

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1476

By: Representative Collins

For An Act To Be Entitled

AN ACT TO REVISE CERTAIN PROVISIONS RELATED TO
FORMATION AND OPERATION OF CAPTIVE INSURANCE
COMPANIES; AND FOR OTHER PURPOSES.

Subtitle

TO REVISE CERTAIN PROVISIONS RELATED TO
FORMATION AND OPERATION OF CAPTIVE
INSURANCE COMPANIES.

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

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

As used in this subchapter:

(1) "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;

(2) "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 that imposes statutory or regulatory standards in a form acceptable to the Insurance Commissioner on companies transacting the business of insurance in the alien jurisdiction;

(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)(A) "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.

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

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

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

(9) "Commissioner" means the Insurance Commissioner;

(10) "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;

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

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

~~(12)(A)~~(13)(A) "Industrial insured" means an insured:

(i) ~~Which~~ That 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~~ That has at least twenty-five (25) full-time employees.

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

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

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

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

(i) 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

(ii) A group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as it existed January 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., or 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 § 23-82-101 et seq.;

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

~~(16)~~(17) “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)~~(18) “Participant” means an entity as defined in § 23-63-1621 and any affiliates of that entity that are insured by a sponsored captive insurance company when the losses of the participant are limited through a participant contract to the assets of a protected cell;

~~(18)~~(19) “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)~~(20) “Producer reinsurance captive insurance company” means a company that is wholly owned by a resident licensed insurance producer and that acts only as a reinsurer for risks written by or placed through its parent or an affiliate of its parent;

~~(20)~~(21) “Protected cell” means a separate account established and maintained by a sponsored captive insurance company for one (1) participant or by a producer reinsurance captive insurance company and includes an incorporated protected cell;

~~(21)~~(22) “Pure captive insurance company” means a company that insures risks of its parent and affiliated companies or controlled unaffiliated business;

~~(22)~~(23) “Special purpose captive insurance company” means a captive insurance company that is formed or licensed under this chapter and does not meet the definition of any other type of captive insurance company defined in this section;

~~(23)~~(24) “Sponsor” means an entity that meets the requirements of § 23-63-1620 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; and

~~(24)~~(25) “Sponsored captive insurance company” means a captive insurance company:

- (A) In which the minimum capital and surplus required is provided by one (1) or more sponsors;
- (B) That is formed or licensed under this subchapter;
- (C) That insures the risks of separate participants through the contract; and
- (D) That segregates each participant's liability through one (1) or more protected cells.

SECTION 2. The introductory language of Arkansas Code § 23-63-1602(a), concerning the application for licensure of a captive insurer, is amended to read as follows:

(a) When permitted by its ~~articles of incorporation or charter~~ organizational documents, a captive insurance company may apply to the Insurance Commissioner for a license to do all insurance, including workers' compensation insurance, authorized by the Arkansas Insurance Code. However:

SECTION 3. Arkansas Code § 23-63-1606 is amended to read as follows:
23-63-1606. Organization.

(a) A ~~producer reinsurance captive insurance company, pure captive insurance company, or a sponsored captive insurance company must~~ may be incorporated as a domestic stock insurer under § 23-69-206 with its capital divided into shares and held by the stockholders formed and operated in any form of business organization authorized under Arkansas law and approved by the Insurance Commissioner.

(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 § 23-70-101 et seq.~~

~~(c) A captive insurance company shall have at least one (1) incorporator.~~

~~(d) The alien captive insurance company may register to do business in this state after the Insurance Commissioner's~~ commissioner's certificate has

been issued.

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

~~(f)~~(d) 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~~ shall be a resident of the United States or a United States territory.

~~(g)~~(e) At least one (1) of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer ~~must~~ shall be a resident of the United States or a United States territory.

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

(2) If a conflict occurs between ~~general corporation~~ business organization law and this subchapter, the latter controls.

(3)(A) The Arkansas Insurance Code concerning mergers, consolidations, conversions, mutualizations, and redomestications applies 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~~ rules that 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.

~~(i)~~(1)(A)(g)(1)(A) A captive insurance company formed as a reciprocal insurer under this subchapter is subject to § 23-70-101 et seq. and ~~applicable provisions~~ of this subchapter.

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

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

(2) In addition to subdivision ~~(i)~~(1)(g)(1) of this section, a captive insurance company organized as a reciprocal insurer that is an

industrial insured group is subject to § 23-70-101 et seq. and applicable provisions of the Arkansas Insurance Code.

~~(j)~~(h) 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 § 4-27-824(b).

~~(k)~~(i) 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 4. Arkansas Code § 23-63-1607(b), concerning reporting requirements of a captive insurance company, is amended to read as follows:

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

(2)(A) Except as provided in §§ 23-63-1604 and 23-63-1605, 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 appropriate 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 their reports in the form required by § 23-63-216(a).

~~(i) An association captive insurance company shall file its report in the form required by § 23-63-216(a); and~~

~~(ii) An industrial insured group shall:~~

~~(a) File its report in the form required by § 23-63-216(a); and~~

~~(b) Comply with § 23-63-216(b)(1).~~

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

SECTION 5. Arkansas Code § 23-63-1619(a), concerning the conversions and mergers of a captive insurance company, is amended to read as follows:

(a) ~~An association~~ A 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~~ another captive insurance company according to a plan and this section.

SECTION 6. Arkansas Code § 23-63-1619(c)(3), concerning the plan of conversion of a captive insurance company, is amended to read as follows:

(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 § 23-63-1606(f)~~ stated in § 23-63-1606(d);

SECTION 7. Arkansas Code § 23-63-1619(d)(5)(A), concerning the articles of merger of a captive insurance company, is amended to read as follows:

(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 § 23-63-1606(f)~~ stated in § 23-63-1606(d).

SECTION 8. Arkansas Code § 23-63-1620(c), concerning the business written by a sponsored captive insurance company, is amended to read as follows:

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

SECTION 9. Arkansas Code § 23-63-1620, concerning the sponsorship requirements necessary to form a sponsored captive insurance company, is amended to add two (2) additional subsections to read as follows:

(f) A protected cell of a sponsored captive insurance company may be formed as an incorporated protected cell subject to subsection (e) of this

section and the following conditions:

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

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

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

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

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

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

(A) Subject to the prior written approval of the commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell or as otherwise permitted pursuant to a participation agreement, a sponsored captive insurance company may convert a protected cell into an incorporated protected cell without affecting the protected cell's assets, rights, benefits, obligations, and liabilities; and

(B) Any such conversion shall be deemed:

(i) For all purposes to be a continuation of the protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as an incorporated protected cell of the

sponsored captive insurance company; and

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

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

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

SECTION 10. Arkansas Code Title 23, Chapter 63, Subchapter 16, is amended to add an additional section to read as follows:

23-63-1624. Dormant captive insurance company – Definition.

(a) As used in this section, “dormant captive insurance company” means a pure captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company that has:

(1) Ceased transacting the business of insurance, including the issuance of insurance policies; and

(2) No remaining liabilities associated with insurance business transactions, or insurance policies issued before the filing of its application for a certificate of dormancy under this section.

(b)(1) A captive insurance company domiciled in this state that meets the criteria of subsection (a) of this section may apply to the Insurance Commissioner for a certificate of dormancy.

(2) The certificate of dormancy is subject to renewal every five (5) years and shall be forfeited if not renewed within that time.

(c) A dormant captive insurance company that has been issued a certificate of dormancy shall:

(1) Possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than twenty-five thousand dollars (\$25,000);

(2) Before March 15 of each year, submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers, in a form as may be prescribed by the commissioner; and

(3) Pay a license renewal fee as provided in the rules

promulgated by the commissioner under Section 18 of Rule and Regulation 73 of the State Insurance Department.

(d) A dormant captive insurance company is not subject to or liable for the payment of any tax under § 23-63-1614.

(e) A dormant captive insurance company shall apply to the commissioner for approval to surrender its certificate of dormancy and resume conducting the business of insurance before issuing any insurance policies.

(f) A certificate of dormancy shall be revoked if a dormant captive insurance company no longer meets the criteria of subsection (a) of this section.

(g) The commissioner may establish guidelines and procedures as necessary to carry out this section.