

1 State of Arkansas
2 95th General Assembly
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4

A Bill

SENATE BILL 237

5 By: Senator J. Boyd
6 By: Representative Steimel
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE LAW CONCERNING THE LICENSING AND
10 REGULATION OF CAPTIVE INSURERS; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14
15 TO AMEND THE LAW CONCERNING THE
16 LICENSING AND REGULATION OF CAPTIVE
17 INSURERS.
18

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

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

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

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

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

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

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



1
2 SECTION 2. Arkansas Code § 23-63-1601(9), concerning the definition of
3 "Commissioner" used in the licensing and regulation of captive insurers, is
4 repealed.

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

6
7 SECTION 3. Arkansas Code § 23-63-1601(11), concerning the definition
8 of "Department" used in the licensing and regulation of captive insurers, is
9 repealed.

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

11
12 SECTION 4. Arkansas Code § 23-63-1602, concerning the application for
13 a license as a captive insurer, is amended to add an additional subsection to
14 read as follows:

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

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

21 (A) The applicant shall have:

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

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

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

28 (3) The commissioner may by order:

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

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

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

36

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

3 (a)(1) The Insurance Commissioner shall not issue a license to a
4 producer reinsurance captive insurance company, pure captive insurance
5 company, sponsored captive insurance company, association captive insurance
6 company incorporated as a stock insurer, or industrial insured captive
7 insurance company incorporated as a stock insurer unless the company
8 possesses and maintains unimpaired paid-in capital of:

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

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

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

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

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

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

28
29 SECTION 6. Arkansas Code § 23-63-1604(d), concerning dividends and
30 distributions by a captive insurance company, is amended to read as follows:

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

35 (2) Approval of an ongoing plan for the payment of dividends or
36 other distributions ~~must~~ shall be conditioned upon the retention, at the time

1 of each payment, of capital or surplus in excess of amounts specified by or
 2 determined ~~in accordance with~~ according to formulas approved by the
 3 commissioner.

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

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

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

12
 13 SECTION 7. Arkansas Code § 23-63-1605(a)(1), concerning surplus
 14 requirements for a captive insurance company, is amended to read as follows:

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

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

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

23 (C) In the case of an association captive insurance
 24 company incorporated as a stock insurer, not less than ~~three hundred fifty~~
 25 ~~thousand dollars (\$350,000)~~ two hundred fifty thousand dollars (\$250,000);

26 (D) In the case of an industrial insured captive insurance
 27 company incorporated as a stock insurer, not less than ~~three hundred thousand~~
 28 ~~dollars (\$300,000)~~ two hundred fifty thousand dollars (\$250,000);

29 (E) In the case of an association captive insurance
 30 company incorporated as a mutual insurer, not less than ~~seven hundred fifty~~
 31 ~~thousand dollars (\$750,000)~~ five hundred thousand dollars (\$500,000);

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

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

1 thousand dollars (\$100,000); and

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

8

9 SECTION 8. Arkansas Code § 23-63-1606 is amended to read as follows:
10 23-63-1606. Organization.

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

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

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

18 (d) 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 shall be a
20 resident of the United States or a United States territory.

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

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

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

29 (3)(A) The Arkansas Insurance Code concerning mergers,
30 consolidations, and mutualizations, ~~and redomestications~~ applies 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, upon request of an insurer that
34 is a party to a merger authorized under subdivision (f)(3)(A) of this
35 section, waive certain applicable requirements to the merger transaction.

36 (C) A conversion may be accomplished under a reasonable

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

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

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

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

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

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

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

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

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

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

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

36 (iii) Obtain an approval letter issued by the

1 commissioner.

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

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

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

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

12 (A) Considered domiciled in this state;

13 (B) Subject to this subchapter; and

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

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

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

23 (A) Shall:

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

26 (ii)(a) Report all premium taxes due under § 23-63-
27 1614 but may elect to forego the payment of premium taxes, in either its
28 first or its second year of operations, but not both, after redomesticating
29 into this state.

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

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

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

3 (8) This section shall not:

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

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

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

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

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

19 (2) In addition to ~~subdivision (g)(1)~~ subdivision (h)(1) of this
 20 section, a captive insurance company organized as a reciprocal insurer that
 21 is an industrial insured group is subject to § 23-70-101 et seq. and
 22 applicable provisions of the Arkansas Insurance Code.

23 ~~(h)(i)~~ The articles of incorporation or bylaws of a captive insurance
 24 company may authorize a quorum of a board of directors to consist of no fewer
 25 than one-third ($\frac{1}{3}$) of the fixed or prescribed number of directors under § 4-
 26 27-824(b).

27 ~~(i)(j)~~ The subscribers' agreement or other organizing document of a
 28 captive insurance company formed as a reciprocal insurer may authorize a
 29 quorum of a subscribers' advisory committee to consist of no fewer than one-
 30 third ($\frac{1}{3}$) of the number of its members.

31
 32 SECTION 9. Arkansas Code § 23-63-1607(b)(2), concerning reporting
 33 requirements of a captive insurance company, is amended to add an additional
 34 subdivision to read as follows:

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

1 the pure captive insurance company has:

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

9
 10 SECTION 10. Arkansas Code § 23-63-1608(a), concerning the examination
 11 of a captive insurance company, is amended to add an additional subdivision
 12 to read as follows:

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

17
 18 SECTION 11. Arkansas Code § 23-63-1614 is amended to read as follows:
 19 23-63-1614. Premium tax – Definition.

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

- 23 (1) Two hundred fifty thousandths of one percent (0.250%) on the
 24 first twenty million dollars (\$20,000,000);
 25 (2) One hundred fifty thousandths of one percent (0.150%) on the
 26 next twenty million dollars (\$20,000,000); and
 27 (3) Fifty thousandths of one percent (0.050%) on each dollar
 28 thereafter, on the direct premiums collected or contracted for on policies or
 29 contracts of insurance written by the captive insurance company during the
 30 year ending December 31 next preceding, after deducting from the direct
 31 premiums subject to the tax the amounts paid to policyholders as return
 32 premiums, which shall include dividends on unabsorbed premiums or premium
 33 deposits returned or credited to policyholders.

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

- 36 (A) Two hundred twenty-five thousandths of one percent

1 (0.225%) on the first twenty million dollars (\$20,000,000) of assumed
2 reinsurance premium;

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

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

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

9 (2) ~~No reinsurance tax applies~~ A reinsurance tax does not apply
10 to premiums for risks or portions of risks that are subject to taxation on a
11 direct basis under subsection (a) of this section.

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

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

22 (d) The total tax paid by a captive insurance company shall not exceed
23 one hundred thousand dollars (\$100,000) in any year.

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

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

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

33 (B) The employee shall:

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

35 (ii) Pay income taxes in this state.

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

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

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

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

8 ~~(g)~~(h) As used in this section, "common ownership and control" means:

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

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

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

17 ~~(i)~~~~(l)~~(j)(1) The tax under this section constitutes all taxes
18 collectible under the laws of this state from a captive insurance company.

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

23 ~~(j)~~(k) This section shall not apply to any producer reinsurance
24 captive insurance company that invests and continuously maintains not less
25 than fifty percent (50%) of its assets in certificates of deposit of any bank
26 organized under the laws of the United States with a banking facility in the
27 State of Arkansas or any federally insured bank or savings institution
28 organized under the laws of the State of Arkansas, or in bonds, notes,
29 warrants, or other securities, not in default, that are direct obligations
30 of:

31 (1) This state;

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

34 (A) If no default on the part of the obligor in payment of
35 principal or interest on any of its obligations has occurred within five (5)
36 years prior to the date of the proposed investment; or

1 (B) If the obligations were issued less than five (5)
 2 years prior to the date of investment, no default in payment of principal or
 3 interest has occurred on the obligations to be purchased or on any other
 4 public obligation of the obligor within five (5) years of the investment; or

5 (3) Any local improvement district in this state to finance
 6 local improvements authorized by law, if the principal and interest of the
 7 obligations are payable from assessments on real property within the local
 8 improvement district, and:

9 (A) No default on the part of the obligor in payment of
 10 principal or interest on any of its obligations has occurred within five (5)
 11 years prior to the date of the proposed investment; or

12 (B) 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.
 16

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

20 (3) Pay a license renewal fee as provided in the rules
 21 promulgated by the commissioner under Section 18 of Rule ~~and Regulation~~ 73 of
 22 the State Insurance Department.
 23

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

26 23-63-1625. Violations.

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

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

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

1 insurance company;

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

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

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

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

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

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

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