

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

State of Arkansas
95th General Assembly
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A Bill

SENATE BILL 237

By: Senator J. Boyd
By: Representative Steimel

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE LICENSING AND
REGULATION OF CAPTIVE INSURERS; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE
LICENSING AND REGULATION OF CAPTIVE
INSURERS.

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

SECTION 1. Arkansas Code § 23-63-1601(3), concerning the definition of "association" used in the licensing and regulation of captive insurers, is amended to read as follows:

(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;



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SECTION 2. Arkansas Code § 23-63-1601(9), concerning the definition of "Commissioner" used in the licensing and regulation of captive insurers, is repealed.

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

SECTION 3. Arkansas Code § 23-63-1601(11), concerning the definition of "Department" used in the licensing and regulation of captive insurers, is repealed.

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

SECTION 4. Arkansas Code § 23-63-1602, concerning the application for a license as a captive insurer, is amended to add an additional subsection to read as follows:

(f)(1) Notwithstanding any other provision of this subchapter, the commissioner may issue a provisional license to a captive insurance company applying for a license under this subchapter if the commissioner finds that issuing a provisional license is in the public's best interest.

(2) As a condition to the issuance of a provisional license under subdivision (f)(1) of this section:

(A) The applicant shall have:

(i) Filed a complete application containing all information required by this section; and

(ii) Paid all fees required for a license; and

(B) The commissioner shall have made a preliminary finding that the expertise, experience, and character of the person who will control and manage the applicant are acceptable.

(3) The commissioner may by order:

(A) Limit the authority of a provisional license in any way deemed necessary to protect insureds and the public; or

(B) Revoke a provisional license if the interests of insureds or the public are endangered.

(4) If an applicant fails to complete the regular licensure application process under this section, the provisional license shall automatically terminate.

SECTION 5. Arkansas Code § 23-63-1604(a)(1), concerning the capital requirements of a captive insurance company, is amended to read as follows:

(a)(1) The Insurance Commissioner shall 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, not less than three hundred thousand dollars (\$300,000);

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

(C) In the case of an association captive insurance company incorporated as a stock insurer, not less than ~~four hundred thousand dollars (\$400,000)~~ two hundred fifty thousand dollars (\$250,000);

(D) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than ~~two hundred thousand dollars (\$200,000)~~ two hundred fifty thousand dollars (\$250,000);

(E) In the case of a sponsored captive insurance company, not less than ~~two hundred fifty thousand dollars (\$250,000)~~ one hundred thousand dollars (\$100,000); or

(F) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than ~~three hundred thousand dollars (\$300,000)~~ one hundred twenty-five thousand dollars (\$125,000).

SECTION 6. Arkansas Code § 23-63-1604(d), concerning dividends and distributions by a captive insurance company, is amended to read as follows:

(d)(1) A captive insurance company ~~may not~~ shall not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in § 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~~ shall 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~~ according to formulas approved by the commissioner.

(3) This subsection ~~shall not~~ does not apply to producer reinsurance captive insurance companies.

(4)(A) A pure captive insurance company is not required to obtain prior approval by the commissioner for payment of an ordinary dividend.

(B) A pure captive insurance company shall obtain the prior approval by the commissioner for an extraordinary dividend or distribution as defined in § 23-63-515.

SECTION 7. Arkansas Code § 23-63-1605(a)(1), concerning surplus requirements for a captive insurance company, is amended to read as follows:

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

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

(B) In the case of a pure captive insurance company, not less than ~~one hundred fifty thousand dollars (\$150,000)~~ one hundred thousand dollars (\$100,000);

(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)~~ two hundred fifty thousand dollars (\$250,000);

(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)~~ two hundred fifty thousand dollars (\$250,000);

(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)~~ five hundred thousand dollars (\$500,000);

(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);

(G) In the case of a sponsored captive insurance company, not less than ~~two hundred fifty thousand dollars (\$250,000)~~ one hundred

thousand dollars (\$100,000); and

(H) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than ~~three hundred thousand dollars (\$300,000)~~ one hundred twenty-five thousand dollars (\$125,000).

SECTION 8. Arkansas Code § 23-63-1606 is amended to read as follows:
23-63-1606. Organization.

(a) A captive insurance company may be formed and operated in any form of business organization authorized under Arkansas law and approved by the Insurance Commissioner.

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

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

(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 shall be a resident of the United States or a United States territory.

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

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

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

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

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

(C) A conversion may be accomplished under a reasonable

plan and procedure as may be approved by the commissioner and according to rules that the commissioner may promulgate.

(D) The commissioner may waive or modify the requirements for public notice and hearing.

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

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

(g)(1)(A) Notwithstanding any other method authorized by law, a foreign or alien insurer may become a domestic captive insurance company by complying with the requirements of this subchapter relative to the organization and licensing of a domestic captive insurance company of the same type with the approval of the commissioner.

(B) A foreign or alien insurer redomesticating to this state under this section may be organized under any corporate form permitted by this chapter.

(2)(A) A foreign or alien insurer that is domiciled in a foreign or alien jurisdiction may redomesticate under this section if as a result of the actions taken by the foreign or alien insurer under this section to redomesticate to this state, the foreign or alien insurer shall no longer be a domestic legal entity of the foreign or alien jurisdiction.

(B) A foreign or alien insurer that applies to redomesticate under this section shall provide evidence to the commissioner that the applicable regulatory authority of the foreign or alien jurisdiction of its domicile has no objection to the redomestication.

(3)(A) The foreign or alien insurer applying to redomesticate under this section shall:

(i) File with the Secretary of State its articles of association, charter, or other organizational document, together with appropriate amendments thereto adopted according to the laws of this state;

(ii) Bring the articles of association, charter, or other organizational document into compliance with the laws of this state;
and

(iii) Obtain an approval letter issued by the

commissioner.

(B) The foreign or alien insurer may file with the Secretary of State an election deferring the effective date of the redomestication.

(C) Upon filing and paying any required fees, the Secretary of State shall issue an acknowledgement letter to the applicant.

(4) The foreign or alien insurer shall file a copy of the Secretary of State's acknowledgement letter with the commissioner, who shall then issue a license under § 23-63-1602.

(5) Upon the completion of a redomestication under this section, the captive insurance company shall be:

(A) Considered domiciled in this state;

(B) Subject to this subchapter; and

(C) Deemed to have a formation date corresponding to its original formation date in the foreign or alien domicile.

(6) For the purposes of an examination under § 23-63-1608, an examination conducted by the foreign or alien domicile that is substantially similar to an examination conducted in this state if the company had been domiciled in this state shall be recognized for the purposes of establishing the period of time when the next examination is due.

(7) A foreign or alien insurer redomesticating under this section:

(A) Shall:

(i) Be liable only for taxes due under § 23-63-1614 on premiums paid to the captive insurance company after redomestication; and

(ii)(a) Report all premium taxes due under § 23-63-1614 but may elect to forego the payment of premium taxes, in either its first or its second year of operations, but not both, after redomesticating into this state.

(b) A foreign or alien insurer making an election under subdivision (g)(7)(A)(ii)(a) of this section that surrenders its license or redomesticates to another jurisdiction within five (5) years of redomestication into this state shall immediately pay a tax in an amount equal to the premium tax under § 23-63-1614 plus ten percent (10%) per annum from the date the premium tax under § 23-63-1614 would have been due; and

(B) After July 1 of any year shall be subject to only one-

half ($\frac{1}{2}$) of the minimum premium tax specified under § 23-63-1614 in its first year.

(8) This section shall not:

(A) Be the exclusive means of redomesticating a captive insurance company to this state; and

(B) Restrict the ability of an insurance company to undergo a merger, consolidation, transfer of assets and liabilities, or utilize any other means permitted by law to effect the transfer of operations of a foreign or alien insurance company to this state.

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

~~(h)(i)~~ 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 ($\frac{1}{3}$) of the fixed or prescribed number of directors under § 4-27-824(b).

~~(i)(j)~~ 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 ($\frac{1}{3}$) of the number of its members.

SECTION 9. Arkansas Code § 23-63-1607(b)(2), concerning reporting requirements of a captive insurance company, is amended to add an additional subdivision to read as follows:

(C) The commissioner may waive the requirement of an audit or actuarial opinion for a pure captive insurance company if the parent of

the pure captive insurance company has:

- (i) A consolidated audit;
- (ii) A guaranty for liabilities of the pure captive insurance company;
- (iii) A minimum net equity of one hundred million dollars (\$100,000,000); and
- (iv) A financial strength rating of "BBB" or better from a rating agency acceptable to the commissioner.

SECTION 10. Arkansas Code § 23-63-1608(a), concerning the examination of a captive insurance company, is amended to add an additional subdivision to read as follows:

- (3) Notwithstanding subdivision (a)(1) of this section, a pure captive insurance company shall be subject to examination:
 - (A) At least one (1) time every seven (7) years; or
 - (B) Whenever the commissioner determines it to be prudent.

SECTION 11. Arkansas Code § 23-63-1614 is amended to read as follows:
23-63-1614. Premium tax – Definition.

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

- (1) Two hundred fifty thousandths of one percent (0.250%) on the first twenty million dollars (\$20,000,000);
- (2) One hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000); and
- (3) Fifty thousandths of one percent (0.050%) 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 twenty-five thousandths of one percent

(0.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premium;

(B) One hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000);

(C) Fifty thousandths of one percent (0.050%) on the next twenty million dollars (\$20,000,000); and

(D) Twenty-five thousandths of one percent (0.025%) of each dollar thereafter.

(2) ~~No reinsurance tax applies~~ A reinsurance tax does not apply to premiums for risks or portions of risks that 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) The total tax paid by a captive insurance company shall not exceed one hundred thousand dollars (\$100,000) in any year.

(e)(1)(A) A captive insurance company may apply for a credit for the noncommissioned salaries and wages of its Arkansas employees that are paid in connection with its captive insurance company operations.

(B) The credit under subdivision (e)(1)(A) of this section may be applied as an offset against the premium taxes imposed by this section.

(2)(A) An employee shall be employed for six (6) months for the salary or wages to be eligible to qualify for the premium tax credit under subdivision (e)(1)(A) of this section.

(B) The employee shall:

(i) Have a primary residence in this state; and

(ii) Pay income taxes in this state.

(3) The offset under subdivision (e)(1)(B) of this section shall

not reduce the premium tax due by more than fifty percent (50%).

(f) 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.

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

~~(g)~~(h) 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.

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

~~(i)~~~~(1)~~(j)(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.

~~(j)~~(k) 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 certificates of deposit of any bank organized under the laws of the United States with a banking facility in the State of Arkansas or any federally insured bank or savings institution organized under the laws of the State of Arkansas, or in bonds, notes, warrants, or other securities, not in default, that are direct obligations of:

(1) This state;

(2) Any county, incorporated city or town, or duly organized school district or other taxing district of this state:

(A) 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

(B) 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) 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:

(A) 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

(B) 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 12. Arkansas Code § 23-63-1624(c)(3), concerning the license renewal fee of a dormant captive insurance company, is amended to read as follows:

(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.

SECTION 13. Arkansas Code Title 23, Chapter 63, Subchapter 16, is amended to add an additional section to read as follows:

23-63-1625. Violations.

(a) The Insurance Commissioner, after notice and a hearing, shall suspend or revoke a certificate of authority of a captive insurance company if the commissioner finds that the captive insurance company:

(1)(A) Is in an unsound condition or is in such condition, or is using methods and practices in the conduct of its business, as to allow further transactions of insurance in Arkansas hazardous or injurious to the policyholders of the captive insurance company or to the public.

(B) For purposes of this section, the commissioner may consider the present, past, and future trends in the financial condition of the captive insurance company that may affect the solvency of the captive

insurance company;

(2) Refuses to be examined or to produce the accounts, records, or files of the captive insurance company for examination or if any of the officers of the captive insurance company have refused to give information with respect to the affairs of the captive insurance company when required by the commissioner;

(3) Fails to pay any final judgment rendered against the captive insurance company within thirty (30) days of entry of the judgment; or

(4) Knowingly, or with reckless disregard, violated or failed to comply with the Arkansas Insurance Code or with any lawful rule or order of the commissioner.

(b) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of a certificate of authority of a captive insurance company, the commissioner may:

(1) In lieu of suspension, impose upon the holder of the certificate of authority an administrative penalty in the amount of five thousand dollars (\$5,000); or

(2) In lieu of revocation, impose upon the holder of the certificate of authority an administrative penalty in the amount of ten thousand dollars (\$10,000).