

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2502

"TO PROVIDE FOR THE LICENSING AND REGULATION OF CAPTIVE INSURERS."

Amendment No. 1 to House Bill No. 2502.

Amend House Bill No. 2502 as originally introduced:

Delete everything after the Enacting Clause and substitute:

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

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

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

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

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

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

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

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

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

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

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

(7) "Branch operations" means any business operations of a branch

captive insurance company in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A group of industrial insureds that collectively:

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

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

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

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

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

(16) "Parent" means a corporation, partnership, or individual that

directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company;

(17) "Participant" means an entity as defined in Section 21 of this act, and any affiliates of that entity, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to the assets of a protected cell;

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. Application for license.

(a) A captive insurance company, when permitted by its articles of incorporation or charter, may apply to the commissioner for a license to do any and all insurance, including workers' compensation insurance, authorized by the Arkansas Insurance Code; however:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) A description of the coverages, deductibles, coverage limits, and rates, and any other information the commissioner may reasonably require.

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

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

(2) In addition to the information required by subsection (c)(1) of this section, an applicant captive insurance company shall file with the commissioner evidence of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) A subpoena issued by a judicial or

administrative officer of competent jurisdiction has been submitted to the commissioner; however, subsection (c)(4) of this section does not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group; and

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

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

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

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

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

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

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

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

SECTION 3. Similar names.

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

SECTION 4. Capital requirements.

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

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

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

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

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

(2) The capital may be in the form of cash or an irrevocable

letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

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

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

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

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

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

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

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

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

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

SECTION 5. Surplus requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. Organization.

(a) A producer reinsurance captive insurance company, pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

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

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

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

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

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

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

finding the commissioner shall consider:

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

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

(3) Other aspects as the commissioner considers advisable.

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

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

(1) The character, reputation, financial standing, and purposes of the organizers;

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

(3) Other aspects the commissioner considers advisable.

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

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

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

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

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

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

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

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

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

(C) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the hearing.

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

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

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

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

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

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

SECTION 7. Reporting.

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

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

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

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

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

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

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

(1) The annual report is due sixty (60) days after the fiscal

year end; and

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

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

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

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

SECTION 8. Examinations.

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

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

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

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

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

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

(c)(1)(A) This section applies to all business written by a captive

insurance company.

(B) The examination for a branch captive insurance company must be of branch business and branch operations only, as long as the branch captive insurance company provides annually to the commissioner, a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.

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

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

SECTION 9. Suspension and revocation

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

(1) Insolvency or impairment of capital or surplus;

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

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

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

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

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

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

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

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

SECTION 10. Investments.

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

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

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

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

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

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

SECTION 11. Reinsurance.

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

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

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

SECTION 12. Rating organizations.

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

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

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

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

SECTION 14. Premium tax.

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

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

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

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

(4) Seventy-five thousandths of one percent (.075 of 1%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as

return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) No other tax may be levied or collected from a captive insurance company by this state, or a county, city, or municipality of this state, except ad valorem taxes on real and personal property used in the production of income.

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

(1) Direct obligations of this state;

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

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

SECTION 15. Regulations.

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

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

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

SECTION 16. Limitations.

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

SECTION 17. Reorganizations, receiverships, and injunctions.

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

SECTION 18. Availability of funds.

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

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

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

SECTION 19. Conversions and mergers.

(a) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be converted to or merged

with and into a reciprocal insurer in accordance with a plan and this section.

(b) A plan for conversion or merger:

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

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

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

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

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

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

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

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

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

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

(D) Is approved;

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

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

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

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

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

(6) Upon the effectiveness of the conversion the corporate existence of the converting insurer shall cease.

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

For purposes of the merger:

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

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

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

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

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

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

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

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

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

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

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

SECTION 20. Sponsorship requirements.

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

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

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

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

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

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

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

(d) A risk retention group may not be either a sponsor or a

participant of a sponsored captive insurance company.

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

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

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

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

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

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

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

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

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

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

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

SECTION 21. Participants.

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

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

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

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

SECTION 22. Producer reinsurance protected cell requirements.

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

(1) Each protected cell must be accounted for separately on the books and records of the producer reinsurance captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions, and other factors as may be required by the commissioner;

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

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

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

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

SECTION 23. Certificate of authority.

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

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

The Amendment was read _____
By: Representative Hunt
PB/CDS - 031320011049
CDS402 _____ **Chief Clerk**