pure captive insurance company, association captive
25 insurance company, sponsored captive insurance company, special purpose
26 captive insurance company, or industrial insured captive insurance company
27 formed or licensed under this subchapter;

28 (9) "Commissioner" means the Insurance Commissioner ~~of the State~~
29 ~~Insurance Department or the commissioner's designee;~~

30 (10) "Controlled unaffiliated business" means a company:

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

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

35 (C) Whose risks are managed by a pure captive insurance company
36 or reinsured by a pure captive insurance company;

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

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

3 (i) Which procures insurance by use of the services of a
 4 full-time employee acting as a risk manager or insurance manager or utilizing
 5 the services of a regularly and continuously qualified insurance consultant;

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

8 (iii) Which has at least twenty-five (25) full-time
 9 employees.

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

12 (13)(A) "Industrial insured captive insurance company" means a company
 13 that insures risks of the industrial insureds that compose the industrial
 14 insured group and their affiliated companies.

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

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

19 (i) A group of industrial insureds that collectively:

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

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

25 (ii) A group which is created under the Product Liability
 26 Risk Retention Act of 1981, 15 U.S.C. §§ 3901 et seq., as it existed January
 27 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201 et
 28 seq., or as a corporation or other limited liability association taxable as a
 29 stock insurance company or a mutual insurer under the Arkansas Insurance
 30 Code, § 23-60-101 et seq.

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

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

35 (16) "Parent" means a corporation, partnership, or individual that
 36 directly or indirectly owns, controls, or holds with power to vote more than

1 fifty percent (50%) of the outstanding voting securities of a pure captive
2 insurance company;

3 (17) "Participant" means an entity as defined in § 23-63-1621, and any
4 affiliates of that entity, that are insured by a sponsored captive insurance
5 company where the losses of the participant are limited through a participant
6 contract to the assets of a protected cell;

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

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

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

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

20 ~~(22) "Retrocession" means a transaction whereby an accredited~~
21 ~~reinsurer under §§ 23-62-305—23-62-308 or an authorized insurer cedes to~~
22 ~~another reinsurer all or part of the reinsurance it has previously assumed;~~

23 "Special purpose captive insurance company" means a captive insurance company
24 that is formed or licensed under this chapter that does not meet the
25 definition of any other type of captive insurance company defined in this
26 section;

27 (23) "Sponsor" means an entity that meets the requirements of § 23-63-
28 1620 and is approved by the commissioner to provide all or part of the
29 capital and surplus required by applicable law and to organize and operate a
30 sponsored captive insurance company; and

31 (24) "Sponsored captive insurance company" means a captive insurance
32 company:

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

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

36 (C) That insures the risks of separate participants through the

1 contract; and

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

4

5 SECTION 2. Arkansas Code § 23-63-1602 is amended to read as follows:
6 23-63-1602. Application for license.

7 (a) A captive insurance company, when permitted by its articles of
8 incorporation or charter, may apply to the Insurance Commissioner for a
9 license to do any and all insurance, including workers’ compensation
10 insurance, authorized by the Arkansas Insurance Code. However:

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

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

17 (3) An industrial insured captive insurance company may not
18 insure any risks other than those of the industrial insureds that compose the
19 industrial insured group and their affiliated companies;

20 (4) A captive insurance company may not provide personal motor
21 vehicle or homeowner’s insurance coverage or any component of these
22 coverages;

23 (5) A captive insurance company may not accept or cede
24 reinsurance except as authorized by § 23-63-1611;~~and~~

25 (6) A producer reinsurance captive insurance company may not
26 ~~accept retrocession of~~ reinsure any risks other than those written by or
27 placed through its parent or ~~affiliated licensed insurance producer and~~
28 ~~written by authorized insurers.~~ an affiliate of its parent and written by
29 authorized insurers; and

30 (7) The following statement must appear on the front of every
31 policy or certificate of insurance issued by a captive insurance company:

32 “THIS CONTRACT IS REGISTERED AND DELIVERED AS A POLICY UNDER ARKANSAS
33 CODE §§ 23-63-1601 THROUGH 23-63-1623. THIS POLICY MAY BE DIFFERENT FROM
34 POLICIES ISSUED IN THE OPEN MARKET. IT MAY BE MORE OR LESS FAVORABLE TO AN
35 INSURED THAN A CONTRACT ISSUED BY AN ADMITTED CARRIER. THE PROTECTION OF THE
36 ARKANSAS PROPERTY AND CASUALTY INSURANCE GUARANTY ACT, ARKANSAS CODE § 23-90-

1 101, DOES NOT APPLY TO THIS CONTRACT.”

2 (b) To conduct insurance business in this state, a captive insurance
3 company shall:

4 (1) ~~Obtain from the commissioner a license authorizing it~~ Be
5 licensed to conduct insurance business in this state;

6 (2) Hold at least one (1) board of directors meeting, or in the
7 case of a reciprocal insurer, a subscriber’s advisory committee meeting, each
8 year in this state;

9 (3) Maintain its ~~principal place of business~~ registered office
10 in this state, or in the case of a branch captive insurance company, maintain
11 the ~~principal place of business~~ registered office for its branch operations
12 in this state; and

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

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

16 (i) Formed as a corporation, the commissioner must
17 be ~~an~~ designated as the agent of the captive insurance company upon whom any
18 process, notice, or demand may be served whenever the registered agent
19 cannot, with reasonable diligence, be found at the registered office of the
20 captive insurance company;

21 (ii) Formed as a reciprocal insurer, the
22 commissioner must be ~~an~~ designated as the agent of the captive insurance
23 company upon whom any process, notice, or demand may be served whenever the
24 registered agent cannot, with reasonable diligence, be found at the
25 registered office of the captive insurance company.

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

27 (A) Formed as a corporation shall file with the
28 commissioner:

29 (i) A certified copy of its ~~charter~~ articles of
30 incorporation and bylaws;

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

33 (iii) Any other statements or documents required by
34 the commissioner;

35 (B) Formed as a reciprocal shall file with the
36 commissioner:

- 1 (i) A certified copy of the power of attorney of its
- 2 attorney in fact;
- 3 (ii) A certified copy of its subscribers' agreement;
- 4 (iii) A statement under oath of its attorney in fact
- 5 showing its financial condition; and
- 6 (iv) Any other statements or documents required by
- 7 the commissioner; or

8 (C)(i) Formed as a reciprocal shall obtain the
 9 commissioner's approval of its coverages, deductibles, coverage limits, and
 10 rates.

11 (ii) If there is a subsequent material change in an
 12 item in the description, the reciprocal captive insurance company shall
 13 submit to the commissioner for approval an appropriate revision and may not
 14 offer any additional kinds of insurance until a revision of the description
 15 is approved by the commissioner.

16 (iii) The reciprocal captive insurance company shall
 17 inform the commissioner of any material change in rates within thirty (30)
 18 days of the adoption of the change.

19 (2) In addition to the information required by subdivision
 20 (c)(1) of this section, ~~an applicant~~ a captive insurance company applying for
 21 a license shall file with the commissioner evidence of:

22 (A) The amount and ~~liquidity~~ description of its assets
 23 relative to the risks to be assumed;

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

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

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

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

32 (3) In addition to the information required by subdivisions
 33 (c)(1) and (2) of this section, an applicant producer reinsurance captive
 34 insurance company or a sponsored captive insurance company shall file with
 35 the commissioner:

36 (A) A business plan demonstrating how the applicant will

1 account for the loss and expense experience of each protected cell ~~at a level~~
 2 ~~of detail found to be sufficient by~~ in as much detail as the commissioner may
 3 require, and ~~how~~ the manner in which it will report the experience to the
 4 commissioner;

5 (B) A statement acknowledging that all financial records
 6 of the captive insurance company, including records pertaining to any
 7 protected cells, must be made available for inspection or examination by the
 8 commissioner; and

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

11 (4) In addition to the information required by subdivisions
 12 (c)(1)-(3) of this section, ~~an applicant-sponsored~~ a sponsored captive
 13 insurance company shall file with the commissioner all contracts between the
 14 sponsored captive insurance company and any participants.

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

18 (A) Information may be discoverable by a party in a civil
 19 action or contested case to which the captive insurance company that
 20 submitted the information is a party, upon a showing by the party seeking to
 21 discover the information that:

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

24 (ii) The information sought is unavailable from
 25 other nonconfidential sources; and

26 (iii) A subpoena issued by a judicial or
 27 administrative officer of competent jurisdiction has been submitted to the
 28 commissioner. However, subdivision (c)(4) of this section does not apply to
 29 an industrial insured captive insurance company insuring the risks of an
 30 industrial insured group; and

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

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

36 (ii) The laws of the state in which the public

1 official serves require the information to be confidential.

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

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

8 (3) Section 23-61-208 applies to examinations, investigations,
 9 and processing conducted under the authority of this section.

10 (4) In addition, a captive insurance company shall pay to the
 11 fund a license fee for the year of registration and a renewal fee in an
 12 amount and manner to be prescribed by regulation.

13 (e) If the commissioner is satisfied that the documents and statements
 14 filed by the captive insurance company comply with this subchapter, the
 15 commissioner may grant a license authorizing the company to do insurance
 16 business in this state until March 1, at which time the license may be
 17 renewed.

18

19 SECTION 3. Arkansas Code § 23-63-1604 is amended to read as follows:
 20 23-63-1604. Capital requirements.

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

27 (A) In the case of a producer reinsurance captive
 28 insurance company ~~or a pure captive insurance company~~, not less than ~~one~~
 29 ~~hundred thousand dollars (\$100,000)~~ three hundred thousand dollars
 30 (\$300,000);

31 (B) In the case of 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 ~~(C)(D)~~ In the case of an industrial insured captive

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

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

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

10 (2) The capital may be in the form of ~~cash or~~ cash, other assets
11 acceptable to the commissioner, or an irrevocable letter of credit issued by
12 a bank chartered by this state or a member bank of the Federal Reserve System
13 and approved by the commissioner.

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

16 (2) This capital may be in the form of cash, other assets
17 acceptable to the commissioner, or an irrevocable letter of credit issued by
18 a bank chartered by this state or a member bank of the Federal Reserve
19 System.

20 (c)(1) In the case of a branch captive insurance company, as security
21 for the payment of liabilities attributable to branch operations, the
22 commissioner shall require that a trust fund, funded by an irrevocable letter
23 of credit or other acceptable asset, be established and maintained in the
24 United States for the benefit of United States policyholders and United
25 States ceding insurers under insurance policies issued or reinsurance
26 contracts issued or assumed by the branch captive insurance company through
27 its branch operations.

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

33 (B)(i) The commissioner may permit a branch captive
34 insurance company that is required to post security for loss reserves on
35 branch business by its reinsurer to reduce the funds in the trust account
36 required by this section by the same amount so long as the security remains

1 posted with the reinsurer.

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

5 (d)(1) A captive insurance company may not pay a dividend out of, or
 6 other distribution with respect to, capital or surplus, in excess of the
 7 limitations set forth in § 23-63-515, without the prior approval of the
 8 commissioner.

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

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

15

16 SECTION 4. Arkansas Code § 23-63-1605 is amended to read as follows:
 17 23-63-1605. Surplus requirements.

18 (a)(1) The Insurance Commissioner may not issue a license to a captive
 19 insurance company, unless the company possesses and maintains ~~free~~ unimpaired
 20 surplus of:

21 (A) In the case of a producer reinsurance captive
 22 insurance company, not less ~~that than one hundred thousand dollars (\$100,000)~~
 23 three hundred thousand dollars (\$300,000);

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

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

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

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

35 (F) In the case of an industrial insured captive insurance
 36 company incorporated as a mutual insurer, not less than five hundred thousand

1 dollars (\$500,000); and

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

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

9 (2) The surplus may be in the form of ~~cash or~~ cash, other assets
 10 acceptable to the commissioner, or an irrevocable letter of credit:

11 (A) Issued by a bank chartered by this state or a member
 12 bank of the Federal Reserve System; and

13 (B) Approved by the commissioner.

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

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

20 (2) This capital may be in the form of cash, other assets
 21 acceptable to the commissioner, or an irrevocable letter of credit issued by
 22 a bank chartered by this state or a member bank of the Federal Reserve
 23 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 § 23-63-515, without the prior approval of the
 27 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 each
 30 payment of capital or surplus in excess of amounts specified by or determined
 31 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 23-63-1606. 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 domestic stock insurer under § 23-69-206 with its capital
 3 divided into shares and held 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 § 23-70-101 et seq.

12 (c) A captive insurance company may not have fewer than ~~three (3)~~
 13 ~~incorporators of whom not fewer than two (2) must be residents of this state,~~
 14 one (1) incorporator.

15 ~~(d) Before the articles of incorporation of a captive insurance~~
 16 ~~company formed as a corporation are transmitted to the Insurance~~
 17 ~~Commissioner, the incorporators shall petition the commissioner to issue a~~
 18 ~~certificate setting forth a finding that the establishment and maintenance of~~
 19 ~~the proposed corporation will promote the general good of the state. In~~
 20 ~~arriving at this 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 § 23-~~
 29 ~~63-1602(d), must be transmitted to the commissioner, who shall record both~~
 30 ~~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)(d)~~ The alien captive insurance company may register to do business
 15 in this state after the commissioner's certificate has been issued.

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

18 ~~(i)(f)~~ 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~~ the United States or a United States territory.

21 ~~(j)(g)~~ 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~~ the United States or a United States territory.

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

27 (2) If a conflict occurs between general corporation law and
 28 this subchapter, 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)~~(i)(1)(A) A captive insurance company formed as a reciprocal
 3 insurer under this subchapter is subject to § 23-70-101 et seq. and
 4 applicable provisions of this subchapter.

5 (B) If a conflict occurs between § 23-70-101 et seq. and
 6 this subchapter, the latter controls.

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

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

16 ~~(m)~~(j) 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 4-27-824(B).

20 ~~(n)~~(k) 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 6. Arkansas Code § 23-63-1607 is amended to read as follows:
 26 23-63-1607. Reporting.

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

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

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

36 (B) The commissioner may require, approve, or accept

1 ~~necessary~~ appropriate modifications or adaptations for the type of insurance
2 and kinds of insurers to be reported upon, supplemented by additional
3 information.

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

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

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

16 (1) The annual report is due no later than sixty (60) days after
17 the fiscal year-end; and

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

23 (d)(1) Sixty (60) days after the fiscal year-end, a branch captive
24 insurance company shall file with the commissioner a copy of all reports and
25 statements required to be filed under the laws of the jurisdiction in which
26 the alien captive insurance company is formed, verified by oath by two (2) of
27 its executive officers.

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

34 (B) The waiver must be in writing and subject to public
35 inspection.

36

1 SECTION 7. Arkansas Code § 23-63-1614(i), concerning an exception to
 2 the tax rates of captive insurance companies, is amended to read as follows:

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 certificates of deposit of any bank organized
 6 under the laws of the United States with a banking facility in the State of
 7 Arkansas or any federally insured bank or savings institution organized under
 8 the laws of the State of Arkansas, or bonds, notes, warrants, or other
 9 securities, not in default, which are direct obligations of:

10 (1) This state;

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

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

29
 30 SECTION 8. Arkansas Code § 23-63-1616 is amended to read as follows:
 31 23-63-1616. Limitations.

32 (a) The Arkansas Insurance Code does not apply to captive insurance
 33 companies except for those provisions contained in or specifically referenced
 34 in this subchapter which are to be incorporated into the Arkansas Insurance
 35 Code.

36 (b) The commissioner may, by rule, regulation, or other order exempt

1 special purpose captive insurance companies, on a case by case basis, from
2 the provisions of this chapter that he or she determines to be inappropriate,
3 given the nature of the risks to be insured.

4
5 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
6 General Assembly of the State of Arkansas that captive insurers are making a
7 presence in Arkansas and that the present regulatory scheme places undue
8 burdens on captive insurers. Therefore, an emergency is declared to exist
9 and this act being immediately necessary for the preservation of the public
10 peace, health, and safety shall become effective on:

11 (1) The date of its approval by the Governor;

12 (2) If the bill is neither approved nor vetoed by the Governor,
13 the expiration of the period of time during which the Governor may veto the
14 bill; or

15 (3) If the bill is vetoed by the Governor and the veto is
16 overridden, the date the last house overrides the veto.

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19 APPROVED: 3/18/2003
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