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# HOUSE BILL No. 1417

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-1-40.

**Synopsis:** Captive insurers in Indiana. Specifies requirements for a captive insurer to do business in Indiana. Imposes fees and premium taxes to be paid by a captive insurer. Establishes a captive insurer trust fund.

**Effective:** July 1, 2007.

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### Ripley

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January 16, 2007, read first time and referred to Committee on Insurance.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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## HOUSE BILL No. 1417



A BILL FOR AN ACT to amend the Indiana Code concerning insurance and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 27-1-40 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2007]:

4 **Chapter 40. Captive Insurers**

5 **Sec. 1. A definition set forth in IC 27-1-2-3 does not apply to this**  
6 **chapter unless this chapter specifies that the definition applies to**  
7 **this chapter.**

8 **Sec. 2. As used in this chapter, "affiliate" means a business**  
9 **entity that, directly or indirectly through one (1) or more**  
10 **intermediaries:**

- 11 (1) controls;
- 12 (2) is controlled by; or
- 13 (3) is under common control with;
- 14 **another person.**

15 **Sec. 3. As used in this chapter, "agency captive insurer" means**  
16 **a captive insurer that:**

- 17 (1) is owned and controlled by one (1) or more insurance



1           producers or brokers; and  
 2           (2) reinsures only risks under policies that are placed by or  
 3           through the insurance producers or brokers that own and  
 4           control the captive insurer.

5           **Sec. 4.** As used in this chapter, "alien captive insurer" means an  
 6           alien company that:

- 7           (1) is formed to write insurance business for the alien  
 8           company's parent or affiliate; and  
 9           (2) is licensed under the laws of a foreign country that imposes  
 10          statutory or regulatory standards, in a form acceptable to the  
 11          commissioner, on companies transacting the business of  
 12          insurance in the foreign jurisdiction.

13          **Sec. 5.** As used in this chapter, "alien company" has the  
 14          meaning set forth in IC 27-1-2-3.

15          **Sec. 6.** As used in this chapter, "association" means a legal  
 16          entity that consists of two (2) or more individuals, corporations,  
 17          partnerships, associations, or other forms of business  
 18          organizations.

19          **Sec. 7. (a)** As used in this chapter, "association captive insurer"  
 20          means a captive insurer that:

- 21          (1) is owned and controlled by an association; and  
 22          (2) insures only the risks of the association, the association's  
 23          member organizations, and affiliates of the association's  
 24          member organizations.

25          **(b)** The term does not include a captive insurer formed to insure  
 26          risks of the captive insurer's direct or indirect owners or members  
 27          under the federal Liability and Risk Retention Act, as amended (15  
 28          U.S.C. 3901 et seq.).

29          **Sec. 8.** As used in this chapter, "branch business" means an  
 30          insurance business transacted by a branch captive insurer in  
 31          Indiana.

32          **Sec. 9.** As used in this chapter, "branch captive insurer" means  
 33          an alien captive insurer that is authorized by the commissioner to  
 34          transact the business of insurance in Indiana through a business  
 35          unit having a principal place of business in Indiana.

36          **Sec. 10.** As used in this chapter, "branch operations" means  
 37          business operations of a branch captive insurer in Indiana.

38          **Sec. 11.** As used in this chapter, "business entity" refers to:

- 39          (1) a corporation organized as a stock corporation or a  
 40          nonstock corporation;  
 41          (2) a partnership;  
 42          (3) a limited liability company;

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- 1 (4) a limited liability partnership;
- 2 (5) a joint venture;
- 3 (6) an association;
- 4 (7) a joint stock company;
- 5 (8) a trust;
- 6 (9) an unincorporated organization;
- 7 (10) an entity similar to an entity described in, or a
- 8 combination of entities described in, this section.

9 Sec. 12. (a) As used in this chapter, "captive insurer" means a  
 10 business entity that insures the risks of:

- 11 (1) the business entity's parent or affiliates of the business
- 12 entity's parent;
- 13 (2) member organizations of an association and the affiliates
- 14 of the member organizations, or
- 15 (3) other policyholders or participants that have entered into
- 16 a contractual relationship with the business entity for the
- 17 purchase of insurance.

18 (b) The term includes a business entity that qualifies for and is  
 19 granted a certificate of authority under this chapter as:

- 20 (1) an agency captive insurer;
- 21 (2) an alien captive insurer;
- 22 (3) an association captive insurer;
- 23 (4) a branch captive insurer;
- 24 (5) an industrial insured captive insurer;
- 25 (6) a mutual captive insurer;
- 26 (7) a pure captive insurer;
- 27 (8) a rental captive insurer;
- 28 (9) a risk retention group captive insurer;
- 29 (10) a sponsored captive insurer; or
- 30 (11) a special purpose captive insurer.

31 Sec. 13. As used in this chapter, "captive manager" means a  
 32 person that maintains a physical presence in Indiana and that the  
 33 commissioner has determined to be qualified by education and  
 34 experience to:

- 35 (1) oversee the operational results of a captive insurer;
- 36 (2) analyze the captive insurer's financial performance and
- 37 condition; and
- 38 (3) report the operational results, financial performance, and
- 39 condition to the commissioner.

40 Sec. 14. As used in this chapter, "commissioner" has the  
 41 meaning set forth in IC 27-1-2-3.

42 Sec. 15. As used in this chapter, "company" has the meaning set

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forth in IC 27-1-2-3.

**Sec. 16.** As used in this chapter, "control" means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person:

- (1) through the control or beneficial ownership of voting securities or membership interests;
- (2) by contract other than a commercial contract for goods or nonmanagement services; or
- (3) otherwise, unless the power is the result of an official position as a member of the governing body, a manager, or an officer of an entity.

**Sec. 17.** As used in this chapter, "department" has the meaning set forth in IC 27-1-2-3.

**Sec. 18.** As used in this chapter, "domestic company" has the meaning set forth in IC 27-1-2-3.

**Sec. 19.** As used in this chapter, "excess worker's compensation insurance" means insurance in excess of the specified per incident or aggregate limit established by:

- (1) the commissioner, if the insurance is transacted in Indiana; or
- (2) the chief regulatory officer for insurance in the jurisdiction in which the insurance is transacted.

**Sec. 20.** As used in this chapter, "foreign company" has the meaning set forth in IC 27-1-2-3.

**Sec. 21.** As used in this chapter, "general assets" means the assets of a captive insurer that are not protected cell assets.

**Sec. 22.** As used in this chapter, "governing body" means the board of trustees, governing board, board of directors, or other body responsible for governing a business entity.

**Sec. 23.** As used in this chapter, "industrial insured" has the meaning set forth in IC 27-4-5-2(a)(8).

**Sec. 24.** As used in this chapter, "industrial insured captive insurer" means a captive insurer that insures risks of:

- (1) the industrial insureds that comprise an industrial insured group; and
- (2) the industrial insured group's affiliates.

**Sec. 25.** As used in this chapter, "industrial insured group" means a 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 that is incorporated as a stock insurer or a limited liability company; or

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- 1           (2) have complete voting control over an industrial insured  
2           captive insurer that is incorporated as a mutual captive.
- 3           **Sec. 26.** As used in this chapter, "member organization" means  
4           a business entity that belongs to an association.
- 5           **Sec. 27.** As used in this chapter, "mutual captive insurer" means  
6           a captive insurer that is organized as a nonstock, nonprofit  
7           corporation under IC 23-17 to act as a captive insurer.
- 8           **Sec. 28.** As used in this chapter, "net direct premiums" means:  
9           (1) direct premiums that are collected or contracted for on  
10           policies or contracts of insurance written by a captive insurer  
11           during the preceding calendar year; minus  
12           (2) amounts paid to policyholders as return premiums,  
13           including dividends on unabsorbed premiums and premium  
14           deposits returned or credited to policyholders.
- 15           **Sec. 29. (a)** As used in this chapter, "organizational documents"  
16           means basic documents related to the creation, organization, and  
17           functioning of a business entity.
- 18           **(b)** The term includes:  
19           (1) articles of incorporation;  
20           (2) articles of association;  
21           (3) a partnership agreement;  
22           (4) a trust agreement;  
23           (5) a shareholder agreement;  
24           (6) other applicable documents;  
25           (7) bylaws, rules, regulations, or other documents that  
26           regulate the internal affairs of the entity; and  
27           (8) amendments to the documents specified in subdivisions (1)  
28           through (7).
- 29           **Sec. 30. (a)** As used in this chapter, "parent" means the person  
30           that directly or indirectly owns, controls, or holds power to vote  
31           fifty percent (50%) or more of the outstanding voting securities of  
32           a pure captive insurer.
- 33           **(b)** The term, as it applies to a pure captive insurer, includes an  
34           employee benefit plan or trust.
- 35           **Sec. 31.** As used in this chapter, "participant" means a person,  
36           or affiliate of a person, that meets both of the following conditions:  
37           (1) The person or affiliate is insured by a sponsored captive  
38           insurer.  
39           (2) The person's or affiliate's losses are limited under a  
40           contract with the sponsored captive insurer to the assets of a  
41           protected cell.
- 42           **Sec. 32.** As used in this chapter, "participant contract" means

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1 a contract by which a sponsored captive insurer insures the risks  
2 of a participant and limits the losses of the participant to the assets  
3 of the protected cell.

4 Sec. 33. As used in this chapter, "person" has the meaning set  
5 forth in IC 27-1-2-3.

6 Sec. 34. As used in this chapter, "protected cell" means an  
7 account separately established and maintained by a captive  
8 insurer:

- 9 (1) for which the minimum capital and surplus required by
- 10 applicable law is provided by one (1) or more persons;
- 11 (2) that is formed or granted a certificate of authority under
- 12 this chapter;
- 13 (3) that insures risks of each individual participant under a
- 14 contract;
- 15 (4) that is comprised of one (1) or more participants who are
- 16 authorized to act on matters relating to the protected cell; and
- 17 (5) that segregates each participant's liability through one (1)
- 18 or more protected cells.

19 Sec. 35. As used in this chapter, "protected cell assets" or  
20 "protected cell's assets" means the assets of a captive insurer that  
21 are held in or on behalf of a protected cell of the captive insurer as  
22 follows:

- 23 (1) Capital stock, retained earnings, and additional paid in
- 24 capital or surplus attributable to the protected cell.
- 25 (2) All other assets held in or on behalf of the protected cell.

26 Sec. 36. As used in this chapter, "pure captive insurer" means  
27 a captive insurer that insures or reinsures only risks of:

- 28 (1) the captive insurer's parent; and
- 29 (2) affiliates or controlled unaffiliated business.

30 Sec. 37. As used in this chapter, "redomestication" means the  
31 transfer to Indiana of the insurance domicile of:

- 32 (1) a foreign company; or
- 33 (2) an alien company;

34 that is authorized by the commissioner to do insurance business in  
35 Indiana.

36 Sec. 38. As used in this chapter, "risk retention group captive  
37 insurer" means a captive insurer that is formed to insure only the  
38 similar liability risks of the captive insurer's direct or indirect  
39 members or owners to the extent permitted by the federal Liability  
40 and Risk Retention Act, as amended (15 U.S.C. 3901 et seq.)

41 Sec. 39. As used in this chapter, "rental captive insurer" means  
42 a captive insurer that:

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- 1 (1) is formed to enter into contracts with policyholders or
- 2 associations to offer the benefits of a program of captive
- 3 insurance; and
- 4 (2) only insures risks of policyholders or associations
- 5 described in subdivision (1).

6 Sec. 40. As used in this chapter, "sponsored captive insurer"  
7 means a captive insurer:

- 8 (1) for which the minimum capital and surplus required by
- 9 applicable law is provided by one (1) or more sponsors;
- 10 (2) that is formed or granted a certificate of authority under
- 11 this chapter;
- 12 (3) that insures the risks of separate participants through a
- 13 contract; and
- 14 (4) that segregates each participant's liability through one (1)
- 15 or more protected cells.

16 Sec. 41. As used in this chapter, "special purpose captive  
17 insurer" means a captive insurer that is formed under Indiana law  
18 to act as a captive insurer:

- 19 (1) of a type that is not otherwise defined in this chapter; and
- 20 (2) that:
  - 21 (A) is consistent with the type of captive insurer permitted
  - 22 under the laws of another jurisdiction; and
  - 23 (B) the commissioner approves as a captive insurer under
  - 24 this chapter.

25 Sec. 42. As used in this chapter, "stock insurer" means an  
26 incorporated company with issued and outstanding stock whose  
27 capital and surplus is owned by the company's stockholders.

28 Sec. 43. For purposes of this chapter, insurance written by a  
29 captive insurer or protected cell of a worker's compensation  
30 qualified self insured plan of the captive insurer's parent or  
31 affiliate is considered to be reinsurance.

32 Sec. 44. (a) A captive insurer may, if permitted by the captive  
33 insurer's organizational documents, apply to the commissioner for  
34 a certificate of authority as a captive insurer to engage in the  
35 business of insurance in Indiana. However, except as provided in  
36 subsection (b), a captive insurer may not:

- 37 (1) directly provide personal motor vehicle or homeowner's
- 38 insurance coverage;
- 39 (2) accept or cede reinsurance, except as provided in section
- 40 60 of this chapter;
- 41 (3) if the captive insurer is a pure captive insurer, insure risks
- 42 other than risks of the captive insurer's parent and affiliates;

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- 1 (4) if the captive insurer is an association captive insurer,
- 2 insure risks other than risks of the captive insurer's
- 3 association, member organizations of the association, and
- 4 affiliates of the member organizations;
- 5 (5) if the captive insurer is an agency captive insurer, insure
- 6 risks other than risks of the policies that are placed by or
- 7 through the insurance producer or broker that owns the
- 8 captive insurer;
- 9 (6) if the captive insurer is a risk retention group captive
- 10 insurer, insure risks other than the similar liability risks of
- 11 the captive insurer's direct or indirect members or owners;
- 12 (7) if the captive insurer is a rental captive insurer:
- 13 (A) insure risks other than risks of the policyholders or
- 14 associations that have entered into insurance contracts
- 15 with the captive insurer; and
- 16 (B) use a form approved by the commissioner for the
- 17 contracts;
- 18 (8) provide excess worker's compensation insurance to the
- 19 captive insurer's parent or affiliate if the provision of excess
- 20 worker's compensation insurance to the captive insurer's
- 21 parent or affiliate is prohibited by the law of the state in
- 22 which the worker's compensation insurance is transacted;
- 23 (9) directly insure the worker's compensation liability of the
- 24 captive insurer's parent or affiliate, or reinsure worker's
- 25 compensation insurance provided under a self funded
- 26 insurance program of the captive insurer's parent or affiliate,
- 27 unless:
- 28 (A) either:
- 29 (i) if the worker's compensation insurance is transacted
- 30 in Indiana, the parent or affiliate that provides the self
- 31 funded insurance is certified by the commissioner as a
- 32 self insured employer; or
- 33 (ii) the self funded insurance program is otherwise
- 34 qualified under or in compliance with the law of the state
- 35 in which the worker's compensation insurance is
- 36 transacted; or
- 37 (B) the captive insurer receives a worker's compensation
- 38 endorsement from the commissioner, which is valid only
- 39 for Indiana worker's compensation liability; or
- 40 (10) write insurance or reinsurance for employee benefits that
- 41 are subject to the provisions of the federal Employee
- 42 Retirement Income Security Act of 1974, as amended (29

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1 U.S.C. 1001 et seq.) for an entity other than the captive  
 2 insurer's parent or affiliate.

3 (b) The commissioner may authorize a captive insurer that is  
 4 otherwise qualified to engage in insurance business in Indiana to  
 5 engage in activity in which the captive insurer is permitted to  
 6 engage in another jurisdiction.

7 (c) A captive insurer must file with the commissioner a written  
 8 request to engage in activity described in subsection (b). The  
 9 commissioner shall approve the request not more than thirty (30)  
 10 days after receiving the request, unless the commissioner  
 11 determines that the activity is harmful to the captive insurer's  
 12 policyholders.

13 Sec. 45. A captive insurer may not use or adopt a name that is  
 14 the same as, deceptively similar to, or likely to be confused with or  
 15 mistaken for the name of another insurer authorized to engage in  
 16 insurance business in Indiana.

17 Sec. 46. (a) A captive insurer may be organized in Indiana as a  
 18 stock or nonstock corporation, limited liability company,  
 19 partnership, limited liability partnership, or another form of entity  
 20 recognized by Indiana law and authorized by the commissioner.

21 (b) The organizational documents of a captive insurer must  
 22 meet all of the following minimum requirements:

23 (1) The capital stock of a captive insurer incorporated as a  
 24 stock insurer must be issued at not less than par value.

25 (2) The captive insurer may not have less than two (2)  
 26 incorporators or organizers.

27 (3) The captive insurer must be managed under the direction  
 28 of at least three (3) members of the captive insurer's  
 29 governing body, at least one (1) of whom is a resident of  
 30 Indiana.

31 (4) The organizational documents of a captive insurer must  
 32 specify that a quorum of the governing body consists of more  
 33 than one-third (1/3) of the number of members of the  
 34 governing body prescribed by the organizational documents.

35 (5) Additional provisions required by the commissioner.

36 (c) The commissioner may:

37 (1) at the request of a captive insurer, issue a certificate of  
 38 good standing; and

39 (2) charge a fee established by the commissioner for each  
 40 certificate of good standing.

41 (d) Indiana law applies to a captive insurer organized in Indiana  
 42 to the same extent that the law applies to another business entity of

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the same type as the captive insurer.

(e) This chapter is controlling in the event of a conflict with any other law.

**Sec. 47. (a) To engage in insurance business in Indiana, a captive insurer shall do all of the following:**

**(1) Obtain from the commissioner a certificate of authority authorizing the captive insurer to engage in the business of insurance in Indiana.**

**(2) Hold at least one (1) board meeting each year in Indiana.**

**(3) Maintain:**

**(A) the captive insurer's principal place of business in Indiana; or**

**(B) if the captive insurer is a branch captive insurer, maintain the principal place of business for the captive insurer's branch operations in Indiana;**

**at which location copies of all corporate and financial records shall be maintained.**

**(4) Make adequate arrangements with:**

**(A) an Indiana chartered bank; or**

**(B) a branch, located in Indiana, of a bank:**

**(i) that is a member of the United States Federal Reserve System; or**

**(ii) the deposits of which are insured by the Federal Deposit Insurance Corporation.**

**(5) Employ or enter into a contract with a qualified, experienced, certified public accountant that meets appropriate standards of competence and experience in matters concerning the regulation of insurance in Indiana, as determined by the commissioner.**

**(6) Employ or enter into a contract with a qualified, experienced actuary to perform reviews and evaluations of the operations of the captive insurer.**

**(7) Employ or enter into a contract with an attorney who is licensed to practice law in Indiana and meets appropriate standards of competence and experience in matters concerning the regulation of insurance in Indiana, as determined by the commissioner.**

**(8) Appoint a resident registered agent to accept service of process and to otherwise act on the captive insurer's behalf in Indiana.**

**(9) Retain a captive manager approved by the commissioner, who shall do all of the following:**

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- 1           **(A) Review the results of the captive insurer's operations.**
- 2           **(B) Consult with the captive insurer's management to**
- 3           **ensure that the captive insurer is operated in a sound and**
- 4           **financially responsible manner and in compliance with the**
- 5           **captive insurer's business plan currently on file with the**
- 6           **commissioner.**
- 7           **(C) File a report with the commissioner at least annually,**
- 8           **on a form prescribed by the commissioner, concerning the**
- 9           **captive insurer's operations and financial conditions.**
- 10          **(b) Before receiving a certificate of authority, a captive insurer**
- 11          **shall file all of the following with the commissioner:**
- 12           **(1) If the captive insurer is formed as a corporation or a**
- 13           **nonprofit corporation:**
  - 14           **(A) a certified copy of the captive insurer's organizational**
  - 15           **documents;**
  - 16           **(B) a statement under oath of the captive insurer's**
  - 17           **president and secretary showing the captive insurer's**
  - 18           **financial condition; and**
  - 19           **(C) other information required by the commissioner.**
- 20           **(2) If the captive insurer is formed as a limited liability**
- 21           **company or other form of business entity:**
  - 22           **(A) a certified copy of the captive insurer's organizational**
  - 23           **documents;**
  - 24           **(B) a statement under oath by the captive insurer's**
  - 25           **managers showing the captive insurer's financial**
  - 26           **condition; and**
  - 27           **(C) other information required by the commissioner**
- 28           **(3) Evidence of:**
  - 29           **(A) the amount and liquidity of the captive insurer's assets**
  - 30           **relative to the risks to be assumed;**
  - 31           **(B) the adequacy of the expertise, experience, and**
  - 32           **character of the person that will manage the captive**
  - 33           **insurer;**
  - 34           **(C) the overall soundness of the captive insurer's plan of**
  - 35           **operation;**
  - 36           **(D) the adequacy of the loss prevention programs of the**
  - 37           **captive insurer's parent, member organizations, or**
  - 38           **industrial insureds, as applicable;**
  - 39           **(E) a pro forma financial statement for the captive insurer**
  - 40           **that has been prepared by a certified public accountant or**
  - 41           **other professional approved by the commissioner; and**
  - 42           **(F) other factors considered by the commissioner to be**

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- relevant in determining whether the captive insurer is able to meet the captive insurer's policy obligations.
- (4) If the captive insurer is a sponsored captive insurer:
  - (A) a business plan demonstrating the manner by which the sponsored captive insurer will:
    - (i) account for the loss and expense experience of each protected cell at a level of detail determined sufficient by the commissioner; and
    - (ii) report the loss and expense experience to the commissioner;
  - (B) a statement acknowledging that all financial records of the sponsored captive insurer, including records that pertain to protected cells, are available for inspection by the commissioner;
  - (C) all contracts or sample contracts between the sponsored captive insurer and participants; and
  - (D) evidence that expenses are allocated to each protected cell in an equitable manner.
- (c) The commissioner shall consider the following in determining whether to grant a certificate of authority under this section:
  - (1) The character, reputation, financial standing, and purposes of:
    - (A) the captive insurer's incorporators; or
    - (B) other sponsors, organizers, or creators of the captive insurer.
  - (2) The character, reputation, financial responsibility, experience related to insurance, and business qualifications of the members of the governing body of the captive insurer.
  - (3) The competence of any person who will manage the affairs of the captive insurer under a contract with the captive insurer.
  - (4) The competence, reputation, and experience related to the regulation of insurance of the legal counsel of the captive insurer.
  - (5) If the captive insurer is a rental captive insurer, the competence, reputation, and experience of the underwriter of the captive insurer.
  - (6) The strategic business plan of the captive insurer.
  - (7) Other aspects of the captive insurer as determined by the commissioner.
- (d) If the commissioner is satisfied from the information filed

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1 under subsection (b) that the captive insurer is in compliance with  
2 this chapter, the commissioner may grant a certificate of authority  
3 authorizing the captive insurer to engage in the business of  
4 insurance in Indiana.

5 (e) A certificate of authority granted under subsection (d) is  
6 effective until:

- 7 (1) the captive insurer fails to pay applicable fees; or
- 8 (2) the withdrawal, suspension, or revocation of the certificate  
9 of authority by the commissioner.

10 Sec. 48. (a) Except as provided in subsection (b) or (c),  
11 information filed with the commissioner under this chapter is  
12 confidential.

13 (b) Information filed with the commissioner is discoverable by  
14 a party in a civil action or contested case to which the captive  
15 insurer that filed the information is a party, upon a specific finding  
16 by the court that:

- 17 (1) the captive insurer is a necessary party to the action and  
18 not joined only to evade the confidentiality provisions of this  
19 section; and
- 20 (2) the information sought is:
  - 21 (A) relevant, material to, and necessary for the prosecution  
22 or defense of the claim asserted in the litigation; and
  - 23 (B) not available through another source.

24 (c) The commissioner may disclose information filed with the  
25 commissioner to a public official that has jurisdiction over the  
26 regulation of insurance in another state if:

- 27 (1) the public official agrees in writing to maintain the  
28 confidentiality of the information; and
- 29 (2) the laws of the state in which the public official serves  
30 require the information to be confidential.

31 Sec. 49. (a) At the time a captive insurer applies for a certificate  
32 of authority under this chapter, the captive insurer shall pay to the  
33 department a nonrefundable application fee of five hundred dollars  
34 (\$500).

- 35 (b) The commissioner may:
  - 36 (1) retain legal, financial, and examination consulting services  
37 to examine and investigate the application, the reasonable cost  
38 of which may be charged to the captive insurer; or
  - 39 (2) use internal resources to examine and investigate the  
40 application for a fee of two thousand four hundred dollars  
41 (\$2,400).

42 (c) A captive insurer shall pay to the department a certificate of

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1 authority renewal fee of five hundred dollars (\$500) annually after  
2 the year the certificate of authority is granted under section 47 of  
3 this chapter.

4 (d) The department may charge a fifteen dollar (\$15) fee for a  
5 document that requires:

- 6 (1) a certification of authenticity by the department; or
- 7 (2) the signature of the commissioner or the commissioner's  
8 designee.

9 Sec. 50. (a) A captive insurer may form one (1) or more  
10 protected cells to:

- 11 (1) insure the risks of one (1) or more participants; or
- 12 (2) segregate the captive insurer's assets and liabilities from  
13 the assets and liabilities of a protected cell formed under  
14 subdivision (1).

15 The assets and liabilities of each protected cell must be held  
16 separately from the assets and liabilities of all other protected cells.

17 (b) A captive insurer is a single legal entity and each protected  
18 cell of a captive insurer:

- 19 (1) may be established as a legal entity that is separate from  
20 the captive insurer; and
- 21 (2) must be separately identified or designated as being a part  
22 of the captive insurer.

23 (c) A captive insurer that maintains a protected cell shall, at the  
24 time of paying the annual certificate of authority renewal fee under  
25 section 49 of this chapter, pay an additional annual fee in an  
26 amount to be established by the commissioner for each protected  
27 cell.

28 Sec. 51. (a) A captive insurer may create and issue one (1) or  
29 more classes or series of shares for one (1) or more protected cells.  
30 The proceeds of the issue must be included in the assets of the  
31 protected cell that issues the shares.

32 (b) The proceeds of an issue of shares other than protected cell  
33 shares must be included in the captive insurer's general assets.

34 (c) A captive insurer may pay a dividend on a class or series of  
35 protected cell shares regardless of whether a dividend is declared  
36 on another class or series of protected cell shares or other shares.

37 (d) Dividends may be paid on protected cell shares from  
38 protected cell assets. Protected cell dividends must be paid only to  
39 the shareholders of the protected cell from which the protected cell  
40 shares are issued, and otherwise in accordance with the rights of  
41 the shares.

42 Sec. 52. (a) An act, a matter, a deed, an agreement, a contract,

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1 an instrument under seal, or another instrument or arrangement  
2 that is binding on or inures to the benefit of a protected cell must  
3 be:

4 (1) executed by the captive insurer for and on behalf of the  
5 protected cell and identified as an act, a matter, a deed, an  
6 agreement, a contract, an instrument under seal, or another  
7 instrument or arrangement; and

8 (2) if the act, matter, deed, agreement, contract, instrument,  
9 or arrangement is in writing, the act, matter, deed,  
10 agreement, contract, instrument, or arrangement must  
11 indicate that the execution is in the name of, or by, or for the  
12 account of the protected cell.

13 (b) If a captive insurer violates subsection (a), the following  
14 apply:

15 (1) Except as provided in subsection (c), the members of the  
16 governing body of the captive insurer shall, notwithstanding  
17 a provision to the contrary in:

- 18 (A) the captive insurer's organizational documents;
- 19 (B) a contract with the captive insurer; or
- 20 (C) any other document;

21 incur personal liability for the liabilities of the captive insurer  
22 and a protected cell or the matter, deed, agreement, contract,  
23 instrument, or arrangement executed.

24 (2) Unless the members of the governing body of the captive  
25 insurer were fraudulent, reckless, negligent, or acted in bad  
26 faith:

27 (A) in the case of a matter on behalf of or attributable to a  
28 protected cell, the members of the governing body have a  
29 right of indemnity against the assets of the protected cell;  
30 and

31 (B) in the case of a matter not on behalf of or attributable  
32 to a protected cell or account, the members of the  
33 governing body have a right of indemnity against the  
34 general assets of the captive insurer.

35 (c) A court may relieve a member of the governing body of all  
36 or part of the member's personal liability under subsection (b)(1)  
37 if the member satisfies the court that the member should be  
38 relieved because the member:

- 39 (1) was not aware of the circumstances giving rise to the  
40 liability and so was not fraudulent or reckless and did not act  
41 in bad faith; or
- 42 (2) expressly objected, and exercised the rights that a member

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1 of the governing body, by way of voting power or otherwise,  
2 should exercise to prevent the circumstances giving rise to the  
3 liability.

4 (d) If a court relieves a member of the governing body of all or  
5 part of the member's personal liability under subsection (c), the  
6 court may order the liability in question to be paid from the  
7 protected cell, or from the general assets of the captive insurer.

8 (e) A provision:

9 (1) that is set forth in:

10 (A) the organizational documents of a captive insurer; or

11 (B) a contract entered into by a captive insurer under  
12 which the captive insurer may be liable; and

13 (2) that purports to indemnify a member of the governing  
14 body of the captive insurer for conduct that would otherwise  
15 make the member of the governing body ineligible for  
16 indemnification under subsection (b)(2);

17 is void.

18 **Sec. 53. (a) The assets of a captive insurer must be protected cell  
19 assets or general assets.**

20 (b) It is the duty of the members of the governing body of a  
21 captive insurer to establish and maintain, or cause to be established  
22 and maintained, procedures to:

23 (1) keep protected cell assets separate and separately  
24 identifiable from general assets;

25 (2) keep each protected cell's assets separate and separately  
26 identifiable from every other protected cell's assets; and

27 (3) apportion or transfer protected cell assets and liabilities  
28 between protected cells, or between protected cells and  
29 general assets of the protected cell captive insurer.

30 (c) Protected cell assets of a particular protected cell:

31 (1) may be available and used only to meet liabilities to  
32 creditors of the protected cell, and are subject to recourse  
33 only of the creditors of the protected cell; and

34 (2) may not be available or used to meet liabilities to, and  
35 must be protected from, creditors of the captive insurer that  
36 are not creditors of the protected cell, and are not subject to  
37 recourse of creditors that are not creditors of the protected  
38 cell.

39 (d) If a liability of a captive insurer to a person arises from a  
40 matter related to, or is otherwise imposed with respect to, a  
41 particular protected cell, the liability extends, and the person is  
42 entitled to recourse, only to:

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- 1           (1) first, the protected cell's assets; and
- 2           (2) second, the captive insurer's general assets, to the extent
- 3           that the:
- 4                (A) protected cell's assets are insufficient to satisfy the
- 5                liability; and
- 6                (B) captive insurer's general assets exceed minimum
- 7                capital amounts required under this chapter.
- 8       (e) If a liability of a captive insurer to a person:
- 9           (1) arises other than from a matter related to a particular
- 10          protected cell; or
- 11          (2) is imposed other than in relation to a particular protected
- 12          cell;
- 13       the liability extends, and the person has recourse, only to the
- 14       captive insurer's general assets.
- 15       (f) A liability of a captive insurer that is not attributable to a
- 16       protected cell must be discharged from the captive insurer's
- 17       general assets.
- 18       (g) Income, receipts, and other property or rights of a captive
- 19       insurer that are not attributable to a protected cell must be
- 20       attributed to the captive insurer's general assets to the extent that
- 21       the captive insurer's general assets exceed minimum capital
- 22       amounts required under this chapter.
- 23       Sec. 54. (a) Each protected cell must be accounted for separately
- 24       in the records of a captive insurer to reflect the financial condition
- 25       and results of operations of the protected cell, including:
- 26           (1) net income or loss;
- 27           (2) dividends or other distributions to participants; and
- 28           (3) other factors:
- 29                (A) provided in a participant contract; or
- 30                (B) required by the commissioner.
- 31       (b) A captive insurer may not make a sale, an exchange, or
- 32       another transfer of assets between the captive insurer's protected
- 33       cells without the written consent of the protected cells and the
- 34       commissioner.
- 35       (c) A sale, an exchange, a transfer of assets, a dividend, or a
- 36       distribution may not be made from a protected cell to any person
- 37       unless the commissioner provides prior written approval upon a
- 38       finding that the sale, exchange, transfer, dividend, or distribution
- 39       will not result in the insolvency or impairment of the protected cell.
- 40       Sec. 55. (a) A captive insurer that forms a protected cell shall
- 41       annually file with the commissioner financial reports required by
- 42       the commissioner, including financial statements detailing the

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1 financial experience of each protected cell.

2 (b) A captive insurer described in subsection (a) shall notify the  
3 commissioner not more than ten (10) business days after a  
4 protected cell becomes insolvent or otherwise unable to meet the  
5 protected cell's obligations.

6 Sec. 56. (a) A participant contract must be approved by the  
7 commissioner in writing before the participant contract is effective.

8 (b) The addition of a new protected cell or the withdrawal of a  
9 participant from an existing protected cell constitutes a change in  
10 the strategic business plan of the protected cell and requires the  
11 commissioner's prior written approval.

12 (c) Any person may be a participant in a protected cell formed  
13 or authorized under this chapter.

14 (d) A participant in a protected cell is not required to be a  
15 shareholder insured:

16 (1) in the protected cell;

17 (2) by the captive insurer; or

18 (3) by an affiliate of the captive insurer.

19 Sec. 57. (a) Except as provided in subsection (b), (c), or (d), a  
20 captive insurer shall at all times maintain a minimum unimpaired  
21 capital of one hundred thousand dollars (\$100,000) in the form of  
22 cash or an irrevocable letter of credit that satisfies the  
23 requirements of subsection (h).

24 (b) A risk retention group captive insurer that issues a  
25 nonassessable policy shall maintain minimum unimpaired capital  
26 of three hundred thousand dollars (\$300,000).

27 (c) A captive insurer seeking authority to directly insure  
28 worker's compensation liability shall maintain minimum  
29 unimpaired capital of one million dollars (\$1,000,000).

30 (d) The commissioner may:

31 (1) require a captive insurer, including each protected cell, to  
32 maintain additional unimpaired capital based on the type,  
33 volume, and nature of the insurance business engaged in by  
34 the captive insurer; and

35 (2) determine the amount of capital, if any, that may be in the  
36 form of an irrevocable letter of credit.

37 (e) Except as provided in subsection (f), in addition to the  
38 minimum unimpaired capital required by this section, a captive  
39 insurer must have a minimum unencumbered surplus:

40 (1) in the form of cash or an irrevocable letter of credit; or

41 (2) in another form approved by the commissioner;

42 of one hundred fifty thousand dollars (\$150,000).

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1 (f) The minimum unencumbered surplus that must be  
2 maintained by the following types of captive insurers is as follows:

3 (1) For an association captive insurer incorporated as a stock  
4 insurer or a limited liability company, not less than three  
5 hundred thousand dollars (\$300,000).

6 (2) For an agency captive insurer, not less than three hundred  
7 thousand dollars (\$300,000).

8 (3) For a rental captive insurer, not less than three hundred  
9 thousand dollars (\$300,000).

10 (4) For an association captive insurer incorporated as a  
11 nonstock corporation, not less than five hundred thousand  
12 dollars (\$500,000).

13 (5) For an industrial insured captive insurer, not less than:

14 (A) four hundred thousand dollars (\$400,000) if organized  
15 as a stock corporation or limited liability company; or

16 (B) five hundred thousand dollars (\$500,000) if organized  
17 other than as a stock corporation or limited liability  
18 company.

19 (6) For a risk retention group captive insurer, not less than:

20 (A) three hundred thousand dollars (\$300,000) if the risk  
21 retention group captive insurer issues only assessable  
22 policies; or

23 (B) the lesser of:

24 (i) one million dollars (\$1,000,000); or

25 (ii) the greater of three hundred thousand dollars  
26 (\$300,000) or an amount equal to ten thousand dollars  
27 (\$10,000) times the number of the risk retention group  
28 captive insurer's insureds;

29 if the risk retention group captive insurer insures policies  
30 other than assessable policies.

31 (7) For a captive insurer seeking authority to insure worker's  
32 compensation liability, not less than two hundred fifty  
33 thousand dollars (\$250,000).

34 (8) For each protected cell, not less than an amount  
35 established by the commissioner.

36 (g) The commissioner may prescribe additional requirements:

37 (1) relating to a captive insurer's required surplus based on  
38 the type, volume, and nature of the insurance business  
39 engaged in by the captive insurer or protected cell; and

40 (2) allowing surplus to be in the form of an irrevocable letter  
41 of credit.

42 (h) A letter of credit used by a captive insurer or protected cell

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1 as evidence of capital or surplus required under this section must:

2 (1) be issued by:

3 (A) a bank chartered in Indiana; or

4 (B) a branch, located in Indiana, of a bank:

5 (i) that is a member of the United States Federal Reserve  
6 System; or

7 (ii) the deposits of which are insured by the Federal  
8 Deposit Insurance Corporation;

9 (2) be issued on a form approved by the commissioner; and

10 (3) include a provision specifying that the letter of credit is  
11 automatically renewed each year.

12 Sec. 58. (a) Except as otherwise provided in this chapter, a  
13 captive insurer or protected cell may pay dividends or make any  
14 other distribution from the captive insurer's capital or surplus only  
15 to the extent that the capital and surplus remaining after the  
16 dividend is paid or the distribution is made exceeds:

17 (1) the minimum capital and surplus required by this chapter;  
18 or

19 (2) a higher amount of capital and surplus required by the  
20 commissioner.

21 (b) The commissioner may approve an ongoing plan for the  
22 payment of dividends or other distributions by a captive insurer or  
23 protected cell if:

24 (1) at the time of each payment or distribution, the amount of  
25 capital and surplus retained by the captive insurer or  
26 protected cell exceeds the amount required by the  
27 commissioner; and

28 (2) the ongoing plan includes one (1) of the following:

29 (A) A specific amount that a captive insurer or protected  
30 cell must have in excess capital and surplus.

31 (B) A formula under which the specific amount of required  
32 excess capital and surplus may be calculated.

33 Sec. 59. (a) A captive insurer shall file with the commissioner a  
34 schedule of the captive insurer's proposed investments and  
35 material changes to investments.

36 (b) The commissioner:

37 (1) may approve a filing described in subsection (a) if the  
38 commissioner determines that the proposed investments do  
39 not threaten the solvency or liquidity of the captive insurer;  
40 and

41 (2) may not unreasonably disapprove a filing described in  
42 subsection (a).

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1 (c) A captive insurer or protected cell may make a loan to the  
2 captive insurer's parent or affiliate if the loan:

- 3 (1) has been approved in writing by the commissioner;
- 4 (2) is evidenced by a note that is in a form approved by the  
5 commissioner; and
- 6 (3) does not include money that has been set aside as capital  
7 or surplus as required by section 57 of this chapter.

8 Sec. 60. A captive insurer or protected cell may do the  
9 following:

- 10 (1) Provide reinsurance on risks ceded by another insurer,  
11 captive insurer, or protected cell.
- 12 (2) Take credit for the reinsurance of risks or portions of risks  
13 ceded to reinsurers in compliance with the requirements for  
14 credit for reinsurance that apply to domestic companies.
- 15 (3) Cede or take credit for the reinsurance risks or portions of  
16 risks ceded to reinsurers not in compliance with the  
17 requirements referred to subdivision (2) if the captive insurer  
18 or protected cell has the prior approval of the commissioner.
- 19 (4) Take credit for the reinsurance of risks or portions of risks  
20 ceded to a reinsurance pool, exchange, or association acting as  
21 a reinsurer that has been authorized by the commissioner. In  
22 determining whether to authorize the reinsurance pool,  
23 exchange, or association acting as a reinsurer, the  
24 commissioner may do the following:
  - 25 (A) Require documents, financial information, or other  
26 evidence that the reinsurance pool, exchange, or  
27 association is able to provide adequate security for the  
28 pool's, exchange's, or association's financial obligations.
  - 29 (B) Deny authorization or impose limitations on the  
30 activities of the reinsurance pool, exchange, or association  
31 that the commissioner determines to be necessary to  
32 provide adequate security for the ceding captive insurer or  
33 protected cell and for the protection and benefit of the  
34 public.

35 Sec. 61. (a) Except as otherwise provided in this section, a  
36 captive insurer is liable for a tax on net direct premiums, to be paid  
37 not later than March 1 of each year, as follows:

- 38 (1) Two hundred fifty thousandths of one percent (0.250%) on  
39 the first five million dollars (\$5,000,000) of the captive  
40 insurer's net direct premiums.
- 41 (2) One hundred fifty thousandths of one percent (0.150%) on  
42 the next twenty-five million dollars (\$25,000,000) of the

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1 captive insurer's net direct premiums.

2 (3) Fifty thousandths of one percent (0.050%) on each  
3 additional dollar (\$1) of the captive insurer's net direct  
4 premiums.

5 (b) Except as otherwise provided in this section, a captive  
6 insurer is liable for a tax on assumed reinsurance premiums, to be  
7 paid not later than March 1 of each year, as follows:

8 (1) Two hundred twenty-five thousandths of one percent  
9 (0.225%) on the first twenty-five million dollars (\$25,000,000)  
10 of revenue from assumed reinsurance premiums.

11 (2) One hundred fifty thousandths of one percent (0.150%) on  
12 the next twenty-five million dollars (\$25,000,000) of revenue  
13 from assumed reinsurance premiums.

14 (3) Twenty-five thousandths of one percent (0.025%) on each  
15 additional dollar (\$1) of revenue from assumed reinsurance  
16 premiums.

17 (c) The tax on assumed reinsurance premiums under subsection  
18 (b) must not be levied on net direct premiums for risks or portions  
19 of risks that are subject to taxation under subsection (a).

20 (d) A captive insurer is not required to pay an assumed  
21 reinsurance premium tax under subsection (b) on revenue related  
22 to the receipt of assets by the captive insurer in exchange for the  
23 assumption of loss reserves and other liabilities of another insurer  
24 that is under common ownership and control with the captive  
25 insurer, if the transaction is part of a plan to discontinue the  
26 operation of the other insurer and the intent of the parties to the  
27 transaction is to renew or maintain the business with the captive  
28 insurer.

29 (e) If the sum of taxes to be paid by a captive insurer, other than  
30 a risk retention group captive insurer, calculated under subsections  
31 (a) and (b) is less than seven thousand five hundred dollars (\$7,500)  
32 in a particular year, the captive insurer shall pay a minimum tax  
33 of seven thousand five hundred dollars (\$7,500) for the year.

34 (f) If the sum of the taxes to be paid by a risk retention group  
35 captive insurer calculated under subsections (a) and (b) is less than  
36 ten thousand dollars (\$10,000) in a particular year, the captive  
37 insurer shall pay a minimum tax of ten thousand dollars (\$10,000)  
38 for the year.

39 (g) The total state tax paid by a captive insurer must not exceed  
40 one hundred thousand dollars (\$100,000) in a particular year.

41 (h) The taxes required under this section must be calculated  
42 annually, notwithstanding policies or contracts of insurance, or

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1 contracts of reinsurance, issued on a multiyear basis. If a policy or  
 2 contract is issued on a multiyear basis, the premium must be  
 3 prorated to determine the tax obligation under this section.

4 (i) Any insurance transaction engaged in by a captive insurer  
 5 granted a certificate of authority under this chapter, regardless of  
 6 the location of the risk or domicile of the purchaser, must be  
 7 included for purposes of calculating the amount of tax owed under  
 8 this section. However, upon presentation of evidence that another  
 9 jurisdiction has claimed, and the captive insurer has paid,  
 10 premium tax to the other jurisdiction on the same transaction, the  
 11 captive insurer may credit the amount paid to the other  
 12 jurisdiction against taxes owed under this section.

13 (j) A captive insurer that is issued a certificate of authority  
 14 during the fourth quarter of a calendar year may file a written  
 15 request with the commissioner for a reduction in the minimum  
 16 premium tax obligation calculated under subsection (e) or (f). The  
 17 commissioner may grant the request according to a methodology  
 18 established by the commissioner under rules adopted under  
 19 IC 4-22-2.

20 (k) One hundred percent (100%) of the revenues collected from  
 21 taxes required under this section must be deposited in the captive  
 22 insurer trust fund established by section 68 of this chapter.

23 (l) Notwithstanding any other law, and except:

- 24 (1) as provided in this section; and  
 25 (2) for real or personal property taxes;

26 the taxes required under this section constitute all taxes collectible  
 27 from a captive insurer under Indiana law.

28 (m) This section:

- 29 (1) applies only to the branch business of a branch captive  
 30 insurer; and  
 31 (2) does not apply to annuity business.

32 Sec. 62. (a) A captive insurer shall:

- 33 (1) before March 1 of each year, file with the commissioner,  
 34 on a form prescribed by the commissioner, a report prepared  
 35 by a certified public accountant of the captive insurer's  
 36 financial condition;  
 37 (2) file a consolidated report on behalf of each of the captive  
 38 insurer's protected cells; and  
 39 (3) in preparing the report, use generally accepted accounting  
 40 principles and include useful or necessary modifications or  
 41 adaptations of the generally accepted accounting principles  
 42 that have been approved or accepted by the commissioner for

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1 the type of insurance and kinds of insurers included in the  
 2 report, and as supplemented by additional information  
 3 required by the commissioner.

4 (b) A pure captive insurer may apply to the commissioner in  
 5 writing for authorization to file the pure captive insurer's annual  
 6 report based on a fiscal year that is consistent with the fiscal year  
 7 of the pure captive insurer. If the commissioner grants an  
 8 alternative date:

- 9 (1) the annual report is due not later than sixty (60) days after  
 10 the end of each of the pure captive insurer's fiscal years; and  
 11 (2) the pure captive insurer shall file, before March 1 of each  
 12 year, forms required by the commissioner to provide  
 13 sufficient detail to support the pure captive insurer's premium  
 14 tax return filed under section 61 of this chapter.

15 Sec. 63. (a) The commissioner or the commissioner's designee  
 16 may visit a captive insurer whenever the commissioner considers  
 17 it necessary to examine the affairs of the captive insurer or a  
 18 protected cell of the captive insurer to ascertain:

- 19 (1) the financial condition of the captive insurer;  
 20 (2) the ability of the captive insurer to fulfill the captive  
 21 insurer's obligations; and  
 22 (3) whether the captive insurer has complied with this  
 23 chapter.

24 (b) The commissioner may require a captive insurer to retain  
 25 qualified independent legal, financial, and examination services  
 26 from outside the department to conduct an examination under this  
 27 section and make recommendations to the commissioner. The  
 28 captive insurer shall pay the cost of an examination.

29 (c) IC 27-1-3.1 applies to examinations conducted under this  
 30 section.

31 (d) Protected cells of a captive insurer may not be individually  
 32 examined unless the commissioner has cause to examine one (1) or  
 33 more protected cells individually.

34 Sec. 64. (a) The commissioner may revoke or suspend the  
 35 certificate of authority of a captive insurer if the captive insurer:

- 36 (1) has failed or refused to comply with this chapter;  
 37 (2) is impaired in capital or surplus;  
 38 (3) is insolvent;  
 39 (4) is determined to be in a hazardous financial condition such  
 40 that the further transaction of insurance business by the  
 41 captive insurer is hazardous to the captive insurer's  
 42 policyholders or creditors or to the public;

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1 (5) has failed or refused to submit a report or statement  
2 required by law or order of the commissioner;

3 (6) has failed or refused to comply with a provision of the  
4 captive insurer's organizational documents;

5 (7) has used a method of transacting insurance business that  
6 is detrimental to the operation of the captive insurer or makes  
7 the captive insurer's condition unsound with respect to the  
8 captive insurer's policyholders or the public; or

9 (8) has failed otherwise to comply with the law of any  
10 jurisdiction.

11 (b) After notice and hearing under IC 4-21.5, the commissioner  
12 may impose on a captive insurer a civil penalty of not more than  
13 five thousand dollars (\$5,000) for each violation of this chapter.

14 Sec. 65. (a) A captive insurer may not join or contribute  
15 financially to a risk sharing plan, risk pool, or insurance insolvency  
16 guaranty fund in Indiana, and a captive insurer or:

17 (1) an insured of the captive insurer;

18 (2) the parent or affiliate of the captive insurer; or

19 (3) a member organization of the captive insurer's  
20 association;

21 may not receive a benefit from a risk sharing plan, risk pool, or  
22 insurance insolvency guaranty fund in Indiana for claims arising  
23 out of the operations of the captive insurer.

24 (b) IC 27-9 applies to a captive insurer and to a protected cell of  
25 a captive insurer. If IC 27-9 and this chapter conflict, this chapter  
26 is controlling.

27 (c) In the winding up of a captive insurer, the liquidator:

28 (1) shall deal with the assets of a protected cell only in  
29 accordance with the procedures set out in subsections (f), (g),  
30 and (h); and

31 (2) in the discharge of the claims of creditors of the captive  
32 insurer, shall apply the assets of a protected cell only to the  
33 persons entitled to recourse against the protected cell.

34 (d) A petition for a liquidation or rehabilitation order with  
35 respect to a protected cell of a captive insurer may be made by:

36 (1) the protected cell captive insurer;

37 (2) the majority of the members of the governing body of the  
38 protected cell captive insurer;

39 (3) a creditor of the protected cell; or

40 (4) the commissioner.

41 (e) Notice of a petition to a court for a liquidation or  
42 rehabilitation order with respect to a protected cell of a captive

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1 insurer must be served upon:

- 2 (1) the captive insurer;  
 3 (2) the commissioner; or  
 4 (3) other persons as directed by the court.

5 (f) A court may issue a liquidation or rehabilitation order with  
 6 respect to a particular protected cell if, in relation to the captive  
 7 insurer, the court is satisfied that:

- 8 (1) the protected cell assets attributable to the particular  
 9 protected cell of the captive insurer are or may be insufficient  
 10 to discharge the claims of creditors with respect to the  
 11 protected cell;  
 12 (2) the creditors of the captive insurer with respect to the  
 13 protected cell are entitled to recourse against the captive  
 14 insurer's general assets; and  
 15 (3) the issuance of an order under this section would achieve  
 16 the purposes described in subsection (g).

17 (g) A liquidation or rehabilitation order must direct that the  
 18 business and protected cell assets of a protected cell must be  
 19 managed by a liquidator or rehabilitator specified in the order to  
 20 ensure:

- 21 (1) the orderly closing or rehabilitation of the business of, or  
 22 attributable to, the protected cell; and  
 23 (2) the distribution of the protected cell assets to persons  
 24 entitled to recourse against the protected cell.

25 (h) The liquidator or rehabilitator of a protected cell:

- 26 (1) has all the powers and duties of the members of the  
 27 governing body who are responsible for the business and  
 28 protected cells assets of the protected cell;  
 29 (2) may at any time apply to the court for:

- 30 (A) direction concerning the extent or exercise of a power  
 31 or duty;  
 32 (B) the liquidation or rehabilitation order to be discharged  
 33 or varied; or  
 34 (C) an order concerning a matter that occurs during the  
 35 course of the liquidation or rehabilitation; and

- 36 (3) in exercising the liquidator's or rehabilitator's powers and  
 37 duties, acts as the agent of the captive insurer, and does not  
 38 incur personal liability.

39 (i) Upon the filing of a petition for, and during the period of  
 40 operation of, a liquidation or rehabilitation order:

- 41 (1) a proceeding may not be instituted or continued by or  
 42 against the captive insurer or protected cell that is the subject

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1 of the liquidation or rehabilitation order; and  
 2 (2) steps may not be taken to enforce a security or in the  
 3 execution of legal process concerning the business or  
 4 protected cell assets of the protected cell that is the subject of  
 5 the liquidation or rehabilitation order, except by leave of the  
 6 court.

7 (j) During the period of operation of a liquidation or  
 8 rehabilitation order:

9 (1) the powers and duties of the members of the governing  
 10 body cease concerning the business of the protected cell or  
 11 protected cell assets that are the subject of the order; and

12 (2) the liquidator or rehabilitator of the protected cell may  
 13 attend all meetings of the captive insurer or protected cell and  
 14 vote at the meetings as if the liquidator or rehabilitator were  
 15 a member of the governing body of the captive insurer. Unless  
 16 there are no creditors entitled to recourse against the captive  
 17 insurer's general assets, the liquidator's or rehabilitator's  
 18 voting authority includes matters concerning the captive  
 19 insurer's general assets.

20 (k) A court shall not discharge a liquidation or rehabilitation  
 21 order issued under this section unless it appears to the court that  
 22 the purpose for which the order was issued has been achieved, has  
 23 been substantially achieved, or is incapable of being achieved.

24 (l) A court, on hearing a petition for the discharge or variance  
 25 of a liquidation or rehabilitation order, may issue an interim order  
 26 or adjourn the proceeding.

27 (m) When a court issues an order discharging a liquidation or  
 28 rehabilitation order for a protected cell on the ground that the  
 29 purpose for which the order was made has been achieved or  
 30 substantially achieved, the court may direct that a payment made  
 31 by the liquidator or rehabilitator to a creditor of the captive  
 32 insurer, with respect to the protected cell, is full satisfaction of the  
 33 liability of the captive insurer to the creditor with respect to the  
 34 protected cell, and the creditor's claims against the captive insurer  
 35 with respect to the protected cell are extinguished.

36 Sec. 66. (a) A captive insurer that is licensed in a foreign or alien  
 37 jurisdiction may transfer the captive insurer's domicile to Indiana  
 38 and become a domestic company by:

39 (1) complying with the requirements for a certificate of  
 40 authority under this chapter; and

41 (2) designating an office located in Indiana.

42 (b) A captive insurer, after redomestication, may engage in the

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1 insurance business in Indiana, and is subject to the authority of the  
2 commissioner.

3 (c) All insurance contracts in existence when a captive insurer  
4 undergoes redomestication by merger, consolidation, or another  
5 lawful method continue in force after redomestication if the captive  
6 insurer is authorized in Indiana to transact the types of insurance  
7 business represented by the existing contracts.

8 (d) A captive insurer, before undergoing redomestication, shall:  
9 (1) notify the commissioner of the details of a proposed  
10 redomestication; and  
11 (2) promptly file resulting amendments to application  
12 documents that have been filed or are required to be filed  
13 with the commissioner.

14 (e) A domestic captive insurer, upon the approval of the  
15 commissioner, may transfer the captive insurer's domicile to a  
16 state in which the captive insurer is licensed to engage in insurance  
17 business as a captive insurer, and upon the transfer ceases to be a  
18 domestic company. The commissioner shall approve a proposed  
19 transfer unless the commissioner determines that the transfer is  
20 not in the best interest of the captive insurer's policyholders.

21 Sec. 67. (a) To be authorized to function as a captive manager  
22 in Indiana, a person shall register with the department and provide  
23 information determined by the commissioner to be necessary or  
24 appropriate to establish the person's qualifications to act as a  
25 captive manager in Indiana.

26 (b) A captive manager is subject to the authority of the  
27 commissioner.

28 (c) If a registered resident agent appointed by a captive insurer  
29 under section 47(a)(8) of this chapter cannot with reasonable  
30 diligence be found at the registered office of the captive insurer, a  
31 captive manager identified in the department's records as the  
32 captive manager for the captive insurer is considered to be an  
33 agent of the captive insurer upon whom any process, notice, or  
34 demand may be served, and any service of process identifying the  
35 captive insurer served upon the captive manager is conclusive  
36 proof of service on the captive insurer.

37 Sec. 68. (a) The captive insurer trust fund is established for the  
38 purpose of funding the enforcement of this chapter. The fund shall  
39 be administered by the commissioner.

40 (b) The expenses of administering the fund shall be paid from  
41 money in the fund.

42 (c) The treasurer of state shall invest the money in the fund not

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1 currently needed to meet the obligations of the fund in the same  
2 manner as other public money may be invested. Interest that  
3 accrues from these investments shall be deposited in the fund.  
4 (d) Money in the fund is annually appropriated for the purposes  
5 of the fund.  
6 (e) Money in the fund at the end of a state fiscal year does not  
7 revert to the state general fund.  
8 Sec. 69. A captive insurer is not required to join a rating  
9 organization.  
10 Sec. 70. The parent of a branch captive insurer is subject to the  
11 jurisdiction of Indiana courts for all matters involving the branch  
12 captive insurer.  
13 Sec. 71. Except as provided in this chapter, IC 27 does not apply  
14 to a captive insurer.  
15 Sec. 72. IC 27-4-1 applies to a captive insurer.  
16 Sec. 73. The commissioner may adopt rules under IC 4-22-2 to  
17 implement this chapter.

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