

CHAPTER 91**(HB 241)**

AN ACT relating to captive insurers.

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

➔Section 1. KRS 304.49-010 is amended to read as follows:

As used in KRS 304.49-010 to 304.49-230, 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) "Agency captive insurer" means a captive insurer that is owned by one (1) or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners.
- (3) "Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, ***special purpose captive insurer, agency captive insurer***, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230. For purposes of KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the executive director.
- (4) "Consortium" means any ***bona fide*** legal association of individuals, corporations, ***limited liability companies***, partnerships, ~~or~~ associations, ***or other entities***~~[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 ***or member interests*** of a consortium captive insurer incorporated as a stock insurer; or
 - (b) Have complete voting control over a consortium captive insurer ***organized***~~[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.
- (5) "Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and ***that also may insure the risks of affiliated companies of the member organizations and the risks associated with the consortium itself***~~[their affiliated companies]~~.
- (6) "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 executive director.
- (7) "Industrial insured" means an insured as defined in KRS ~~304.11-020(1)~~ ***304.11-020(2)***.
- (8) "Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.
- (9) "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. secs. 3901 et seq., as amended, as a corporation or other limited liability association.
- (10) "Member organization" means any individual, corporation, partnership, ~~or~~ association, ***or other entity*** that belongs to a consortium.

- (11) "Parent" means a corporation, partnership, ~~or~~ individual, **or other entity** 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.
- (12) "Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
- (13) "Controlled unaffiliated business" means any **person**~~company~~:
- (a) That is not in the corporate system of a parent and *its* affiliated companies ***in the case of a pure captive, or that is not in the corporate system or an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company;***
 - (b) That has an existing contractual relationship with a parent or affiliated ***companies in the case of a pure captive, or with an industrial insured or one (1) of its affiliated companies in the case of an industrial insured captive insurance*** company; and
 - (c) Whose ***risk management function related to the covered risk of loss is controlled by an affiliate of***~~risks are managed by~~ a pure captive insurer ***or an industrial insured captive insurance company, as applicable, providing coverage or reinsurance***~~[in accordance with KRS 304.49-170].~~
- (14) "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 executive director on companies transacting the business of insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, 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.
- (15) "Branch business" means any insurance business transacted by a branch captive insurer in Kentucky.
- (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the executive director to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.
- (17) "Branch operations" means any business operations of a branch captive insurer in Kentucky.
- (18) "Participant" means an entity as defined in KRS 304.49-210, 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.
- (19) "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.
- (20) "Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant.
- (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010.
- (22) "Special purpose captive insurer" means any person that is licensed under this chapter and designated as a special purpose captive insurer by the executive director. A person may be designated as a special purpose captive insurer if it is established for one (1) specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction.
- (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is approved by the executive director to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer.
- (24) "Sponsored captive insurer" means any captive insurer:
- (a) In which the minimum capital and surplus required by applicable law is provided by one (1) 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. KRS 304.49-040 is amended 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 a *consortium, sponsored, agency or* an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000);~~
 - ~~(d)~~ ~~In the case of a sponsored captive insurer, not less than one million dollars (\$1,000,000);~~
 - ~~(e)~~ ~~In the case of an agency captive insurer, not less than five hundred thousand dollars (\$500,000);~~ and
 - ~~(c)(f)~~ In the case of a special purpose captive insurer, not less than two hundred fifty thousand dollars (\$250,000), or another amount determined by the executive director.
- (2) Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of *not less than five hundred thousand dollars (\$500,000)* ~~one million dollars (\$1,000,000)~~.
- (3) The executive director may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.
- (4) Capital and surplus ~~shall~~ *may* be in the form of cash, ~~or~~ an irrevocable letter of credit issued by a bank approved by the executive director and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System, *a surplus note approved by the executive director*, or other assets as may be approved by the executive director. *A surplus note shall not be used for the initial minimum capital and surplus of a non-mutual captive insurer.*
- (5) In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the executive director 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 executive director 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 3. KRS 304.49-050 is amended 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 304.24-330 without the prior approval of the executive director. 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 executive director. *The executive director may rescind approval of all or part of the dividend and may require repayment of all or part of the dividend amount if a dividend is paid without approval, made in excess of the approved amount, made in excess of the approved amount, or made in violation of the terms of the approval.*

➔Section 4. KRS 304.49-060 is amended to read as follows:

- (1) A ~~pure~~ captive insurer ~~or a sponsored captive insurer~~ shall be *formed* ~~incorporated~~ as a:

- (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 *in accordance with Subtitle 24 of this chapter*[, 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 special purpose captive insurer may be:~~
- ~~(a) Incorporated as a stock corporation;~~
- ~~(b) Incorporated as a nonstock corporation;]~~
- ~~(d)[(e) Formed as a]Limited liability company *pursuant to KRS Chapter 275*;~~
- ~~(e) *Business corporation pursuant to KRS Chapter 271B*;~~
- ~~(f) *Non-stock, non-profit corporation pursuant to KRS Chapter 273*; or~~
- ~~(g) *Partnership, limited partnership, statutory business trust, or other legal person or entity other than a natural person in his or her individual capacity, with the approval of the executive director upon a showing of demonstrated need.*~~
- ~~[(d) Formed as a partnership;~~
- ~~(e) Formed as a limited partnership;~~
- ~~(f) Formed as a statutory trust; or~~
- ~~(g) Such other person approved by the executive director, other than a natural person in his or her individual capacity.~~
- ~~(4) A sponsored captive insurer may be:~~
- ~~(a) Incorporated as a stock corporation;~~
- ~~(b) Incorporated as a nonstock corporation;~~
- ~~(c) Formed as a limited liability company;~~
- ~~(d) Formed as a partnership;~~
- ~~(e) Formed as a limited partnership; or~~
- ~~(f) Formed as a statutory trust.]~~
- (2) *A captive insurer formed as a corporation, limited liability company or nonstock, nonprofit corporation shall have the privileges and be subject to the provisions of KRS Chapter 271B, 273, or 275 and the provisions of this subtitle. If there is a conflict between the provisions of KRS Chapter 271B, 273, or 275 and the provisions of this subtitle, the provisions of this subtitle shall control.*
- (3) *A captive insurer organized as a corporation may issue classes of shares and series of shares within a class pursuant to KRS Chapter 271B.*
- (4) *Captive insurance companies formed as corporations under the provisions of this subtitle shall have the privileges and be subject to the provisions of KRS Chapter 271B and the applicable provisions contained in this subtitle. The provisions of this chapter shall control if there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter. 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 in Subtitles 24 and 37 of this chapter, except that:*
- (a) *The executive director 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 executive director may waive or modify the requirements for public notice and hearing in accordance with administrative regulations which may be promulgated by the executive director*

addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the executive director may cancel the hearing.

- (5) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.
- (6) A captive insurer incorporated or organized in Kentucky shall have *at least one (1) incorporator or organizer* ~~not less than three (3) incorporators or two (2) organizers~~.
- (7) In the case of a captive insurer, the executive director 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 executive director 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 executive director deems advisable.
- (8) The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.
- ~~(9) Captive insurance companies formed as corporations under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. 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 executive director 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 executive director may waive or modify the requirements for public notice and hearing in accordance with rules which the executive director may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the executive director may cancel the hearing.~~~~
- ~~(10) Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 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 KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.~~
- ~~(10)(11) In addition to the provisions of subsection 9(10) 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.~~
- ~~(11)(12) 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 (1/3) of the fixed or prescribed number of directors.~~
- ~~(12)(13) 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 (1/3) of the number of its members.~~
- ~~(13)(14) Each owner of an agency captive insurer shall be licensed as an insurance producer.~~
- (14) *The parent of a pure captive insurer may include an employee benefit plan, employee stock ownership plan, or any legal or business trust approved by the executive director.*

➔Section 5. KRS 304.49-070 is amended to read as follows:

- (1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.
- (2) On or before March 1 of each year, each captive insurer shall submit to the executive director 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 executive director approves the use of statutory accounting principles or international accounting standards. ***The approved accounting method may contain***~~[-with]~~ any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the executive director for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the executive director. Any captive insurer whose use of statutory accounting principles is approved by the executive director may make modifications and adaptations as are necessary to record as admitted the full value of all investments by the captive insurer permitted under this subtitle and, subject to the executive director's approval, to make its reports under this section consistent with the purposes of this subtitle. Except as otherwise provided, all captive insurers, with the exception of those formed as a risk retention group, shall file reports on a form prescribed by the executive director~~[-through administrative regulation]~~. ***The provisions of KRS 304.3-242(4)(a) and (d) shall not apply to a captive insurer.*** A captive insurer formed as a risk retention group shall file reports pursuant to KRS 304.2-205, with additional information or modification as the executive director may prescribe. The executive director shall by administrative regulation propose the forms in which captive insurers shall report.
- (3) Any~~[-pure]~~ captive insurer~~[- or an industrial insured captive insurer insuring the risks of industrial insured groups as defined in KRS 304.49-010(9)(a)]~~ 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 executive director 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 executive director 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 executive director may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

➔Section 6. KRS 304.49-100 is amended to read as follows:

- (1) ***A captive insurer shall establish, monitor, and control its investment strategy prudently, setting clear guidelines with regard to the exposure to different investment types, levels of investment grade, and exposure to individual investments. This investment plan and any material amendments shall be filed with the executive director.***
 - (2) ***A captive insurer shall not be subject to any restrictions on allowable investments in this chapter, including those limitations contained in Subtitle 7 of this chapter.***
 - (3) ***The executive director may prohibit or limit any investment that threatens the solvency or liquidity of any company.***
 - (4) ~~[A consortium captive insurer, sponsored captive insurer, and]~~An industrial insured captive insurer insuring the risks of an industrial insured group defined in KRS 304.49-010(9)(b) shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the executive director 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 KRS 304.49-010(8)(a) shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the executive director 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 executive director and shall be evidenced by a note in a form approved by the executive director.~~
 - ~~(4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.]~~

➔Section 7. KRS 304.49-110 is amended to read as follows:

- (1) Any captive insurer may provide reinsurance, as provided in KRS 304.5-130, 304.5-140, and 304.5-150, on risks ceded by any other insurer.
- (2) ***A captive insurer may provide reinsurance on risks ceded by any other insurer or captive insurer.***
- (3) (a) 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.
 - (b) 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.
 - (c) ***Prior approval of the executive director shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with KRS 304.5-130, 304.5-140, and 304.5-150.***
- ~~(4)(3)~~ For all purposes of KRS 304.49-010 to 304.49-230, insurance by a captive insurer of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.
- (5) ***A captive insurer may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as an insurer or a reinsurer which has been authorized by the executive director. The executive director may require any other documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The executive director may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that in the executive director's judgment are necessary and proper to provide adequate security for the ceding captive insurer or segregated account and for the protection and consequent benefit of the public at large.***
- (6) ***The executive director may impose any other requirements that he or she deems necessary before permitting credit for reinsurance under this section, including but not limited to requiring an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported reserves.***

➔Section 8. KRS 304.49-130 is amended to read as follows:

- (1) No captive insurer, including a captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230, 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.
- (2) ***Subsection (1) of this section shall not prohibit captive insurers from entering into reinsurance or pooling transactions in the normal course of business, in accordance with Section 8 of this Act.***

➔Section 9. KRS 304.49-170 is amended to read as follows:

The executive director ~~may~~~~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. ***The executive director may approve the coverage of such risks by a pure captive insurance company.***

➔Section 10. KRS 304.49-180 is amended to read as follows:

- (1) A consortium captive insurer or industrial insured group formed as a stock or mutual corporation ***or other legal or statutory entity*** 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 executive director, but the executive director 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 executive director may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the executive director 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 executive director shall approve the plan of conversion if the executive director finds that the conversion will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7);
- (c) If the executive director approves the plan, the executive director 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 executive director, 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 executive director 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 executive director shall approve the articles of merger if the executive director finds that the merger will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7). If the executive director approves the articles of merger, the executive director shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;
 - (g) Notwithstanding KRS 304.49-040, the executive director 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 11. KRS 304.49-220 is amended to read as follows:

- (1) Every captive insurer holding a certificate of authority under KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue 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 twenty million dollars (\$20,000,000), and three-tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000), and two-tenths of one percent (0.2%) on the next twenty 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 KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue 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 twenty million dollars (\$20,000,000) of assumed reinsurance premiums, and one hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%) on the next twenty 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 *or self-insurer* under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer *or self-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 Department of Revenue shall annually, *on or before June 30 of each year*, distribute ten percent (10%) of the premium tax revenues collected pursuant to this section to the Office of Insurance for the regulation of captive insurance companies under KRS 304.49-010 to 304.49-230.

➔Section 12. KRS 304.49-222 is amended to read as follows:

- (1) A captive insurer shall engage a manager who is *approved by the executive director*~~—a resident of this state~~.
- (2) The captive manager shall maintain the books and records of the captive insurer's business, transactions, and affairs at a location that is in this state or shall make them available to the executive director at a location that is in this state.
- (3) The captive manager shall promptly notify the executive director of any failure of the captive insurer to comply with this section.

- (4) The executive director may require a captive insurer to discharge a captive manager for failure to substantively fulfill the captive manager's duties under this subtitle.

➔Section 13. KRS 304.49-226 is amended to read as follows:

- (1) If there is any ~~material~~ change in the ***current operations or condition of a captive insurer that materially impacts the*** financial condition or management of ~~the~~ captive insurer, the captive insurer ***or captive manager*** shall notify the executive director, in writing, within ten (10) business days of the change ***or event***.
- (2) No captive insurer shall voluntarily take any of the following material actions without providing the executive director at least thirty (30) days' prior written notice and receiving the executive director's approval of the action within the thirty (30) day period:
- (a) The dissolution of the captive insurer;
 - (b) Any sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, all or substantially all of the assets of the captive insurer;
 - (c) Any incurrence of material indebtedness by the captive insurer;
 - (d) Any making of a material loan or other material extension of credit by the captive insurer;
 - (e) Any payment or distribution that materially reduces capital and surplus;
 - (f) Any merger or consolidation to which the captive insurer is a constituent party;
 - (g) Any conversion of the captive insurer to another business form;
 - (h) Any transfer to or domestication in any jurisdiction by the captive insurer; or
 - (i) Any material amendment of the organizational documents of the captive insurer, ***including changes in the officers, directors, owners, captive manager, actuary, or auditor***.
- (3) ***A captive insurer may make loans to its parent company or affiliates; however, no loans to a parent company or any affiliate shall be permitted without prior written approval of the executive director and shall be evidenced by a note in a form approved by the executive director. The loans shall be evaluated with regard to creditworthiness and collateral.***

Signed by Governor April 8, 2010.