

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

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

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

## A Bill

HOUSE BILL 2502

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

### For An Act To Be Entitled

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

### Subtitle

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

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

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

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

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

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

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

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

1 incorporated as a stock insurer; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34  
35 SECTION 2. Application for license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35  
36 SECTION 3. Similar names.



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

4  
5 SECTION 4. Capital requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26  
27 SECTION 5. Surplus requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34  
35 SECTION 6. Organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the organizers;

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

5 (3) Other aspects the commissioner considers advisable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24  
25 SECTION 7. Reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

35  
36 SECTION 8. Examinations.

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

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

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

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

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

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

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

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



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

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

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

12  
13 SECTION 9. Suspension and revocation

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

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

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

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

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

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

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

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

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

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

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

3  
4 SECTION 10. Investments.

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

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

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

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

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

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

22  
23 SECTION 11. Reinsurance.

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

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

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

32  
33 SECTION 12. Rating organizations.

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

36

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

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

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

13  
14           SECTION 14. Premium tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (1) Direct obligations of this state;

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

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

26  
 27 SECTION 15. Regulations.

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

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

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

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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

1 this section:

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

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

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

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

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

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

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

19 (D) Is approved;

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

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

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

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

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

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

1 existence of the converting insurer shall cease.

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

4 For purposes of the merger:

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

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

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

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

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

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

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

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

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

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



1 23-63-530.

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

5  
6 SECTION 20. Sponsorship requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20  
21 SECTION 21. Participants.

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

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

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

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

31  
32 SECTION 22. Producer reinsurance protected cell requirements.

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

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

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

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

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

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

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

18  
19 SECTION 23. Certificate of authority.

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

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

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*/s/ Hunt, et al.*