

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 287
97TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, March 14, 2013, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

1373S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 379.1300, 379.1306, 379.1310, 379.1312, and 379.1326, RSMo, and to enact in lieu thereof six new sections relating to captive insurance companies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 379.1300, 379.1306, 379.1310, 379.1312, and 379.1326, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 379.1300, 379.1306, 379.1310, 379.1312, 379.1326, and 379.1351, to read as follows:

379.1300. As used in sections 379.1300 to [379.1350] **379.1351**, the following terms shall mean:

(1) "Affiliated company", 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) "Alien captive insurance company", any insurance company formed to write insurance business for its parents and affiliates and licensed under the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction;

(3) "Annuity", a contract issued for a valuable consideration under which the obligations are assumed with respect to periodic payments for a specified term or terms or where the making or continuance of all or of some of such payments, or the amount of any such payments, is dependent upon the continuance of human life;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 (4) "Association", any legal association of individuals, corporations, limited
17 liability companies, partnerships, associations, or other entities that has been in
18 continuous existence for at least one year, the member organizations of which or
19 which does itself, whether or not in conjunction with some or all of the member
20 organizations:

21 (a) Own, control, or hold with power to vote all of the outstanding voting
22 securities of an association captive insurance company incorporated as a stock
23 insurer; [or]

24 (b) Have complete voting control over an association captive insurance
25 company incorporated as a mutual insurer; [or]

26 (c) Constitute all of the subscribers of an association captive insurance
27 company formed as a reciprocal insurer; **or**

28 **(d) Have complete voting control over an association captive**
29 **insurance company formed as a limited liability company;**

30 (5) "Association captive insurance company", any company that insures
31 risks of the member organizations of the association and their affiliated
32 companies; except that, association captive insurance company shall not include,
33 without limitation, any reciprocal insurer that has not chosen to apply for and is
34 not licensed as a captive insurance company under section 379.1302;

35 (6) "Branch business", any insurance business transacted by a branch
36 captive insurance company in this state;

37 (7) "Branch captive insurance company", any alien captive insurance
38 company licensed by the director to transact the business of insurance in this
39 state through a business unit with a principal place of business in this state;

40 (8) "Branch operations", any business operations of a branch captive
41 insurance company in this state;

42 (9) "Captive insurance company", any pure captive insurance company,
43 association captive insurance company, **sponsored captive insurance**
44 **company**, or industrial insured captive insurance company formed or licensed
45 under sections 379.1300 to [379.1350] **379.1351**. For purposes of sections
46 379.1300 to [379.1350] **379.1351**, a branch captive insurance company shall be
47 a pure captive insurance company with respect to operations in this state, unless
48 otherwise permitted by the director;

49 (10) "Controlled unaffiliated business", any company:

50 (a) That is not in the corporate system of a parent and affiliated
51 companies;

52 (b) That has an existing contractual relationship with a parent or
53 affiliated company; and

54 (c) Whose risks are managed by a pure captive insurance company in
55 accordance with section 379.1338;

56 (11) "Director", the director of the department of insurance, financial
57 institutions and professional registration;

58 (12) "Excess workers' compensation insurance", in the case of an employer
59 that has insured or self-insured its workers' compensation risks in accordance
60 with applicable state or federal law, insurance in excess of a specified
61 per-incident or aggregate limit established by the director;

62 (13) "Industrial insured", an insured:

63 (a) Who procures the insurance of any risk or risks by use of the services
64 of a full-time employee acting as an insurance manager or buyer;

65 (b) Whose aggregate annual premiums for insurance on all risks total at
66 least twenty-five thousand dollars; and

67 (c) Who has at least twenty-five full-time employees;

68 (14) "Industrial insured captive insurance company", any company that
69 insures risks of the industrial insureds that comprise the industrial insured
70 group and their affiliated companies;

71 (15) "Industrial insured group", any group of industrial insureds that
72 collectively:

73 (a) Own, control, or hold with power to vote all of the outstanding voting
74 securities of an industrial insured captive insurance company incorporated as a
75 stock insurer; [or]

76 (b) Have complete voting control over an industrial insured captive
77 insurance company incorporated as a mutual insurer;

78 **(c) Constitute all of the subscribers of an industrial insured**
79 **captive insurance company formed as a reciprocal insurer; or**

80 **(d) Have complete voting control over an industrial captive**
81 **insurance company formed as a limited liability company;**

82 (16) "Member organization", any individual, corporation, limited liability
83 company, partnership, association, or other entity that belongs to an association;

84 (17) "Mutual corporation", a corporation organized without stockholders
85 and includes a nonprofit corporation with members;

86 (18) "Parent", a corporation, limited liability company, partnership, other
87 entity, or individual that directly or indirectly owns, controls, or holds with power

88 to vote more than fifty percent of the outstanding voting:

89 (a) Securities of a pure captive insurance company organized as a stock
90 corporation; or

91 (b) Membership interests of a pure captive insurance company organized
92 as a nonprofit corporation;

93 (19) "Pure captive insurance company", any company that insures risks
94 of its parent and affiliated companies or controlled unaffiliated business.

379.1306. 1. No captive insurance company shall be issued a license
2 unless it shall possess and thereafter maintain unimpaired paid-in capital and
3 surplus of:

4 (1) In the case of a pure captive insurance company, not less than two
5 hundred fifty thousand dollars;

6 (2) In the case of an association captive insurance company, not less than
7 [seven] **five** hundred [fifty] thousand dollars; [and]

8 (3) In the case of an industrial insured captive insurance company, not
9 less than five hundred thousand dollars; **and**

10 **(4) In the case of a sponsored captive insurance company, not**
11 **less than five hundred thousand dollars.**

12 2. The director may prescribe additional capital and surplus based upon
13 the type, volume, and nature of insurance business transacted.

14 3. Capital and surplus may be in the form of cash or an irrevocable letter
15 of credit issued by a bank chartered by the state of Missouri or a member bank
16 of the Federal Reserve System, and approved by the director.

379.1310. 1. A pure captive insurance company may be incorporated as
2 a stock insurer with its capital divided into shares and held by the stockholders
3 as a nonprofit corporation with one or more members, or as a manager-managed
4 limited liability company.

5 2. An association captive insurance company or an industrial insured
6 captive insurance company may be:

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

9 (2) Incorporated as a mutual insurer without capital stock, the governing
10 body of which is elected by its insureds;

11 (3) Organized as a manager-managed limited liability company; or

12 (4) Organized as a reciprocal insurer in accordance with sections 379.650
13 to 379.790.

14 3. A captive insurance company incorporated or organized in this state
15 shall have not less than three incorporators or three organizers of whom not less
16 than one shall be a resident of this state.

17 4. In the case of a captive insurance company:

18 (1) Formed as a corporation, before the articles of incorporation are
19 transmitted to the secretary of state, the incorporators shall petition the director
20 to issue a certificate setting forth the director's finding that the establishment
21 and maintenance of the proposed corporation will promote the general good of the
22 state. In arriving at such a finding the director shall consider:

23 (a) The character, reputation, financial standing and purposes of the
24 incorporators;

25 (b) The character, reputation, financial responsibility, insurance
26 experience, and business qualifications of the officers and directors; and

27 (c) Such other aspects as the director shall deem advisable.

28 The articles of incorporation, such certificate, and the organization fee shall be
29 transmitted to the secretary of state, who shall thereupon record both the articles
30 of incorporation and the certificate;

31 (2) Formed as a limited liability company, before the articles of
32 organization are transmitted to the secretary of state, the organizers shall
33 petition the director to issue a certificate setting forth the director's finding that
34 the establishment and maintenance of the proposed company will promote the
35 general good of the state. In arriving at such a finding, the director shall
36 consider the items set forth in paragraphs (a) to (c) of subdivision (1) of this
37 subsection;

38 (3) Formed as a reciprocal insurer, the organizers shall petition the
39 director to issue a certificate setting the director's finding that the establishment
40 and maintenance of the proposed association will promote the general good of the
41 state. In arriving at such a finding the director shall consider the items set forth
42 in paragraphs (a) to (c) of subdivision (1) of this subsection.

43 5. The capital stock of a captive insurance company incorporated as a
44 stock insurer may be authorized with no par value.

45 6. In the case of a captive insurance company:

46 (1) Formed as a corporation, at least one of the members of the board of
47 directors shall be a resident of this state;

48 (2) Formed as a limited liability company, at least one of the managers
49 shall be a resident of this state;

50 (3) Formed as a reciprocal insurer, at least one of the members of the
51 subscribers' advisory committee shall be a resident of this state.

52 7. Other than captive insurance companies formed as limited liability
53 companies under chapter 347, or as nonprofit corporations under chapter 355,
54 captive insurance companies formed as corporations under sections 379.1300 to
55 [379.1350] **379.1351** shall have the privileges and be subject to chapter 351 as
56 well as the applicable provisions contained in sections 379.1300 to 379.1308. In
57 the event of conflict between the provisions of such general corporation law and
58 sections 379.1300 to [379.1350] **379.1351**, sections 379.1300 to [379.1350]
59 **379.1351** shall control.

60 8. Captive insurance companies formed under sections 379.1300 to
61 [379.1350] **379.1351**:

62 (1) As limited liability companies shall have the privileges and be subject
63 to the provisions of chapter 347 as well as the applicable provisions contained in
64 sections 379.1300 to [379.1350] **379.1351**. In the event of a conflict between
65 chapter 347 and sections 379.1300 to [379.1350] **379.1351**, sections 379.1300 to
66 [379.1350] **379.1351** shall control; or

67 (2) As nonprofit corporations shall have the privileges and be subject to
68 the provisions of chapter 355 as well as the applicable provisions contained in
69 sections 379.1300 to [379.1350] **379.1351**. In the event of conflict between
70 chapter 355 and sections 379.1300 to [379.1350] **379.1351**, sections 379.1300 to
71 [379.1350] **379.1351** shall control.

72 9. The provisions of section 375.355, section 375.908, sections 379.980 to
73 379.988, and chapter 382, pertaining to mergers, consolidations, conversions,
74 mutualizations, redomestications, and mutual holding companies shall apply in
75 determining the procedures to be followed by captive insurance companies in
76 carrying out any of the transactions described therein; except that:

77 (1) The director may waive or modify the requirements for public notice
78 and hearing, **or** in accordance with rules which the director may adopt
79 addressing categories of transactions, **modify the requirements for public**
80 **notice and hearing**. If a notice of public hearing is required, but no one
81 requests a hearing **ten days before the day set for the hearing**, then the
82 director may cancel the hearing;

83 (2) An alien insurer may be a party to a merger or a redomestication
84 authorized under this subsection, if approved by the director; **and**

85 (3) **The director may issue a certificate of general good to permit**

86 **the formation of a captive insurance company that is established for**
87 **the sole purpose of consolidating or merging with or assuming existing**
88 **insurance or reinsurance business from an existing Missouri licensed**
89 **captive insurance company. The director may, upon a request of such**
90 **newly formed captive insurance company, waive or modify the**
91 **requirements of paragraph (b) of subdivision (1) and subdivision (2) of**
92 **subsection 3 of section 379.1302.**

93 10. The articles of incorporation or bylaws of a captive insurance company
94 formed as a corporation may authorize a quorum of its board of directors to
95 consist of no fewer than one-third of the full board of directors [determined],
96 provided that a quorum shall not consist of fewer than two directors.

97 11. Captive insurance companies formed as reciprocal insurers under the
98 provisions of sections 379.1300 to [379.1350] **379.1351** shall have the privileges
99 and be subject to the provisions of sections 379.650 to 379.790 in addition to the
100 applicable provisions of sections 379.1300 to [379.1350] **379.1351**. In the event
101 of a conflict between the provisions of sections 379.650 to 379.790 and the
102 provisions of sections 379.1300 to [379.1350] **379.1351**, the latter shall control,
103 to the extent a reciprocal insurer is made subject to other provisions of chapters
104 374, 375, and 379 under sections 379.650 to 379.790, such provisions shall not be
105 applicable to a reciprocal insurer formed under sections 379.1300 to [379.1350]
106 **379.1351** unless such provisions are expressly made applicable to captive
107 insurance companies under sections 379.1300 to [379.1350] **379.1351**.

108 12. The subscribers' agreement or other organizing document of a captive
109 insurance company formed as a reciprocal insurer may authorize a quorum of its
110 subscribers' advisory committee to consist of no fewer than one-third of the
111 number of its members.

379.1312. 1. Captive insurance companies shall not be required to make
2 any annual report except as provided in sections 379.1300 to [379.1350]
3 **379.1351**.

4 2. Prior to March first of each year, each captive insurance company shall
5 submit to the director a report of its financial condition, verified by oath of two
6 of its executive officers. Each captive insurance company shall report using
7 generally accepted accounting principles, unless the director approves the use of
8 statutory accounting principles, with any appropriate or necessary modifications
9 or adaptations thereof required or approved or accepted by the director for the
10 type of insurance and kinds of insurers to be reported upon, and as supplemented

11 by additional information required by the director. Except as otherwise provided,
12 each association captive insurance company shall file its report in the form
13 required by section 375.041. The director shall by rule propose the forms in
14 which pure captive insurance companies and industrial insured captive insurance
15 companies shall report. Subdivision (3) of subsection [2] 3 of section 379.1302
16 shall apply to each report filed under this section.

17 3. Any pure captive insurance company or an industrial insured captive
18 insurance company may make written application for filing the required report
19 on a fiscal year end. If an alternative reporting date is granted:

20 (1) The annual report is due sixty days after the fiscal year end; and

21 (2) In order to provide sufficient detail to support the premium tax return,
22 the pure captive insurance company or industrial insured captive insurance
23 company shall file prior to March first of each year for each calendar year end its
24 balance sheet, income statement and statement of cash flows, verified by oath of
25 two of its executive officers.

379.1326. 1. Each captive insurance company shall pay to the director of
2 revenue, on or before May first of each year, a premium tax at the rate of
3 thirty-eight-hundredths of one percent on the first twenty million dollars and two
4 hundred eighty-five-thousandths of one percent on the next twenty million dollars
5 and nineteen-hundredths of one percent on the next twenty million dollars and
6 seventy-two-thousandths of one percent on each dollar thereafter on the direct
7 premiums collected or contracted for on policies or contracts of insurance written
8 by the captive insurance company during the year ending December thirty-first
9 next preceding, after deducting from the direct premiums subject to the tax the
10 amounts paid to policyholders as return premiums which shall include dividends
11 on unabsorbed premiums or premium deposits returned or credited to
12 policyholders; provided, however, that no tax shall be due or payable as to
13 considerations received for annuity contracts.

14 2. Each captive insurance company shall pay to the director of revenue on
15 or before May first of each year a premium tax at the rate of two hundred
16 fourteen-thousandths of one percent on the first twenty million dollars of
17 assumed reinsurance premium, and one hundred forty-three-thousandths of one
18 percent on the next twenty million dollars and forty-eight-thousandths of one
19 percent on the next twenty million dollars and twenty-four-thousandths of one
20 percent of each dollar thereafter. However, no reinsurance premium tax applies
21 to premiums for risks or portions of risks which are subject to taxation on a direct

22 basis under subsection 1 of this section. No reinsurance premium tax shall be
23 payable in connection with the receipt of assets in exchange for the assumption
24 of loss reserves and other liabilities of another insurer under common ownership
25 and control if such transaction is part of a plan to discontinue the operations of
26 such other insurer, and if the intent of the parties to such transaction is to renew
27 or maintain such business with the captive insurance company.

28 3. The annual:

29 (1) Minimum aggregate tax to be paid by a captive insurance company
30 calculated under subsections 1 and 2 of this section shall be seven thousand five
31 hundred dollars, and the annual maximum aggregate tax shall be two hundred
32 thousand dollars;

33 (2) **Minimum aggregate tax to be paid by a sponsored captive**
34 **insurance company shall be seven thousand five hundred dollars and**
35 **shall apply to the sponsored captive insurance company as a whole and**
36 **not to each protected cell, and such cells shall not be subject to the**
37 **minimum tax;**

38 (3) **Maximum tax to be paid by a protected cell shall be as**
39 **calculated under subsection 1 of this section. The annual maximum tax**
40 **to be remitted by a sponsored captive insurance company shall be the**
41 **aggregate of the tax liabilities of each protected cell.**

42 4. Every captive insurance company shall, on or before February first each
43 year, make a return on a form provided by the director, verified by the affidavit
44 of the company's president and secretary or other authorized officers, to the
45 director stating the amount of all direct premiums received and assumed
46 reinsurance premiums received, whether in cash or in notes, during the year
47 ending on December thirty-first next preceding. Upon receipt of such returns, the
48 director of the department of insurance, financial institutions and professional
49 registration shall verify the same and certify the amount of tax due from the
50 various companies on the basis and at the rate provided in subsections 1 to 3 of
51 this section, and shall certify the same to the director of revenue, on or before
52 March thirty-first of each year. The director of revenue shall immediately
53 thereafter notify and assess each company the amount of tax due.

54 5. A captive insurance company failing to make returns as required by
55 subsection 4 of this section or failing to pay within the time required all taxes
56 assessed by this section shall be subject to the provisions of sections 148.375 and
57 148.410.

58 6. Two or more captive insurance companies under common ownership
59 and control shall be taxed as though they were a single captive insurance
60 company.

61 7. For the purposes of this section, **the following terms shall mean:**

62 **(1) "Common ownership and control" [shall mean] ownership and**
63 **control of two or more captive insurance companies by the same person**
64 **or group of persons;**

65 **(2) "Ownership and control":**

66 **[(1)] (a) In the case of stock corporations, the direct or indirect ownership**
67 **of eighty percent or more of the outstanding voting stock of [two or more**
68 **corporations by the same shareholder or shareholders; and] the corporation;**

69 **[(2)] (b) In the case of mutual or nonprofit corporations, the direct or**
70 **indirect ownership of eighty percent or more of the surplus and the voting power**
71 **of [two or more corporations by the same member or members] the corporation;**

72 **(c) In the case of a limited liability company, the direct or**
73 **indirect ownership of eighty percent or more of the membership**
74 **interest in the limited liability company; and**

75 **(d) In the case of a sponsored captive insurance company and for**
76 **purposes of this section, a protected cell shall be treated as a separate**
77 **captive insurance company owned and controlled by the protected**
78 **cell's participant, but only if:**

79 **a. The participant is the only participant with respect to such**
80 **protected cell; and**

81 **b. The participant is the sponsor or is affiliated with the sponsor**
82 **of the sponsored captive insurance company through common**
83 **ownership and control.**

84 8. The tax provided for in this section shall constitute all taxes collectible
85 under the laws of this state from any captive insurance company, and no other
86 occupation tax or other taxes shall be levied or collected from any captive
87 insurance company by the state or any county, city, or municipality within this
88 state, except ad valorem taxes on real and personal property used in the
89 production of income.

90 9. Upon receiving the taxes collected under this section from the director
91 of revenue, the state treasurer shall receipt ten percent thereof into the insurance
92 dedicated fund established under section 374.150, subject to a maximum of three
93 percent of the current fiscal year's appropriation from such fund, and he or she

94 shall place the remainder of such taxes collected to the general revenue fund of
95 the state.

96 10. The tax provided for in this section shall be calculated on an annual
97 basis, notwithstanding policies or contracts of insurance or contracts of
98 reinsurance issued on a multiyear basis. In the case of multiyear policies or
99 contracts, the premium shall be prorated for purposes of determining the tax
100 under this section.

101 11. A captive insurance company may deduct from premium taxes payable
102 to this state, in addition to all other credits allowed by law, license fees and
103 renewal fees payable under section 379.1302. A deduction for fees which exceeds
104 a captive insurance company's premium tax liability for the same tax year shall
105 not be refundable, but may be carried forward to any subsequent tax year, not to
106 exceed five years, until the full deduction is claimed.

**379.1351. 1. One or more sponsors may form a sponsored captive
2 insurance company under sections 379.1300 to 379.1351. In addition to
3 the general provisions of sections 379.1300 to 379.1351, the provisions
4 of this section shall apply to sponsored captive insurance companies.
5 A sponsored captive insurance company shall be incorporated as a
6 stock insurer with its capital divided into shares and held by the
7 stockholders, as a mutual corporation, as a nonprofit corporation with
8 one or more members, or as a manager-managed limited liability
9 company.**

10 **2. As used in this section, unless the context requires otherwise,
11 the following terms shall mean:**

12 **(1) "Incorporated protected cell", a protected cell that is
13 established as a corporation or limited liability company separate from
14 the sponsored captive insurance company, of which it is a part;**

15 **(2) "Participant", an entity described in subsection 7 of this
16 section and any affiliates thereof that is insured by a sponsored captive
17 insurance company, where the losses of the participant are limited
18 through a participant contract to such participant's pro rata share of
19 the assets of one or more protected cells identified in such participant
20 contract;**

21 **(3) "Participant contract", a contract by which a sponsored
22 captive insurance company insures the risks of a participant and limits
23 the losses of each such participant to its pro rata share of the assets of**

24 one or more protected cells identified in such participant contract;

25 (4) "Protected cell", a separate account established by a
26 sponsored captive insurance company formed or licensed under this
27 chapter in which assets are maintained for one or more participants in
28 accordance with the terms of one or more participant contracts to fund
29 the liability of the sponsored captive insurance company assumed on
30 behalf of such participants as set forth in such participant contracts,
31 and shall include an incorporated protected cell, as defined in this
32 section;

33 (5) "Sponsor", any entity that meets the requirements of
34 subsection 6 of this section and is approved by the director to provide
35 all or part of the capital and surplus required by applicable law and to
36 organize and operate a sponsored captive insurance company;

37 (6) "Sponsored captive insurance company", any captive
38 insurance company:

39 (a) In which the minimum capital and surplus required by
40 applicable law is provided by one or more sponsors;

41 (b) That is formed or licensed under the provisions of sections
42 379.1300 to 379.1351;

43 (c) That insures the risks only of its participants through
44 separate participant contracts; and

45 (d) That funds its liability to each participant through one or
46 more protected cells and segregates the assets of each protected cell
47 from the assets of other protected cells and from the assets of the
48 sponsored captive insurance company's general account.

49 3. In addition to the information required by subsection 3 of
50 section 379.1302, each applicant-sponsored captive insurance company
51 shall file with the director the following:

52 (1) Materials demonstrating how the applicant will account for
53 the loss and expense experience of each protected cell at a level of
54 detail found to be sufficient by the director, and how it will report such
55 experience to the director;

56 (2) A statement acknowledging that all financial records of the
57 sponsored captive insurance company, including records pertaining to
58 protected cells, shall be made available for inspection or examination
59 by the director or the director's designated agent;

60 (3) All contracts or sample contracts between the sponsored

61 captive insurance company and any participants; and

62 (4) Evidence that expenses shall be allocated to each protected
63 cell in a fair and equitable manner.

64 4. A sponsored captive insurance company formed or licensed
65 under this chapter may establish and maintain one or more protected
66 cells to insure risks of one or more participants, subject to the
67 following conditions:

68 (1) The shareholders of a sponsored captive insurance company
69 shall be limited to its participants and sponsors, provided that a
70 sponsored captive insurance company may issue nonvoting securities
71 to other persons on terms approved by the director;

72 (2) Each protected cell shall be accounted for separately on the
73 books and records of the sponsored captive insurance company to
74 reflect the financial condition and results of operations of such
75 protected cell, net income or loss, dividends, or other distributions to
76 participants, and such other factors as may be provided in the
77 participant contract or required by the director;

78 (3) The assets of a protected cell shall not be chargeable with
79 liabilities arising out of any other insurance business the sponsored
80 captive insurance company may conduct;

81 (4) No sale, exchange, transfer of assets, dividend, or distribution
82 may be made by such sponsored captive insurance company between
83 or among any of its protected cells without the consent of such
84 protected cells;

85 (5) No sale, exchange, transfer of assets, dividend, or distribution
86 may be made from a protected cell to a sponsor or participant without
87 the director's approval and in no event shall such approval be given if
88 the sale, exchange, transfer, dividend, or distribution would result in
89 insolvency or impairment with respect to a protected cell;

90 (6) All attributions of assets and liabilities to the protected cells
91 and the general account shall be in accordance with the plan of
92 operation approved by the director. No other attribution of assets or
93 liabilities may be made by a sponsored captive insurance company
94 between its general account and any protected cell or between any
95 protected cells. The sponsored captive insurance company shall
96 attribute all insurance obligations, assets, and liabilities relating to a
97 reinsurance contract entered into with respect to a protected cell to

98 such protected cell. The performance under such reinsurance contract
99 and any tax benefits, losses, refunds, or credits allocated under a tax
100 allocation agreement to which the sponsored captive insurance
101 company is a party, including any payments made by or due to be made
102 to the sponsored captive insurance company under the terms of such
103 agreement, shall reflect the insurance obligations, assets, and liabilities
104 relating to the reinsurance contract that are attributed to such
105 protected cell;

106 (7) In connection with the conservation, rehabilitation, or
107 liquidation of a sponsored captive insurance company, the assets and
108 liabilities of a protected cell shall, to the extent the director determines
109 they are separable, at all times be kept separate from and shall not be
110 commingled with those of other protected cells and the sponsored
111 captive insurance company;

112 (8) The "general account" of a sponsored captive insurance
113 company means all assets and liabilities of the sponsored captive
114 insurance company not attributable to a protected cell;

115 (9) Each sponsored captive insurance company shall annually
116 file with the director such financial reports as the director shall
117 require, which shall include, without limitation, accounting statements
118 detailing the financial experience of each protected cell. Each
119 sponsored captive insurance company shall be subject to the provisions
120 of section 374.190 and sections 374.202 to 374.207, and to the extent
121 applicable, sections 375.930 to 375.948 and sections 375.1000 to 375.1018;

122 (10) Each sponsored captive insurance company shall notify the
123 director in writing within ten business days of any protected cell that
124 is insolvent or otherwise unable to meet its claim or expense
125 obligations;

126 (11) No participant contract shall take effect without the
127 director's prior written approval, and the addition of each new
128 protected cell and withdrawal of a participant or termination of any
129 existing protected cell shall constitute a change in the business plan
130 requiring the director's prior written approval. Each participant
131 contract shall state that under section 379.1324 no benefit shall be paid
132 to the participant or any other party from any state guaranty fund
133 based on a claim against the assets of the participant's protected cell
134 in which such assets are insufficient to satisfy the claim;

135 **(12) At the discretion of the director, the business written by a**
136 **sponsored captive, with respect to each cell, shall be:**

137 **(a) Fronted by an insurance company licensed under the laws of**
138 **any state;**

139 **(b) Reinsured by reinsurer authorized or approved by the state**
140 **of Missouri; or**

141 **(c) Secured by a trust fund in the United States for the benefit**
142 **of policyholders and claimants or funded by an irrevocable letter of**
143 **credit or other arrangement that is acceptable to the director.**

144 **The director may require the sponsored captive to increase the funding**
145 **of any security arrangement established under this subdivision. If the**
146 **form of security is a letter of credit, the letter of credit shall be issued**
147 **or confirmed by a bank approved by the director. A trust maintained**
148 **under this subdivision shall be established in a form and upon such**
149 **terms approved by the director;**

150 **(13) Notwithstanding the provisions of sections 375.1150 to**
151 **375.1246 or other laws of this state, and in addition to the provisions of**
152 **subsection 9 of this section, in the event of an insolvency of a sponsored**
153 **captive insurance company where the director determines that one or**
154 **more protected cells remain solvent, the director may separate such**
155 **cells from the sponsored captive insurance company, and may allow, on**
156 **application of the sponsor for the conversion of such protected cells**
157 **into one or more new or existing sponsored captive insurance**
158 **companies with a sponsor or sponsors, or one or more other captive**
159 **insurance companies, under such plan or plans of operation as the**
160 **director deems acceptable.**

161 **5. A protected cell of a sponsored captive insurance company**
162 **may be formed as an incorporated protected cell, as described in**
163 **subdivision (1) of subsection 4 of this section. The articles of**
164 **incorporation or articles of organization of an incorporated protected**
165 **cell shall refer to the sponsored captive insurance company for which**
166 **it is a protected cell and shall state that the protected cell is**
167 **incorporated or organized for the limited purposes authorized by the**
168 **sponsored captive insurance company's license. A copy of the prior**
169 **written approval of the director to add the incorporated protected cell,**
170 **required by subdivision (11) of subsection 4 of this section, shall be**
171 **attached to and filed with the articles of incorporation or articles of**

172 organization. It is the intent of the general assembly under this
173 subsection to provide sponsored captive insurance companies with the
174 option to establish one or more protected cells as a separate
175 corporation formed under chapter 351 or limited liability company
176 formed under chapter 347. This section shall not be construed to limit
177 any rights or protections applicable to protected cells not established
178 as corporations or limited liability companies.

179 6. A sponsor of a sponsored captive insurance company may be
180 any person approved by the director in the exercise of the director's
181 discretion, based on a determination that the approval of such person
182 as sponsor is consistent with the purposes of sections 379.1300 to
183 379.1351. In evaluating the qualifications of a proposed sponsor, the
184 director shall consider the type and structure of the proposed sponsor
185 entity, its experience in financial operations, financial stability, and
186 strength of business reputation and such other facts deemed relevant
187 by the director. A risk retention group shall not be either a sponsor or
188 a participant of a sponsored captive insurance company.

189 7. Associations, corporations, limited liability companies,
190 partnerships, trusts, and other business entities may be participants in
191 any sponsored captive insurance company formed or licensed under
192 this chapter. A sponsor may be a participant in a sponsored captive
193 insurance company. A participant need not be a shareholder of the
194 sponsored captive insurance company or an affiliate thereof. A
195 participant shall insure only its own risks through a sponsored captive
196 insurance company.

197 8. Notwithstanding the provisions of subsection 4 of this section,
198 the assets of two or more protected cells may be combined for purposes
199 of investment and such combination shall not be construed as defeating
200 the segregation of such assets for accounting or other
201 purposes. Sponsored captive insurance companies shall comply with
202 the investment requirements contained in sections 379.080 and 379.082,
203 as applicable; provided, however, that compliance with such investment
204 requirements shall be waived for sponsored captive insurance
205 companies to the extent that credit for reinsurance ceded to reinsurers
206 is allowed under section 379.1320 or to the extent otherwise deemed
207 reasonable and appropriate by the director. The director shall exercise
208 his or her discretion in approving the accounting standards in use by

209 the company. Notwithstanding any other provision of this chapter, the
210 director may approve the use of alternative reliable methods of
211 valuation and rating.

212 **9. Except as otherwise provided in this section, the provisions of**
213 **sections 375.1150 to 375.1246 shall apply in full to a sponsored captive**
214 **insurance company. Upon any order of supervision, rehabilitation, or**
215 **liquidation of a sponsored captive insurance company, the receiver**
216 **shall manage the assets and liabilities of the sponsored captive**
217 **insurance company under this section. Notwithstanding the provisions**
218 **of sections 375.1150 to 375.1246:**

219 **(1) The assets of a protected cell shall not be used to pay any**
220 **expense or claims other than those attributable to such protected cell;**
221 **and**

222 **(2) A sponsored captive insurance company's capital and surplus**
223 **shall at all times be available to pay any expenses of or claims against**
224 **the sponsored captive insurance company.**

Bill ✓

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