

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter A. Generally
Part 29. Concerning the Licensing and Regulation of Captive Insurance Companies

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"§ 2. Authority

This Rule is issued under the authority vested in the Commissioner by Ark. Code Ann. §§ 23-63-1615 and 25-15-203 – 204."

"§ 19. Effective Date. The effective date shall be February 12, 2002."

Subpart 1. Generally

23 CAR § 29-101. Purpose and scope.

(a)(1) The purpose of this part is to establish financial and reporting requirements that the Insurance Commissioner ("commissioner") deems necessary for the regulation of captive insurance companies.

(2) Reference hereinunder to "company" shall mean captive insurance company or companies, unless otherwise specified.

(b)(1) This part applies to captive insurance companies as that term is defined by Arkansas Code § 23-63-1601(8).

(2) The provisions of the Arkansas Insurance Code do not apply to captive insurance companies except as specifically provided in Arkansas Code § 23-63-1601 et seq.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-102. Annual reporting requirements.

(a)(1) An association captive insurance company and an industrial insured group doing business in this state shall quarterly and annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.

(2) The report shall be that required by Arkansas Code § 23-63-216(a).

(b)(1) A pure captive insurance company, sponsored captive insurance company, industrial insured captive insurance company, or producer reinsurance captive insurance company doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.

(2) The report shall be that prescribed by the commissioner as "Captive Annual Statement".

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-103. Annual audit.

(a)(1) All companies shall:

(A) Have an annual audit by an independent certified public accountant authorized by the Insurance Commissioner; and

(B) File such audited financial report with the commissioner on or before June 30 for the year ending December 31 immediately preceding.

(2) The annual audit shall be on the same accounting basis as the annual statement.

(b) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(c) The annual audit shall consist of the following:

(1) **Opinion of independent certified public accountant.**

(A) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

(B) The opinion of the independent certified public accountant shall cover all years presented.

(C) The opinion shall:

(i) Be addressed to the company on stationery of the accountant showing the address of issuance;

(ii) Bear original manual signatures; and

(iii) Be dated;

(2) Report of evaluation of internal controls.

(A) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records including but not limited to such controls as the system of authorization and approval and the separation of duties.

(B) The review shall be conducted in accordance with generally accepted auditing standards, and the report shall be filed with the commissioner;

(3) Accountant's letter. The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(A) That he or she is independent with respect to the company and conforms to the standards of his or her profession as contained in the:

(i) Code of Professional Conduct and pronouncements of the American Institute of Certified Public Accountants; and

(ii) Pronouncements of the Financial Accounting Standards Board;

(B) The general background and experience of the staff engaged in the audit, including their experience in auditing insurance companies;

(C) That the accountant understands that the audited annual report and his or her opinions thereon will be filed in compliance with this part with the State Insurance Department;

(D) That the accountant:

(i) Consents to the requirements of 23 CAR § 29-106; and

(ii) Consents and agrees to make available for review by the

commissioner or his or her appointed agent the work papers as defined in 23 CAR § 29-106(c); and

(E) That the accountant is properly licensed by an appropriate state licensing authority and that he or she is a member in good standing with the American Institute of Certified Public Accountants;

(4) Financial statements.

(A) The financial statements required shall be as follows:

(i) Balance sheet;

(ii) Statement of gain or loss from operations;

(iii) Statement of changes in financial position, if appropriate;

(iv) Statement of cash flow;

(v) Statement of changes in capital paid up, gross paid in, and contributed surplus and unassigned funds (surplus); and

(vi) Notes to financial statements.

(B) The notes to financial statements shall be those required by the accounting principles used in the annual statement and shall include:

(i) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

(ii) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(iii)(a) A narrative explanation of all material transactions with the company.

(b) For purposes of this provision, no transaction shall be deemed material unless it involves three percent (3%) or more of a company's admitted assets as of the December 31 next preceding; and

(5) Certification of loss reserves and loss expense reserves.

(A) The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

(B) The individual who certifies as to the adequacy of reserves shall be:

(i) Approved by the commissioner; and

(ii) A fellow of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries.

(C) Certification shall be in such form as the commissioner deems appropriate.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-104. Designation of independent certified public accountant.

(a) Companies, after becoming subject to this part, shall within ninety (90) days report to the Insurance Commissioner in writing the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this part.

(b) Any independent certified public accountant retained by a company to conduct its annual audit shall make application to the commissioner for authority to act as an independent certified public accountant for captive insurance companies on the "Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Company", which is adopted as part of this part.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-105. Notification of adverse financial condition.

(a) A company shall require the certified public accountant to immediately notify in writing an officer and all members of the board of directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Insurance Commissioner.

(b) The company shall furnish such notification to the commissioner within five (5) working days of receipt thereof.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-106. Availability and maintenance of working papers of the independent certified public accountant.

(a)(1) Each company shall require the independent certified public accountant to make available for review by the Insurance Commissioner or his or her appointed agent the work papers prepared in the conduct of the audit of the company.

(2) The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(b)(1) The aforementioned reviews by the commissioner shall be considered investigations, and all working papers obtained during the course of such investigations shall be confidential.

(2)(A) The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the State Insurance Department considers relevant.

(B) The department may retain such working papers.

(c) "Work papers" or "working papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the accountant and his or her employees in the conduct of their audit of the company.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-107. Organizational examination.

(a) In addition to the processing of the application, an organizational investigation or examination may be performed before an applicant is licensed.

(b) Such investigation or examination shall consist of:

(1) A general survey of the company's corporate records, including:

(A) Charter;

(B) Bylaws; and

(C) Minute books;

(2) Verification of capital and surplus;

(3) Verification of principal place of business;

(4) Determination of assets and liabilities; and

(5) A review of such other factors as the Insurance Commissioner deems necessary.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-108. Reinsurance.

(a) Any captive insurance company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(1) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer; and

(2) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(b) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing such reinsurance.

(c) The Insurance Commissioner in his or her discretion may require that complete copies of all reinsurance treaties and contracts be filed with and/or approved by him or her.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-109. Alternative investments of assets.

A producer reinsurance captive insurance company which determines that bonds, notes, warrants, or other securities of reasonable quality or liquidity, as determined by the company's management and with the approval of the Insurance Commissioner, do not exist for purposes of compliance with Arkansas Code § 23-63-1614(i) shall be permitted to invest such assets, in any amount necessary to comply with the provisions of Arkansas Code § 23-63-1614(i), in certificates of deposit of any:

- (1) Bank organized under the laws of the United States whose home state is the State of Arkansas; or
- (2) Federally insured bank or savings institution organized and supervised under the laws of the State of Arkansas.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-110. Insurance managers and intermediaries.

(a) No person shall act as an insurance manager or reinsurance intermediary for captive business in or from within this state without the authorization of the Insurance Commissioner.

(b) Application for such authorization must be on a form prescribed by the commissioner.

(c) Any person who engages in the insurance or reinsurance business as a producer, agent, or broker for a captive insurance company shall be:

- (1) Licensed as such pursuant to Chapter 64 of Title 23 of the Arkansas Code;
- and
- (2) Authorized as such by the commissioner.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-111. Directors.

(a) Every company shall report to the Insurance Commissioner within thirty (30) days after any change in its executive officers or directors, including in its report a biographical affidavit of any new executive officer or director.

(b) No director, officer, or employee of a company shall, except on behalf of the company, accept or be the beneficiary of any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional, or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-112. Conflict of interest.

(a)(1) Each company chartered in this state is required to adopt a conflict of interest statement for:

- (A) Officers;
- (B) Directors; and
- (C) Key employees.

(2)(A) Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him or her from his or her duty to further the interests of the company he or she represents.

(B) This shall not preclude such person from being a director or officer in more than one (1) insurance company.

(b) Each officer, director, and key employee shall file such disclosure with the board of directors yearly.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-113. Acquisition of control of or merger with domestic company.

The acquisition of control of or merger of any company with a domestic insurance company shall be conducted pursuant to Arkansas Code § 23-69-142 et seq.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-114. Rescission of captive license.

(a) The Insurance Commissioner may, subject to the provisions of this section, by order rescind the license of the company:

(1) If the company has not commenced business according to its plan of operation within two (2) years of being licensed;

(2) If the company ceases to carry on insurance business in or from within Arkansas;

(3) At the request of the company; or

(4) For any reason provided in Arkansas Code § 23-63-1609.

(b)(1) Before the commissioner rescinds the license of a company under subdivision (a)(1) or (a)(2) of this section, the commissioner shall:

(A) Give the company notice in writing of the grounds on which he or she proposes to cancel the license; and

(B) Afford the company an opportunity to make objection in writing within the period of thirty (30) days after receipt of notice.

(2) The commissioner shall:

(A) Take into consideration any objection received by him or her within that period; and

(B) If he or she decides to cancel the license, cause the order of cancellation to be served on the company.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-115. Change of business.

(a) Any change in the nature of the captive business from that stated in the company's plan of operation filed with the Insurance Commissioner upon application shall require prior approval from the commissioner.

(b) Any change in any other information filed with the application must be filed with the commissioner but does not require prior approval.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-116. Adoption of application and forms.

(a)(1) A proposed captive insurance company shall make application to the Insurance Commissioner for authority to conduct insurance business on the "Captive Insurance Company Application", which is adopted as part of this part.

(2) The application and its accompanying forms and attachments are intended to be used by the applicant in the preparation of the statements and information required by the act and this part.

(3) The applicant may use the application, forms, and attachments as:

(A) Blank forms that are to be filled in by the applicant; or

(B) A guide in the preparation of the statements and information required by the act.

(b)(1) Two (2) complete copies of the application including forms, attachments, exhibits, and all other papers and documents filed as a part thereof, accompanied by the appropriate filing fee, shall be filed with the commissioner by personal delivery or mail addressed to:

Insurance Commissioner of the State of Arkansas

Attention: Legal Division

One Commerce Way, Suite 102

Little Rock, AR 72202

(2)(A) At least one (1) of the copies shall be manually signed in the manner prescribed on the application.

(B) Unsigned copies shall be conformed.

(C) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

Authority. Arkansas Code § 23-63-1615.

23 CAR § 29-117. Application fees.

(a) The fees required for filing an application for authority to conduct insurance business are as follows:

- (1) Filing and review of each application, two hundred dollars (\$200);
- (2) License, when issued, three hundred dollars (\$300);
- (3) Annual license renewal, three hundred dollars (\$300); and
- (4) Actuary review of application, equal to cost to the State Insurance

Department.

(b) All fees imposed pursuant to this part shall be:

- (1) Due and payable to the "State Insurance Department Trust Fund"; and
- (2) Payable by:
 - (A) Company check;
 - (B) Personal, certified, or cashier's checks;
 - (C) Cash; or
 - (D) Money orders.

Authority. Arkansas Code §§ 23-63-1602, 23-63-1615.

Appendix A. Captive Insurance Company Application Form

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/139/23CARpt.29Form.pdf>