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4

A Bill

HOUSE BILL 1476

5 By: Representative Collins
6

For An Act To Be Entitled

8 AN ACT TO REVISE CERTAIN PROVISIONS RELATED TO
9 FORMATION AND OPERATION OF CAPTIVE INSURANCE
10 COMPANIES; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO REVISE CERTAIN PROVISIONS RELATED TO
15 FORMATION AND OPERATION OF CAPTIVE
16 INSURANCE COMPANIES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 23-63-1601 is amended to read as follows:
22 23-63-1601. Definitions.

23 As used in this subchapter:

24 (1) "Affiliated company" means a company in the same corporate
25 system as a parent, an industrial insured, or a member organization by virtue
26 of common ownership, control, operation, or management;

27 (2) "Alien captive insurance company" means an insurance company
28 formed to write insurance business for its parents and affiliates and
29 licensed under the laws of an alien jurisdiction that imposes statutory or
30 regulatory standards in a form acceptable to the Insurance Commissioner on
31 companies transacting the business of insurance in the alien jurisdiction;

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

35 (A) The member organizations of which collectively, or
36 which does itself:



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

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

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

9 (4) "Association captive insurance company" means a company that
10 insures risks of the member organizations of the association and their
11 affiliated companies;

12 (5) "Branch business" means any insurance business transacted by
13 a branch captive insurance company in this state;

14 (6)(A) "Branch captive insurance company" means an alien captive
15 insurance company licensed by the commissioner to transact the business of
16 insurance in this state through a business unit with a principal place of
17 business in this state.

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

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

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

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

29 (10) "Controlled unaffiliated business" means a company:

30 (A) That is not in the corporate system of a parent and
31 affiliated companies;

32 (B) That has an existing contractual relationship with a
33 parent or affiliated company; and

34 (C) Whose risks are managed by a pure captive insurance
35 company;

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

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

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

6 (i) ~~Which~~ That procures insurance by use of the
 7 services of a full-time employee acting as a risk manager or insurance
 8 manager or utilizing the services of a regularly and continuously qualified
 9 insurance consultant;

10 (ii) Whose aggregate annual premiums for insurance
 11 on all risks total at least twenty-five thousand dollars (\$25,000); and

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

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

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

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

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

23 (i) A group of industrial insureds that
 24 collectively:

25 (a) Own, control, or hold with power to vote
 26 all of the outstanding voting securities of an industrial insured captive
 27 insurance company incorporated as a stock insurer; or

28 (b) Have complete voting control over an
 29 industrial insured captive insurance company incorporated as a mutual
 30 insurer; or

31 (ii) A group which is created under the Product
 32 Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as it existed
 33 January 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201
 34 et seq., or as a corporation or other limited liability association taxable
 35 as a stock insurance company or a mutual insurer under the Arkansas Insurance
 36 Code.

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

3 ~~(15)~~(16) "Member organization" means an individual, corporation,
4 partnership, or association that belongs to an association;

5 ~~(16)~~(17) "Parent" means a corporation, partnership, or
6 individual that directly or indirectly owns, controls, or holds with power to
7 vote more than fifty percent (50%) of the outstanding voting securities of a
8 pure captive insurance company;

9 ~~(17)~~(18) "Participant" means an entity as defined in § 23-63-
10 1621 and any affiliates of that entity that are insured by a sponsored
11 captive insurance company when the losses of the participant are limited
12 through a participant contract to the assets of a protected cell;

13 ~~(18)~~(19) "Participant contract" means a contract by which a
14 sponsored captive insurance company insures the risks of a participant and
15 limits the losses of the participant to the assets of a protected cell;

16 ~~(19)~~(20) "Producer reinsurance captive insurance company" means
17 a company that is wholly owned by a resident licensed insurance producer and
18 that acts only as a reinsurer for risks written by or placed through its
19 parent or an affiliate of its parent;

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

24 ~~(21)~~(22) "Pure captive insurance company" means a company that
25 insures risks of its parent and affiliated companies or controlled
26 unaffiliated business;

27 ~~(22)~~(23) "Special purpose captive insurance company" means a
28 captive insurance company that is formed or licensed under this chapter and
29 does not meet the definition of any other type of captive insurance company
30 defined in this section;

31 ~~(23)~~(24) "Sponsor" means an entity that meets the requirements
32 of § 23-63-1620 and is approved by the commissioner to provide all or part of
33 the capital and surplus required by applicable law and to organize and
34 operate a sponsored captive insurance company; and

35 ~~(24)~~(25) "Sponsored captive insurance company" means a captive
36 insurance company;

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

8

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

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

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17 SECTION 3. Arkansas Code § 23-63-1606 is amended to read as follows:
 18 23-63-1606. Organization.

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

25 (b) ~~An association captive insurance company or an industrial insured~~
 26 ~~captive insurance company may be:~~

27 ~~(1) Incorporated as a stock insurer with its capital divided~~
 28 ~~into shares and held by the stockholders;~~

29 ~~(2) Incorporated as a mutual insurer without capital stock, the~~
 30 ~~governing body of which is elected by the member organizations of its~~
 31 ~~association; or~~

32 ~~(3) Organized as a reciprocal insurer under § 23-70-101 et seq.~~

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

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

1 been issued.

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

4 ~~(f)~~(d) At least one (1) of the members of the board of directors of a
5 captive insurance company formed as a corporation in this state ~~must~~ shall be
6 a resident of the United States or a United States territory.

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

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

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

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

20 (B) The commissioner may waive or modify the requirements
21 for public notice and hearing in accordance with ~~regulations~~ rules that the
22 commissioner may promulgate addressing categories of transactions.

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

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

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

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

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

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

3 ~~(j)~~(h) The articles of incorporation or bylaws of a captive insurance
 4 company may authorize a quorum of a board of directors to consist of no fewer
 5 than one-third (1/3) of the fixed or prescribed number of directors under §
 6 4-27-824(b).

7 ~~(k)~~(i) The subscribers' agreement or other organizing document of a
 8 captive insurance company formed as a reciprocal insurer may authorize a
 9 quorum of a subscribers' advisory committee to consist of no fewer than one-
 10 third (1/3) of the number of its members.

11
 12 SECTION 4. Arkansas Code § 23-63-1607(b), concerning reporting
 13 requirements of a captive insurance company, is amended to read as follows:

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

17 (2)(A) Except as provided in §§ 23-63-1604 and 23-63-1605, a
 18 captive insurance company shall report using generally accepted accounting
 19 principles unless the commissioner approves the use of statutory accounting
 20 principles.

21 (B) The commissioner may require, approve, or accept
 22 appropriate modifications or adaptations for the type of insurance and kinds
 23 of insurers to be reported upon, supplemented by additional information.

24 (3)(A) Unless provided otherwise+, an association captive
 25 insurance company and an industrial insured group shall file their reports in
 26 the form required by § 23-63-216(a).

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

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

30 ~~(a) File its report in the form required by §~~
 31 ~~23-63-216(a); and~~

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

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

1
2 SECTION 5. Arkansas Code § 23-63-1619(a), concerning the conversions
3 and mergers of a captive insurance company, is amended to read as follows:

4 (a) ~~An association~~ A captive insurance company ~~or industrial insured~~
5 ~~group formed as a stock or mutual corporation~~ may be converted to or merged
6 with and into a ~~reciprocal insurer in accordance with~~ another captive
7 insurance company according to a plan and this section.

8
9 SECTION 6. Arkansas Code § 23-63-1619(c)(3), concerning the plan of
10 conversion of a captive insurance company, is amended to read as follows:

11 (3) The commissioner shall approve the plan of conversion, if
12 the commissioner finds that the conversion will promote the general good of
13 the state in conformity with those standards ~~set forth in § 23-63-1606(f)~~
14 stated in § 23-63-1606(d);

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

19 (5)(A) The commissioner shall approve the articles of merger if
20 the commissioner finds that the merger will promote the general good of the
21 state in conformity with those standards ~~set forth in § 23-63-1606(f)~~ stated
22 in § 23-63-1606(d).

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

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

31
32 SECTION 9. Arkansas Code § 23-63-1620, concerning the sponsorship
33 requirements necessary to form a sponsored captive insurance company, is
34 amended to add two (2) additional subsections to read as follows:

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

1 section and the following conditions:

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

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

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

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

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

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

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

33 (B) Any such conversion shall be deemed:

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

1 sponsored captive insurance company; and

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

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

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

12
 13 SECTION 10. Arkansas Code Title 23, Chapter 63, Subchapter 16, is
 14 amended to add an additional section to read as follows:

15 23-63-1624. Dormant captive insurance company – Definition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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