

Senate Bill 1547

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows Director of Department of Consumer and Business Services to authorize captive insurers in this state. Sets standards for captive insurers regarding formation, licensing, classes of insurance transacted and reporting. Exempts certain captive insurer documents from disclosure as public records. Sets tax treatment for captive insurers.

Becomes operative on July 1, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to captive insurance; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

GENERAL REQUIREMENTS FOR CAPTIVE INSURERS

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5
6
7 **SECTION 1. Sections 2 to 22 of this 2012 Act are added to and made a part of the In-**
8 **urance Code.**

9 **SECTION 2. As used in sections 2 to 22 of this 2012 Act:**

10 (1)(a) **"Affiliate" means a business entity that, because of common ownership and con-**
11 **trol, is in the same corporate system as a parent or a member organization.**

12 (b) **For purposes of this subsection, "common ownership and control" means that two**
13 **or more business entities are owned or controlled by the same person or group of persons**
14 **with:**

15 (A) **Direct or indirect ownership of 80 percent or more of the outstanding voting stock**
16 **of the stock corporation for a captive insurer that is a stock corporation;**

17 (B) **Direct or indirect ownership of 80 percent or more of the surplus and the voting**
18 **power of the mutual corporation for a captive insurer that is a mutual corporation; or**

19 (C) **Direct or indirect ownership by the same member or members of 80 percent or more**
20 **of the membership interests in the limited liability company for a captive insurer that is a**
21 **limited liability company.**

22 (2) **"Alien captive insurer" means an insurer:**

23 (a) **Formed to transact insurance for a parent or affiliate of the insurer; and**

24 (b) **Licensed under the laws of a nation other than the United States that imposes stat-**
25 **utory or regulatory standards:**

26 (A) **On a business entity transacting insurance in the other nation; and**

27 (B) **In a form acceptable to the Director of the Department of Consumer and Business**
28 **Services.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) "Association" means a legal association of two or more persons that has been in
2 continuous existence for at least one year if the association or its member organizations:

3 (a) Own, control, or hold with power to vote, all of the outstanding voting securities of
4 an association captive insurer incorporated as a stock insurer;

5 (b) Have complete voting control over an association captive insurer incorporated as a
6 mutual insurer; or

7 (c) Have complete voting control over an association captive insurer formed as a limited
8 liability company.

9 (4) "Association captive insurer" means a business entity that insures the risks of:

10 (a) A member organization of the association;

11 (b) An affiliate of a member organization of the association; or

12 (c) The association.

13 (5) "Branch captive insurer" means an alien captive insurer that holds a certificate of
14 authority from the Director of the Department of Consumer and Business Services to
15 transact insurance in this state through a business division with a principal place of business
16 in this state.

17 (6) "Branch operation" means a business operation of a branch captive insurer in this
18 state.

19 (7) "Captive insurer" means any of the following that is formed or holds a certificate of
20 authority issued under sections 2 to 22 of this 2012 Act:

21 (a) A pure captive insurer;

22 (b) A branch captive insurer;

23 (c) An association captive insurer; or

24 (d) A captive reinsurer;

25 (8) "Captive reinsurer" means a reinsurer that is:

26 (a) Formed or holds a certificate of authority under sections 2 to 22 of this 2012 Act;

27 (b) Wholly owned by a qualifying reinsurer parent company; and

28 (c) A stock corporation.

29 (9) "Controlled unaffiliated business" means a business entity:

30 (a) That is not in the same corporate system as a parent or the parent's affiliate but has
31 a contractual relationship with a parent or affiliate; and

32 (b) Whose risks are managed by a pure captive insurer in accordance with rules adopted
33 by the Director of the Department of Consumer and Business Services under section 4 of this
34 2012 Act.

35 (10) "Foreign captive insurer" means an insurer:

36 (a) Formed to transact insurance for a parent or affiliate of the insurer; and

37 (b) Licensed under the laws of another state that imposes statutory or regulatory stan-
38 dards:

39 (A) On a business entity transacting insurance in the other state or jurisdiction; and

40 (B) In a form acceptable to the Director of the Department of Consumer and Business
41 Services.

42 (11) "Member organization" means a person that belongs to an association.

43 (12) "Parent" means a person that directly or indirectly owns, controls, or holds with
44 power to vote, more than 50 percent of:

45 (a) The outstanding voting securities of a pure captive insurer; or

1 (b) The pure captive insurer, if the pure captive insurer is formed as a limited liability
 2 company.

3 (13) "Pure captive insurer" means a business entity that insures risks of a parent or af-
 4 filiate of the business entity.

5 (14)(a) "Qualifying reinsurer parent company" means an accredited reinsurer in this
 6 state that has:

7 (A) A consolidated GAAP net worth of not less than \$500 million; and

8 (B) Complies with the consolidated debt to total capital ratio established by rule by the
 9 Director of the Department of Consumer and Business Services.

10 (b) For purposes of this subsection "consolidated GAAP net worth" means the consol-
 11 idated shareholders' equity determined in accordance with generally accepted accounting
 12 principles for reporting to the United States Securities and Exchange Commission.

13 **SECTION 3.** (1) The provisions of the Insurance Code cited in sections 2 to 22 of this 2012
 14 Act apply to captive insurers. In addition, the provisions of the Insurance Code set forth in
 15 ORS chapter 731 relating to administration of the insurance laws apply to captive insurers
 16 to the extent not inconsistent with the express provisions of sections 2 to 22 of this 2012 Act.

17 (2) In addition to the provisions of the Insurance Code set forth in subsection (1) of this
 18 section, ORS 705.137 and 705.139 apply to captive insurers.

19 **SECTION 4.** The Director of the Department of Consumer and Business Services may
 20 adopt rules for the administration of sections 2 to 22 of this 2012 Act.

21 **SECTION 5.** All documents, materials and other information in the possession of the
 22 Department of Consumer and Business Services under sections 2 to 22 of this 2012 Act are
 23 confidential and subject to public disclosure only as provided in ORS 705.137.

24 **SECTION 6.** (1)(a) When permitted by its articles of incorporation or its charter and by-
 25 laws, a captive insurer may apply to the Director of the Department of Consumer and Busi-
 26 ness Services for a certificate of authority to transact any class of insurance.

27 (b) Notwithstanding paragraph (a) of this subsection:

28 (A) A pure captive insurer may not insure a risk other than a risk of its parent or af-
 29 filiate or a controlled unaffiliated business.

30 (B) An association captive insurer may not insure a risk other than a risk of:

31 (i) An affiliate;

32 (ii) A member organization of its association; or

33 (iii) An affiliate of a member organization of its association.

34 (C) A captive insurer may not provide workers' compensation insurance, life insurance,
 35 health insurance or any personal property or personal casualty line of insurance, including
 36 but not limited to personal motor vehicle insurance coverage and homeowner's insurance,
 37 and any component of such coverage.

38 (D) A captive insurer may not accept or cede reinsurance except as provided in section
 39 11 of this 2012 Act.

40 (2) To transact insurance in this state, a captive insurer must:

41 (a) Obtain from the director a certificate of authority that authorizes the captive insurer
 42 to transact insurance in this state;

43 (b) Appoint a resident registered agent to accept service of process and to otherwise act
 44 on behalf of the captive insurer in this state; and

45 (c)(A) Hold at least once each year in this state a board of directors meeting; or

- 1 **(B) Maintain in this state:**
- 2 **(i) The principal place of business of the captive insurer; or**
- 3 **(ii) In the case of a branch captive insurer, the principal place of business for the branch**
- 4 **operations of the branch captive insurer.**
- 5 **(3) In the case of a captive insurer formed as a corporation, if the registered agent can-**
- 6 **not be found with reasonable diligence at the registered office of the captive insurer, the**
- 7 **director is the agent of the captive insurer upon whom process, notice or demand may be**
- 8 **served.**
- 9 **(4)(a) An applicant captive insurer formed as a corporation shall file with the director:**
- 10 **(A) Certified copies of the articles of incorporation or the charter and bylaws of the**
- 11 **corporation;**
- 12 **(B) A statement under oath of the president and secretary of the corporation showing**
- 13 **the financial condition of the corporation; and**
- 14 **(C) Any other statement or document required by the director as adopted by rule.**
- 15 **(b) In addition to the other information required by this subsection, an applicant captive**
- 16 **insurer shall file with the director evidence of:**
- 17 **(A) The amount and liquidity of the assets of the applicant captive insurer relative to the**
- 18 **risks to be assumed by the applicant captive insurer;**
- 19 **(B) The adequacy of the expertise, experience and character of the individual who will**
- 20 **manage the applicant captive insurer;**
- 21 **(C) The overall soundness of the plan of operation of the applicant captive insurer;**
- 22 **(D) The adequacy of the loss prevention programs for any parent or member organization**
- 23 **of the applicant captive insurer; and**
- 24 **(E) Any other factor the director adopts by rule and considers relevant in ascertaining**
- 25 **whether the applicant captive insurer is able to meet the policy obligations of the applicant**
- 26 **captive insurer.**
- 27 **(5)(a) A captive insurer shall pay to the department nonrefundable fees established by the**
- 28 **director by rule for:**
- 29 **(A) Examining, investigating and processing the captive insurer's application for issuance**
- 30 **of a certificate of authority;**
- 31 **(B) Obtaining a certificate of authority for the year the director issues a certificate of**
- 32 **authority to the captive insurer in an amount not less than \$5,000; and**
- 33 **(C) Renewing a certificate of authority in an amount not less than \$5,000.**
- 34 **(b) The fees a captive insurer pays to the Department of Consumer and Business Services**
- 35 **for obtaining or renewing a certificate of authority are in lieu of any payment of premium**
- 36 **assessment on receipt of premium by the captive insurer. Fees for obtaining or renewing a**
- 37 **certificate of authority may be increased by the department by rule and may be scaled on**
- 38 **the basis of premiums the captive insurer collects in any given year.**
- 39 **(c) The director may retain legal, financial and examination services from outside the**
- 40 **department to perform any functions described in sections 2 to 22 of this 2012 Act and may**
- 41 **charge the applicant captive insurer the reasonable cost of services performed.**
- 42 **(6) If the director is satisfied that the documents and statements filed by the applicant**
- 43 **captive insurer meet the requirements of sections 2 to 22 of this 2012 Act, the director may**
- 44 **issue a certificate of authority that authorizes the captive insurer to transact insurance in**
- 45 **this state.**

1 (7) A certificate of authority issued under this section expires annually and must be re-
2 newed by December 31 of each year beginning with the year following the year that the ori-
3 ginal certificate was issued.

4 (8) Upon approval of the director, a foreign or alien captive insurer may become a do-
5 mestic captive insurer by complying with all of the requirements of the Insurance Code rel-
6 ative to the organization and licensing of a domestic captive insurer of the same or
7 equivalent type in this state and by filing with the director certified copies of the insurer's
8 articles of association, charter or other organizational document, together with any appro-
9 priate amendments adopted in accordance with the laws of this state bringing those articles
10 of association, charter or other organizational document into compliance with the laws of
11 this state. After complying with these requirements, the captive insurer is entitled to the
12 necessary or appropriate certificates and licenses to continue transacting insurance in this
13 state and is subject to the authority and jurisdiction of this state. In connection with this
14 redomestication, the director may waive any requirements for public hearings. It is not
15 necessary for a captive insurer redomesticating into this state to merge, consolidate, trans-
16 fer assets or otherwise engage in any other reorganization, other than as specified in this
17 section.

18 SECTION 7. A captive insurer may assume a business name only if consistent with the
19 provisions of ORS 731.430.

20 SECTION 8. (1) To qualify for authority to transact insurance in this state, a captive
21 insurer shall possess and thereafter maintain capital or surplus, or any combination thereof,
22 of not less than:

23 (a) \$250,000 for a pure captive insurer.

24 (b) \$750,000 for an association captive insurer incorporated as a stock insurer or as a
25 mutual insurer.

26 (c) \$300,000,000 for a captive reinsurer.

27 (2) In accordance with ORS 731.554 (6), for the protection of the public, the Director of
28 the Department of Consumer and Business Services may require a captive insurer to possess
29 and maintain capital or surplus, or any combination thereof, in excess of the amount other-
30 wise required under this section.

31 (3) The capital and surplus required under subsections (1) and (2) of this section may be
32 in the form of:

33 (a) Cash or cash equivalent; or

34 (b) An irrevocable letter of credit issued by an insured institution, as described in ORS
35 731.510, and approved by the director.

36 (4)(a) Except as provided in paragraph (d) of this subsection, a branch captive insurer,
37 as security for the payment of liabilities attributable to branch operations, must establish
38 and maintain, through its branch operations, a trust fund funded by an irrevocable letter of
39 credit or other asset approved by the director.

40 (b) The trust fund established under this subsection shall be for the benefit of United
41 States policyholders and United States ceding insurers under insurance policies issued or
42 reinsurance contracts issued or assumed.

43 (c) The amount of the security required under this subsection must be equal to or
44 greater than:

45 (A) The capital and surplus required under this section applicable to the line of business

1 written by the captive insurer; and

2 (B) The net reserves on the insurance policies or reinsurance contracts described in this
3 subsection, including:

4 (i) Case basis loss and allocated loss adjustment expense reserves;

5 (ii) Losses and allocated loss adjustment expense amounts incurred but not reported; and

6 (iii) Unearned premiums with regard to insurance transacted by branch operations.

7 (d) In accordance with ORS 731.510, the director may permit a branch captive insurer
8 that is required to post security for loss reserves on insurance transacted by its reinsurer
9 to reduce the funds in the trust fund established under this section by the same amount as
10 the security posted if the security remains posted with the reinsurer.

11 (5) A captive insurer may pay dividends or make distributions if all the following re-
12 quirements are met:

13 (a) Submission of a report to the director listing all dividends and distributions within
14 five business days following the declaration, and not less than 10 business days prior to
15 payment, of the dividends and distributions, commencing from the date of receipt of the re-
16 port by the director.

17 (b) The report required under paragraph (a) of this subsection must demonstrate that the
18 combined capital and surplus of the captive insurer following any dividend or distribution is
19 reasonable in relation to the captive insurer's outstanding liabilities and adequate to the
20 captive insurer's financial needs.

21 (c) A captive insurer may pay dividends or distributions only from earned surplus unless
22 the director gives prior approval for payment from another source.

23 **SECTION 9.** (1) A pure captive insurer must be incorporated as a stock insurer with the
24 capital of the pure captive insurer divided into shares and held by the shareholders of the
25 pure captive insurer.

26 (2) An association captive insurer may be:

27 (a) Incorporated as a stock insurer with the capital of the association captive insurer
28 divided into shares and held by the shareholders of the association captive insurer; or

29 (b) Incorporated as a mutual insurer without capital stock, with a governing body elected
30 by the member organizations of the association captive insurer.

31 (3) The requirements of ORS 732.085 apply to the incorporators of a captive insurer.

32 (4) Any person desiring to organize a captive insurer must first file an application with
33 the Director of the Department of Consumer and Business Services for a permit to organize
34 the captive insurer. The applicant shall pay the applicable fee to the director at the time the
35 application is filed. The application shall be on forms provided by the director and shall be
36 signed by the applicants and verified. The form shall specify information about the following:

37 (a) The character, reputation, financial responsibility and purposes of the proposed
38 incorporators;

39 (b) The character, reputation, financial responsibility, insurance experience and business
40 qualifications of the proposed officers and directors and the proposed managers;

41 (c) Any information provided to the Department of Consumer and Business Services in
42 the application for a certificate of authority or that is maintained in the department's files;
43 and

44 (d) Other aspects the director considers advisable.

45 (5) The director shall approve an application for a permit to organize a captive insurer

1 only if the director finds that:

2 (a) The application is complete;

3 (b) The documents filed with the application are in the proper form;

4 (c) The proposed financial structure is adequate;

5 (d) The character, reputation, financial responsibility and general fitness of the persons
6 named in the application or otherwise found to be associated with or have an interest in the
7 proposed insurer are such as to command the confidence of the public;

8 (e) The proposed directors are collectively competent to assume responsibility for the
9 management and general policies and procedures of the captive insurer;

10 (f) The proposed management, collectively, possess the requisite general business ability
11 and experience in the business of insurance of the class or classes specified in the applica-
12 tion; and

13 (g) No fact is then known to the director that would prevent the proposed insurer from
14 completing its organization and receiving a certificate of authority to transact insurance as
15 a captive insurer.

16 (6) To the extent not otherwise inconsistent with provision of sections 2 to 22 of this 2012
17 Act, ORS 732.095, 732.105 and 732.115 apply for the filing of the articles of incorporation of a
18 captive insurer.

19 (7)(a) An alien captive insurer applying to the director for a certificate of authority to
20 act as a branch captive insurer shall obtain from the director a certificate finding that:

21 (A) The nation of an alien captive insurer imposes statutory or regulatory standards, in
22 a form acceptable to the director, on captive insurers transacting insurance in that nation;
23 and

24 (B) After considering the character, reputation, financial responsibility, insurance expe-
25 rience and business qualifications of the officers and directors of the alien captive insurer,
26 and other relevant information, the establishment and maintenance of the branch operations
27 will promote the general good of this state.

28 (b) After the director issues a certificate under paragraph (a) of this subsection, the alien
29 captive insurer may register to do business in this state as a branch captive insurer.

30 (8) The capital stock of a captive insurer incorporated as a stock insurer may not be is-
31 sued at less than par value.

32 (9) At least one-quarter of the members of the board of directors of a captive insurer
33 formed as a corporation shall be residents of this state.

34 (10)(a) A captive insurer formed as a corporation under sections 2 to 22 of this 2012 Act
35 has the privileges of and is subject to ORS chapters 60 and 732 and sections 2 to 22 of this
36 2012 Act.

37 (b) If a conflict exists between a provision of ORS chapters 60 and 732 and a provision
38 of sections 2 to 22 of this 2012 Act, sections 2 to 22 of this 2012 Act shall control.

39 (c) Except as provided in paragraph (d) of this subsection, the provisions of sections 2 to
40 22 of this 2012 Act pertaining to a merger, consolidation, conversion, mutualization and
41 redomestication apply in determining the procedures to be followed by a captive insurer in
42 carrying out any of the transactions described in those provisions.

43 (d) The director may waive or modify the requirements in paragraph (c) of this sub-
44 section after providing notice and a public hearing.

45 (11) The articles of incorporation or bylaws of a captive insurer may not authorize a

1 quorum of a board of directors to consist of less than one-third of the fixed or prescribed
2 number of directors as provided in rules adopted by the director.

3 **SECTION 10.** (1)(a) An association captive insurer must comply with the investment re-
4 quirements of ORS 733.510 to 733.780.

5 (b) Notwithstanding paragraph (a) of this subsection, the Director of the Department of
6 Consumer and Business Services may by rule approve the use of alternative reliable methods
7 of valuation and rating for an association captive insurer.

8 (2)(a) A pure captive insurer is not subject to any restrictions on allowable investments
9 under ORS 733.510 to 733.780.

10 (b) The director may prohibit or limit an investment that threatens the solvency or
11 liquidity of a pure captive insurer.

12 (3) A captive insurer may not make loans to the parent of the captive insurer or an af-
13 filiate of the captive insurer.

14 **SECTION 11.** (1) A captive insurer may provide reinsurance on risks ceded by an affiliate
15 of the insurer or a controlled unaffiliated business.

16 (2) A captive insurer may take credit for reserves on risks or portions of risks ceded to
17 reinsurers if the credit is acceptable to the Director of the Department of Consumer and
18 Business Services.

19 (3) Subject to the prior written approval of the director, a captive insurer may participate
20 in a pool for the purpose of commercial risk sharing. However, a captive insurer may not join
21 or contribute financially to a plan, pool, association or guaranty or insolvency fund in this
22 state, and a captive insurer, or its insured or its parent or any affiliated company or any
23 member organization of its association, may not receive a benefit from a plan, pool, associ-
24 ation or guaranty or insolvency fund for claims arising out of the operations of the captive
25 insurer.

26 (4) A captive reinsurer must annually file with the department an actuarial opinion pro-
27 vided by a qualified actuary on loss and loss adjustment expense reserves. The qualified
28 actuary providing the actuarial opinion must be independent and may not be an employee
29 of the captive reinsurer or an affiliate of the captive reinsurer for which the actuarial opin-
30 ion is filed.

31 (5) A captive reinsurer may discount its loss and loss adjustment expense reserves only
32 as allowed in rules adopted by the director.

33 (6) The director may disallow the discounting of loss and loss adjustment reserves of a
34 captive reinsurer if the captive reinsurer violates any provision of sections 2 to 22 of this
35 2012 Act.

36 **SECTION 12.** A captive insurer is not required to join a rating organization.

37 **SECTION 13.** (1) A captive insurer is not required to make a report except as specified
38 in this section.

39 (2)(a) Before March 1 of each year, a captive insurer shall submit to the Director of the
40 Department of Consumer and Business Services a report of the financial condition of the
41 captive insurer, verified by oath of two of the executive officers of the captive insurer.

42 (b) A captive insurer shall report:

43 (A) Using generally accepted accounting principles, except to the extent that the director
44 requires, approves or accepts the use of statutory accounting principles;

45 (B) Using a useful or necessary modification or adaptation to an accounting principle

1 that is required, approved or accepted by the director for the type of insurance and kind of
2 insurer to be reported upon; and

3 (C) Supplemental or additional information required by the director.

4 (c) Except as otherwise provided in sections 2 to 22 of this 2012 Act, an association cap-
5 tive insurer shall file the financial statement required by ORS 731.574.

6 (d) For the purposes of this subsection, "statutory accounting" means a method of ac-
7 counting using rules that insurance companies must follow in filing an annual financial
8 statement with the Department of Consumer and Business Services.

9 (3)(a) A pure captive insurer may make a written request to file the required report on
10 a fiscal year end that is consistent with the fiscal year of the parent company of the pure
11 captive insurer.

12 (b) If the director grants an alternative reporting date for a pure captive insurer as de-
13 scribed under paragraph (a) of this subsection, the annual report is due 60 days after the
14 fiscal year end.

15 (4)(a) Not later than 60 days after the fiscal year end, an alien captive insurer operating
16 as a branch captive insurer in this state shall file with the director a copy of all reports and
17 statements required to be filed under the laws of the jurisdiction in which the alien captive
18 insurer is formed, verified by oath by two of the alien captive insurer's executive officers.

19 (b) If the director is satisfied that the annual report filed by the alien captive insurer in
20 the jurisdiction in which the alien captive insurer is formed provides adequate information
21 concerning the financial condition of the alien captive insurer, the director may waive the
22 requirement for completion of the annual statement required for a captive insurer under this
23 section with respect to business written in the alien jurisdiction.

24 (c) A waiver granted by the director under paragraph (b) of this subsection shall be in
25 writing and is subject to public inspection.

26 (5) All captive insurers transacting insurance in this state shall engage a qualified
27 actuary with knowledge of this state for purposes of determining and setting premiums to
28 be charged by the captive insurer.

29 **SECTION 14.** (1)(a) The Director of the Department of Consumer and Business Services
30 shall examine the affairs of each captive insurer once in each three-year period.

31 (b) The three-year period described in paragraph (a) of this subsection is determined on
32 the basis of three full annual accounting periods of operation.

33 (c) The examination is to be made as of December 31 of the full three-year period or as
34 of the last day of the month of an annual accounting period authorized for a captive insurer
35 under this section.

36 (d) In addition to an examination required under this subsection, the director may ex-
37 amine a captive insurer whenever the director determines it to be prudent.

38 (2) During an examination under this section, the director shall thoroughly examine the
39 affairs of the captive insurer to ascertain:

40 (a) The financial condition of the captive insurer;

41 (b) The ability of the captive insurer to fulfill the obligations of the captive insurer; and

42 (c) Whether the captive insurer meets the requirements of sections 2 to 22 of this 2012
43 Act.

44 (3) The director may expand the three-year period described in subsection (1) of this
45 section to five years if during that period a captive insurer is subject to a comprehensive

1 **annual audit:**

- 2 (a) Of a scope satisfactory to the director; and
- 3 (b) Performed by independent auditors approved by the director.

4 (4) The director may accept a comprehensive annual independent audit in lieu of an ex-
 5 amination if the scope of the examination is satisfactory to the director and the examination
 6 is performed by a qualified independent auditor.

7 (5) A captive insurer that is examined under this section shall pay the expenses and
 8 charges of the examination.

9 **SECTION 15.** Any captive insurer for which the Director of the Department of Consumer
 10 and Business Services issues a certificate of authority must comply with the limits of risk
 11 set forth in ORS 731.504.

12 **SECTION 16.** (1) The Director of the Department of Consumer and Business Services
 13 may suspend or revoke the certificate of authority issued to a captive insurer to transact
 14 insurance in this state if the captive insurer:

- 15 (a) Is insolvent or impaired as defined in ORS 734.014;
- 16 (b) Fails to meet the requirements of sections 2 to 22 of this 2012 Act;
- 17 (c) Refuses or fails to submit an annual report required by section 13 of this 2012 Act or
 18 any other report or statement required by law or by order of the director;
- 19 (d) Fails to comply with the charter, bylaws or other organizational document of the
 20 captive insurer;
- 21 (e) Fails to submit to an examination under section 14 or 18 of this 2012 Act or any legal
 22 obligation relative to an examination under section 14 or 18 of this 2012 Act;
- 23 (f) Refuses or fails to pay the cost of examination under section 14 or 18 of this 2012 Act;
- 24 (g) Uses methods that, although not otherwise specifically prohibited by law, render:
 - 25 (A) The operation of the captive insurer detrimental to the public or the policyholders
 26 of the captive insurer according to standards adopted by the director by rule; or
 - 27 (B) The condition of the captive insurer unsound with respect to the public or to the
 28 policyholders of the captive insurer; or
- 29 (h) Otherwise fails to comply with laws of this state.

30 (2) If the director finds, upon examination, hearing or other evidence that a captive
 31 insurer has committed any of the acts specified in subsection (1) of this section, the director
 32 may suspend or revoke the certificate of authority issued to the captive insurer if the di-
 33 rector considers it in the best interest of the public and the policyholders of the captive
 34 insurer.

35
 36 **BRANCH CAPTIVE INSURERS**

37
 38 **SECTION 17.** Except as otherwise provided in sections 2 to 22 of this 2012 Act, a branch
 39 captive insurer must be a pure captive insurer with respect to business operations in this
 40 state, unless otherwise permitted by rule of the Director of the Department of Consumer and
 41 Business Services.

42 **SECTION 18.** (1) The Director of the Department of Consumer and Business Services
 43 shall examine only the branch operations of, and the insurance transacted by, a branch
 44 captive insurer in this state if the branch captive insurer:

- 45 (a) Provides annually to the director a certificate of compliance, or an equivalent, issued

1 by or filed with the licensing authority of the jurisdiction in which the branch captive insurer
 2 is formed; and

3 (b) Demonstrates to the satisfaction of the director that the branch captive insurer is
 4 operating in sound financial condition in accordance with sections 2 to 22 of this 2012 Act
 5 and all applicable laws and regulations of the jurisdiction in which the branch captive insurer
 6 is formed.

7 (2) As a condition of its authority as a branch captive insurer, an alien captive insurer
 8 must authorize the director to examine the affairs of the alien captive insurer in the juris-
 9 diction in which the alien captive insurer is formed.

10 (3) An alien captive insurer that is examined under this section shall pay the expenses
 11 and charges of the examination

12
 13 **FOREIGN CAPTIVE INSURERS**

14
 15 **SECTION 19.** Notwithstanding ORS 731.022, a foreign captive insurer may provide insur-
 16 ance in this state if the foreign captive insurer meets both of the following conditions:

17 (1) The foreign captive insurer is domiciled in a state that regulates the foreign captive
 18 insurer as a captive insurer and the captive insurer is in good standing in that state.

19 (2) All activities related to the placement of the insurance occurs in the domicile state
 20 and the insurance otherwise complies with the laws of the domicile state, including the pro-
 21 posal to make an insurance contract, taking or receiving an application for insurance, col-
 22 lecting a premium or other consideration for the insurance and issuing or delivering policies
 23 of insurance.

24
 25 **CAPTIVE REINSURERS**

26
 27 **SECTION 20.** At least 35 percent of the assets of a captive reinsurer must be managed
 28 by an asset manager domiciled in this state.

29 **SECTION 21.** If permitted by its articles of incorporation or charter, and in accordance
 30 with sections 6 and 22 of this 2012 Act, a captive reinsurer may apply to the Director of the
 31 Department of Consumer and Business Services for a certificate of authority to transact
 32 reinsurance.

33 **SECTION 22.** (1) A captive reinsurer must be incorporated as a stock insurer with its
 34 capital divided into shares and held by the captive reinsurer's shareholders. In incorporating,
 35 a captive reinsurer must comply with the requirements of section 9 of this 2012 Act.

36 (2) The capital stock of a captive reinsurer must be issued at par value or greater.

37 (3) At least one member of the board of directors of a captive reinsurer incorporated in
 38 this state must be a resident of this state.

39
 40 **TAX PROVISIONS**

41
 42 **SECTION 23.** Section 24 of this 2012 Act is added to and made a part of ORS chapter 317.

43 **SECTION 24.** A captive insurer, as defined in section 2 of this 2012 Act, making an
 44 election under section 831(b) of the Internal Revenue Code, as amended, shall be afforded the
 45 same tax treatment on receipt of premiums and tax on investment earnings for state income

1 tax purposes as exists for federal income tax purposes except that the income tax rates on
2 taxable income of the captive insurer shall be those identified under state law rather than
3 federal law.

4
5 **UNIT CAPTIONS**

6
7 **SECTION 25.** The unit captions used in this 2012 Act are provided only for the conven-
8 ience of the reader and do not become part of the statutory law of this state or express any
9 legislative intent in the enactment of this 2012 Act.

10
11 **OPERATIVE DATE**

12
13 **SECTION 26.** Except as provided in section 27 of this 2012 Act, this 2012 Act becomes
14 operative on July 1, 2012.

15 **SECTION 27.** The Director of the Department of Consumer and Business Services may
16 take any action before the operative date of this 2012 Act that is necessary to enable the
17 director to exercise, on and after the operative date of this 2012 Act, all the duties, functions
18 and powers conferred on the director by this 2012 Act.

19
20 **EMERGENCY CLAUSE**

21
22 **SECTION 28.** This 2012 Act being necessary for the immediate preservation of the public
23 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect
24 on its passage.

25
