

CHAPTER 434

(SB 245)

AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. SUBTITLE 49 OF KRS CHAPTER 304 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 23 of this Act, unless the context requires otherwise:

- (1) *"Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.*
- (2) *"Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of Sections 1 to 23 of this Act. For purposes of Sections 1 to 23 of this Act, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the commissioner.*
- (3) *"Consortium" means any legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year, the member organizations of which collectively, or which does itself:*
 - (a) *Own, control, or hold with power to vote all of the outstanding voting securities of a consortium captive insurer incorporated as a stock insurer; or*
 - (b) *Have complete voting control over a consortium captive insurer incorporated as a mutual insurer; or*
 - (c) *The member organizations of which collectively constitute all of the subscribers of a consortium captive insurer formed as a reciprocal insurer.*
- (4) *"Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and their affiliated companies.*
- (5) *"Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the commissioner.*
- (6) *"Industrial insured" means an insured as defined in KRS 304.11-020(1).*
- (7) *"Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.*
- (8) *"Industrial insured group" means any group that meets either of the following criteria:*
 - (a) *Any group of industrial insureds that collectively:*
 1. *Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer incorporated as a stock insurer;*
 2. *Have complete voting control over an industrial insured captive insurer incorporated as a mutual insurer; or*

3. *Constitute all of the subscribers of an industrial insured captive insurer formed as a reciprocal insurer; or*
 - (b) *Any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as amended, as a corporation or other limited liability association.*
- (9) *"Member organization" means any individual, corporation, partnership, or association that belongs to a consortium.*
- (10) *"Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurer.*
- (11) *"Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.*
- (12) *"Controlled unaffiliated business" means any company:*
 - (a) *That is not in the corporate system of a parent and affiliated companies;*
 - (b) *That has an existing contractual relationship with a parent or affiliated company; and*
 - (c) *Whose risks are managed by a pure captive insurer in accordance with Section 17 of this Act.*
- (13) *"Foreign captive insurer" means any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that jurisdiction. Under Sections 1 to 23 of this Act, captive insurers formed under the laws of any jurisdiction other than a state of the United States shall be treated as a foreign captive insurer unless the context requires otherwise.*
- (14) *"Branch business" means any insurance business transacted by a branch captive insurer in Kentucky.*
- (15) *"Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the commissioner to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.*
- (16) *"Branch operations" means any business operations of a branch captive insurer in Kentucky.*
- (17) *"Participant" means an entity as defined in Section 21 of this Act, and any affiliates thereof, that are insured by a sponsored captive insurer, where the losses of the participant are limited through a participant contract to the assets of a protected cell.*
- (18) *"Participant contract" means a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.*
- (19) *"Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant.*
- (20) *"Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010.*

- (21) *"Sponsor" means any entity that meets the requirements of Section 20 of this Act and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer.*
- (22) *"Sponsored captive insurer" means any captive insurer:*
- (a) *In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;*
 - (b) *That is formed or issued a certificate of authority under the provisions of this subtitle;*
 - (c) *That insures the risks of separate participants through contract; and*
 - (d) *That segregates each participant's liability through one (1) or more protected cells.*

SECTION 2. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any captive insurer, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the commissioner for a certificate of authority to engage in any and all kinds of insurance defined in Subtitle 5 of this chapter; provided, however, that:*
- (a) *No pure captive insurer may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;*
 - (b) *No consortium captive insurer may insure any risks other than those of the member organizations of its consortium, and their affiliated companies;*
 - (c) *No industrial insured captive insurer may insure any risks other than those of the industrial insureds that comprise the industrial insured group, and their affiliated companies;*
 - (d) *No captive insurer may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;*
 - (e) *No captive insurer may accept or cede reinsurance except as provided in Section 11 of this Act;*
 - (f) *Any captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurer may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies;*
 - (g) *Any captive insurer which insures risks described in KRS 304.5-020 and KRS 304.5040 shall comply with all applicable state laws;*
 - (h) *No branch captive insurer may write any business in Kentucky except insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended; and*
 - (i) *No sponsored captive insurer may insure any risks other than those of its participants.*
- (2) *No captive insurer shall do any insurance business in Kentucky unless:*
- (a) *It first obtains from the commissioner a certificate of authority authorizing it to do insurance business in Kentucky;*

- (b) Its board of directors, or in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one meeting each year in Kentucky; and*
 - (c) It maintains its principal place of business in Kentucky, or in the case of a branch captive insurer, maintains the principal place of business for its branch operations in Kentucky.*
- (3) Before receiving a certificate of authority, a captive insurer formed as a corporation shall file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner;*
- (4) Before receiving a certificate of authority, a captive insurer formed as a reciprocal insurer shall:*
 - (a) File with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and*
 - (b) Submit to the commissioner a sample of the coverages, deductibles, coverage limits, and rates, together with any additional information required by the commissioner. In the event of any subsequent material change in any item in the samples, the reciprocal captive insurer shall submit to the commissioner for approval an appropriate revision. The reciprocal captive insurer shall not offer any coverage until the forms are approved by the commissioner. The reciprocal captive insurer shall not use any initial rate until it is approved by the commissioner and shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of the change.*
- (5) In addition to the information required by subsections (3) or (4) of this section, each applicant captive insurer shall file with the commissioner evidence of the following:*
 - (a) The amount and liquidity of its assets relative to the risks to be assumed;*
 - (b) The adequacy of the expertise, experience, and character of the person or persons who will manage it;*
 - (c) The overall soundness of its plan of operation;*
 - (d) The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and*
 - (e) Any other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.*
- (6) In addition to the information required by subsections (3), (4), and (5) of this section, each applicant-sponsored captive insurer shall file with the commissioner the following:*
 - (a) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;*
 - (b) A statement acknowledging that all financial records of the sponsored captive insurer, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner;*

- (c) *All contracts or sample contracts between the sponsored captive insurer and any participants; and*
 - (d) *Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.*
- (7) *Information submitted under this section shall be confidential by law and privileged but may be used, received, and shared in accordance with Subtitle 2 of this chapter.*
- (8) *Each captive insurer shall pay to the commissioner a nonrefundable fee as stated in KRS 304.4-010 for examining, investigating, and processing its application for certificate of authority. The commissioner is authorized to retain legal, financial, and examination services from outside the department to assist in examining and investigating the applicant, the reasonable cost of which may be charged against the applicant. In addition, each captive insurer shall pay a certificate of authority fee for the year of registration and a renewal fee for each year thereafter.*

SECTION 3. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each captive insurer shall be named in accordance with KRS 304.3-100.

SECTION 4. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:*
- (a) *In the case of a pure captive insurer, not less than two hundred fifty thousand dollars (\$250,000);*
 - (b) *In the case of an consortium captive insurer, not less than seven hundred fifty thousand dollars (\$750,000);*
 - (c) *In the case of an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000); and*
 - (d) *In the case of a sponsored captive insurer, not less than one million dollars (\$1,000,000).*
- (2) *Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under Sections 1 to 23 of this Act shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of one million dollars (\$1,000,000).*
- (3) *The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.*
- (4) *Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank approved by the commissioner and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System.*
- (5) *In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the commissioner shall require that a separate trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United*

States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurer through its branch operations. The amount of this security may be no less than the capital and surplus required in this section and the reserves on the insurance policies or the reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operations; provided, however, the commissioner may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in Kentucky or a member bank of the Federal Reserve System.

SECTION 5. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No captive insurer may pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in KRS 304.24-320 and KRS 304.24-330, without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner.

SECTION 6. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) A pure captive insurer or a sponsored captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.*
- (2) A consortium captive insurer or an industrial insured captive insurer may be:
 - (a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or*
 - (b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its consortium; or*
 - (c) Organized as a reciprocal insurer in accordance with Subtitle 27 of this chapter.**
- (3) A captive insurer incorporated or organized in Kentucky shall have not less than three (3) incorporators or two (2) organizers.*
- (4) In the case of a captive insurer, the commissioner shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the commissioner shall consider:
 - (a) The character, reputation, financial standing, and purposes of the incorporators or organizers;*
 - (b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and*
 - (c) Any other aspects the commissioner deems advisable.**

- (5) *The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.*
- (6) *Captive insurance companies formed as corporations under the provisions of Sections 1 to 23 of this Act shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in Sections 1 to 23 of this Act. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:*
 - (a) *The commissioner may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and*
 - (b) *The commissioner may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the commissioner may cancel the hearing.*
- (7) *Captive insurance companies formed as reciprocal insurers under the provisions of Sections 1 to 23 of this Act shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under Sections 1 to 23 of this Act unless the provisions are expressly made applicable to captive insurance companies under Sections 1 to 23 of this Act.*
- (8) *In addition to the provisions of subsection (7) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.*
- (9) *The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.*
- (10) *The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third of the number of its members.*

SECTION 7. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS
CREATED TO READ AS FOLLOWS:

- (1) *Captive insurance companies shall not be required to make any annual report except as provided in Sections 1 to 23 of this Act.*
- (2) *On or before March 1 of each year, each captive insurer shall submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, with any useful or*

necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each consortium captive insurer and each industrial insured captive insurer insuring the risks of an industrial insured group defined in subsection (8)(b) of Section 1 of this Act shall file its report in the form of and as required by KRS 304.2-205. The commissioner shall by administrative regulation propose the forms in which pure captive insurance companies and industrial insured captive insurance companies insuring the risks of an industrial insured group defined in subsection (8)(a) of Section 1 of this Act shall report.

- (3) Any pure captive insurer or an industrial insured captive insurer insuring the risks of industrial insured groups as defined in subsection (8)(a) of Section 1 of this Act may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year-end;*
- (4) Sixty (60) days after the fiscal year-end, a branch captive insurer shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurer, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.*

SECTION 8. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS
CREATED TO READ AS FOLLOWS:

- (1) Any insurer holding a certificate of authority issued under this subtitle shall be subject to provisions of KRS 304.2-210 to KRS 304.2-300 and provisions of Subtitle 2 of this chapter for determining market conduct and business practices. However, the commissioner upon application, in his discretion, may extend the period between examinations, provided the captive insurer is subject to a comprehensive annual audit during that period, of a scope satisfactory to the commissioner, by independent auditors approved by the commissioner.*
- (2) The examination for a branch captive insurer shall be of branch business and branch operations only, as long as the branch captive insurer provides annually to the commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurer is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.*
- (3) As a condition for issuance of a certificate of authority to a branch captive insurer, the foreign captive insurer shall grant authority to the commissioner for examination of the affairs of the foreign captive insurer in the jurisdiction in which the foreign captive insurer is formed.*

SECTION 9. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS
CREATED TO READ AS FOLLOWS:

Insurers holding a certificate of authority issued under this subtitle shall be subject to the provisions of Subtitles 2 and 3 of this chapter to the extent applicable and not in conflict with the expressed provisions of this subtitle.

SECTION 10. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A consortium captive insurer, sponsored captive insurer, and an industrial insured captive insurer insuring the risks of an industrial insured group defined in subsection (8)(b) of Section 1 of this Act shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the commissioner may approve the use of alternative reliable methods of valuation and rating.*
- (2) *No pure captive insurer or industrial insured captive insurer insuring the risks of an industrial insured group as defined in subsection (8)(a) of Section 1 of this Act shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.*
- (3) *Only a pure captive insurer may make loans to its parent company or affiliates. No loans to a parent company or any affiliate shall be permitted without prior written approval of the commissioner and shall be evidenced by a note in a form approved by the commissioner.*
- (4) *All captive insurers are subject to KRS 304.37-030 regarding material transactions.*

SECTION 11. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any captive insurer may provide reinsurance, as provided in KRS 304.5-130, KRS 304.5140, and KRS 304.5-150, on risks ceded by any other insurer.*
- (2) *Any captive insurer may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of KRS 304.5-140. A captive insurer shall not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with KRS 304.5-140.*
- (3) *For all purposes of Sections 1 to 23 of this Act, insurance by a captive insurer of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.*

SECTION 12. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No captive insurer shall be required to join a rating organization.

SECTION 13. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No captive insurer, including a captive insurer organized as a reciprocal insurer under Sections 1 to 23 of this Act, shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in Kentucky, nor shall any such captive insurer, or its insured, or its parent or any affiliated company, or any member organization of its consortium, or in the case of a captive insurer organized as a reciprocal insurer, any subscriber thereof,

receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurer.

SECTION 14. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner may establish and from time to time amend administrative regulations relating to captive insurance companies that are necessary to enable the commissioner to carry out the provisions of Sections 1 to 23 of this Act.

SECTION 15. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

No provisions of this chapter, other than those contained in Sections 1 to 22 of this Act or contained in specific references contained in Sections 1 to 23 of this Act, shall apply to captive insurance companies.

SECTION 16. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in this section, the terms and conditions set forth in Subtitle 33 of this chapter, pertaining to insurance supervision, rehabilitation and liquidation, shall apply in full to captive insurance companies formed or issued a certificate of authority under this subtitle.*
- (2) *In the case of a sponsored captive insurer:*
 - (a) *The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to the protected cell; and*
 - (b) *Its capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurer.*
- (3) *Stock or mutual captive insurers may voluntarily dissolve in accordance with KRS 304.24-430.*
- (4) *Reciprocal captive insurers may voluntarily dissolve in accordance with the provisions of Subtitle 27 of this chapter.*

SECTION 17. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The commissioner shall promulgate administrative regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurer.

SECTION 18. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A consortium captive insurer or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.*
- (2) *Any plan for such conversion or merger shall be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.*
- (3) *In the case of a conversion authorized under subsection (1) of this section:*

- (a) *The conversion shall be accomplished under any reasonable plan and procedure approved by the commissioner, but the commissioner shall not approve any plan of conversion unless the plan:*
1. *Satisfies the provisions of subsection (2) of this section;*
 2. *Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the commissioner may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the commissioner may cancel the hearing;*
 3. *Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and*
 4. *Is approved:*
 - a. *In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;*
 - b. *In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;*
- (b) *The commissioner shall approve the plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in subsection (4) of Section 6 of this Act;*
- (c) *If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue an amended certificate of authority to the company's attorney-in-fact;*
- (d) *Upon the issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion shall be effective; and*
- (e) *Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.*
- (4) *A merger authorized under subsection (1) of this section shall be accomplished substantially in accordance with the procedures set forth in KRS 304.24-390, except that, solely for purposes of the merger:*
- (a) *The plan of merger shall satisfy the provisions of subsection (2) of this section;*
 - (b) *The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurer;*
 - (c) *The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurer;*

- (d) *If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;*
- (e) *The commissioner may, upon request of an insurer party to a merger authorized under subsection (1) of this section, waive the requirement of KRS 304.24-390(4);*
- (f) *The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in subsection (4) of Section 6 of this Act. If the commissioner approves the articles of merger, the commissioner shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;*
- (g) *Notwithstanding Section 4 of this Act, the commissioner may permit the formation, without surplus, of a captive insurer organized as a reciprocal insurer, into which an existing captive insurer may be merged for the purpose of facilitating a transaction under this section; however, there shall be no more than one (1) authorized insurer surviving the merger; and*
- (h) *An alien insurer may be a party to a merger authorized under subsection (1) of this section, provided, that the requirements for a merger between a domestic and a foreign insurer under KRS 304.24-390 shall apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer shall be treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions shall be the equivalent of a state for purposes of KRS 304.24-390.*

SECTION 19. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *One (1) or more sponsors may form a sponsored captive insurer under Sections 1 to 23 of this Act.*
- (2) *A sponsored captive insurer formed or issued a certificate of authority under the provisions of Sections 1 to 23 of this Act may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:*
 - (a) *The shareholders of a sponsored captive insurer shall be limited to its participants and sponsors;*
 - (b) *Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to participants, and any other factors provided in the participant contract or required by the commissioner;*
 - (c) *The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurer may conduct;*
 - (d) *No sale, exchange, or other transfer of assets may be made by the sponsored captive insurer between or among any of its protected cells without the consent of the protected cells;*
 - (e) *No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and,*

in no event, shall such approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

- (f) Each sponsored captive insurer shall annually file with the commissioner those financial reports required by the commissioner, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;*
- (g) Each sponsored captive insurer shall notify the commissioner, in writing, within ten (10) business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and*
- (h) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell shall constitute a change in the business plan requiring the commissioner's prior written approval.*

SECTION 20. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A sponsor of a sponsored captive insurer shall be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, or a captive insurer formed or issued a certificate of authority under Sections 1 to 23 of this Act. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurer.

SECTION 21. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) Associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurer formed or issued a certificate of authority under Sections 1 to 23 of this Act.*
- (2) A sponsor may be a participant in a sponsored captive insurer.*
- (3) A participant need not be a shareholder of the sponsored captive insurer or any affiliate thereof.*
- (4) A participant shall insure only its own risks through a sponsored captive insurer.*

SECTION 22. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) Every captive insurer holding a certificate of authority under Sections 1 to 23 of this Act shall return to the Revenue Cabinet a statement under oath of all premium receipts on business written by the captive insurer during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of four-tenths of one percent (0.4%) on the first 20 million dollars (\$20,000,000), and three-tenths of one percent (0.3%) on the next 20 million dollars (\$20,000,000), and two-tenths of one percent (0.2%) on the next 20 million dollars (\$20,000,000), and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurer during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.*

- (2) *Every captive insurer holding a certificate of authority under Sections 1 to 23 of this Act shall return to the Revenue Cabinet a statement under oath of all assumed reinsurance premium receipts during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of two hundred twenty-five thousandths of one percent (0.225%) on the first 20 million dollars (\$20,000,000) of assumed reinsurance premium, and one hundred fifty thousandths of one percent (0.150%) on the next 20 million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%) on the next 20 million dollars (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (1) of this section. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurer.*
- (3) *If the aggregate taxes to be paid by a captive insurer calculated under subsections (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such year.*
- (4) *Two (2) or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurer.*
- (5) *For the purposes of this section, common ownership and control shall mean:*
 - (a) *In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and*
 - (b) *In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.*
- (6) *In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the company.*
- (7) *The tax provided for in this section shall constitute all taxes collectible under the laws of Kentucky from any captive insurer, and the taxes imposed under this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district except as provided in KRS 136.320 (6) and (7).*
- (8) *The Kentucky Revenue Cabinet shall annually distribute ten percent (10%) of the premium tax revenues collected pursuant to this section to the Department of Insurance for the regulation of captive insurance companies under Sections 1 to 23 of this Act.*

SECTION 23. A NEW SECTION OF SUBTITLE 49 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

This subtitle shall not apply to any foreign captive insurer lawfully transacting the business of insurance in Kentucky prior to the effective date of Sections 1 to 23 of this Act, unless the foreign captive insurer petitions the commissioner requesting that this subtitle be applicable to the foreign captive insurer.

Approved April 21, 2000