

FIRST REGULAR SESSION

# SENATE BILL NO. 215

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Pre-filed December 29, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0058L.01I

## AN ACT

To amend chapter 379, RSMo, by adding thereto twenty-five new sections relating to the regulation of captive insurance companies.

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

Section A. Chapter 379, RSMo, is amended by adding thereto twenty-five  
2 new sections, to be known as sections 379.1300, 379.1302, 379.1304, 379.1306,  
3 379.1308, 379.1310, 379.1312, 379.1314, 379.1316, 379.1318, 379.1320, 379.1322,  
4 379.1324, 379.1326, 379.1328, 379.1330, 379.1332, 379.1336, 379.1338, 379.1340,  
5 379.1342, 379.1344, 379.1346, 379.1348, and 379.1350, to read as follows:

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

3 (1) "Affiliated company", any company in the same corporate  
4 system as a parent, an industrial insured, or a member organization by  
5 virtue of common ownership, control, operation, or management;

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

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

16 (4) "Association", any legal association of individuals,  
17 corporations, limited liability companies, partnerships, associations, or  
18 other entities that has been in continuous existence for at least one

19 year, the member organizations of which or which does itself, whether  
20 or not in conjunction with some or all of the member organizations:

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

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

26 (5) "Association captive insurance company", any company that  
27 insures risks of the member organizations of the association and their  
28 affiliated companies;

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

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

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

37 (9) "Captive insurance company", any pure captive insurance  
38 company, association captive insurance company, or industrial insured  
39 captive insurance company formed or licensed under sections 379.1300  
40 to 379.1350. For purposes of sections 379.1300 to 379.1350, a branch  
41 captive insurance company shall be a pure captive insurance company  
42 with respect to operations in this state, unless otherwise permitted by  
43 the director;

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

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

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

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

51 (11) "Director", the director of the department of insurance;

52 (12) "Excess workers' compensation insurance", in the case of an  
53 employer that has insured or self-insured its workers' compensation  
54 risks in accordance with applicable state or federal law, insurance in  
55 excess of a specified per-incident or aggregate limit established by the

56 **director;**

57 **(13) "Industrial insured", an insured:**

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

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

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

64 **(14) "Industrial insured captive insurance company", any**  
65 **company that insures risks of the industrial insureds that comprise the**  
66 **industrial insured group and their affiliated companies;**

67 **(15) "Industrial insured group", any group of industrial insureds**  
68 **that collectively:**

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

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

74 **(16) "Member organization", any individual, corporation, limited**  
75 **liability company, partnership, association, or other entity that belongs**  
76 **to an association;**

77 **(17) "Mutual corporation", a corporation organized without**  
78 **stockholders and includes a nonprofit corporation with members;**

79 **(18) "Parent", a corporation, limited liability company,**  
80 **partnership, other entity, or individual, that directly or indirectly**  
81 **owns, controls, or holds with power to vote more than fifty percent of**  
82 **the outstanding voting:**

83 **(a) Securities of a pure captive insurance company organized as**  
84 **a stock corporation; or**

85 **(b) Membership interests of a pure captive insurance company**  
86 **organized as a nonprofit corporation;**

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

**379.1302. 1. Any captive insurance company, when permitted by**  
**2 its articles of association, charter, or other organizational document,**  
**3 may apply to the director for a license to do any and all insurance and**

4 annuity contracts comprised in section 376.010, RSMo, and subsection  
5 1 of section 379.010, other than workers' compensation and employers'  
6 liability; provided, however, that:

7 (1) No pure captive insurance company shall insure any risks  
8 other than those of its parent and affiliated companies or controlled  
9 unaffiliated business;

10 (2) No association captive insurance company shall insure any  
11 risks other than those of the member organizations of its association  
12 and their affiliated companies;

13 (3) No industrial insured captive insurance company shall insure  
14 any risks other than those of the industrial insureds that comprise the  
15 industrial insured group and their affiliated companies;

16 (4) No captive insurance company shall provide personal motor  
17 vehicle or homeowner's insurance coverage or any component thereof;

18 (5) No captive insurance company shall accept or cede  
19 reinsurance except as provided in section 379.1320;

20 (6) Any captive insurance company may provide excess workers'  
21 compensation insurance to its parent and affiliated companies, unless  
22 prohibited by the federal law or laws of the state having jurisdiction  
23 over the transaction. Any captive insurance company, unless  
24 prohibited by federal law, may reinsure workers' compensation of a  
25 qualified self-insured plan of its parent and affiliated companies;

26 (7) Any captive insurance company which insures life and  
27 accident and health risks described in section 376.010, RSMo, and  
28 subdivision (4) of subsection 1 of section 379.010, shall comply with all  
29 applicable state and federal laws; and

30 (8) No captive insurance company shall transact business as a  
31 risk retention group under sections 375.1080 to 375.1105, RSMo.

32 2. No captive insurance company shall do any insurance business  
33 in this state unless:

34 (1) It first obtains from the director a license authorizing it to do  
35 insurance business in this state;

36 (2) Its board of directors or committee of managers holds at least  
37 one meeting each year in this state;

38 (3) It maintains its principal place of business in this state;

39 (4) It appoints a registered agent to accept service of process and  
40 to otherwise act on its behalf in this state; provided that, whenever

41 such registered agent cannot with reasonable diligence be found at the  
42 registered office of the captive insurance company, the secretary of  
43 state shall be an agent of such captive insurance company upon whom  
44 any process, notice, or demand may be served; and

45 (5) It holds at least thirty-five percent of its assets either directly  
46 in this state or through a financial institution located in this state and  
47 approved by the director.

48 3. (1) Before receiving a license, a captive insurance company  
49 shall:

50 (a) File with the director a certified copy of its organizational  
51 documents, a statement under oath of its president and secretary  
52 showing its financial condition, and any other statements or documents  
53 required by the director; and

54 (b) Submit to the director for approval a description of the  
55 coverages, deductibles, coverage limits, and rates, together with such  
56 additional information as the director may reasonably require. In the  
57 event of any subsequent material change in any item in such  
58 description, the captive insurance company shall submit to the director  
59 for approval an appropriate revision and shall not offer any additional  
60 kinds of insurance until a revision of such description is approved by  
61 the director. The captive insurance company shall inform the director  
62 of any material change in rates within thirty days of the adoption of  
63 such change.

64 (2) Each applicant captive insurance company shall also file with  
65 the director evidence of the following:

66 (a) The amount and liquidity of its assets relative to the risks to  
67 be assumed;

68 (b) The adequacy of the expertise, experience, and character of  
69 the person or persons who will manage it;

70 (c) The overall soundness of its plan of operation;

71 (d) The adequacy of the loss prevention programs of its insureds;  
72 and

73 (e) Such other factors deemed relevant by the director in  
74 ascertaining whether the proposed captive insurance company will be  
75 able to meet its policy obligations.

76 (3) Information submitted under this subsection shall be and  
77 remain confidential, and shall not be made public by the director or an

78 employee or agent of the director without the written consent of the  
79 company; except that:

80 (a) Such information may be discoverable by a party in a civil  
81 action or contested case to which the captive insurance company that  
82 submitted such information is a party, upon a showing by the party  
83 seeking to discover such information that:

84 a. The information sought is relevant to and necessary for the  
85 furtherance of such action or case;

86 b. The information sought is unavailable from other  
87 nonconfidential sources; and

88 c. A subpoena issued by a judicial or administrative officer of  
89 competent jurisdiction has been submitted to the director; and

90 (b) The director may, in the director's discretion, disclose such  
91 information to a public officer having jurisdiction over the regulation  
92 of insurance in another state, provided that:

93 a. Such public official shall agree in writing to maintain the  
94 confidentiality of such information; and

95 b. The laws of the state in which such public official serves  
96 require such information to be and to remain confidential.

97 (4) Each captive insurance company shall pay to the director a  
98 nonrefundable fee of two hundred dollars for examining, investigating,  
99 and processing its application for license, and the director is  
100 authorized to retain legal, financial, and examination services from  
101 outside the department, the reasonable cost of which may be charged  
102 against the applicant. The provisions of sections 374.160 to 374.162 and  
103 sections 375.202 to 375.207, RSMo, shall apply to examinations,  
104 investigations, and processing conducted under the authority of this  
105 section. In addition, each captive insurance company shall pay a  
106 license fee for the year of registration and a renewal fee for each year  
107 thereafter of three hundred dollars.

108 (5) If the director is satisfied that the documents and statements  
109 that such captive insurance company has filed comply with the  
110 provisions of sections 379.1300 to 379.1350, the director may grant a  
111 license authorizing it to do insurance business in this state until April  
112 first, which license may be renewed.

379.1304. No captive insurance company shall adopt a name that  
2 is the same, deceptively similar, or likely to be confused with or

3 mistaken for any other existing business name registered in the state  
4 of Missouri.

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

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

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

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

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

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

379.1308. No captive insurance company shall pay a dividend out  
2 of, or other distribution with respect to, capital or surplus without the  
3 prior approval of the director. Approval of an ongoing plan for the  
4 payment of dividends or other distributions shall be conditioned upon  
5 the retention, at the time of each payment, of capital or surplus in  
6 excess of amounts specified by or determined in accordance with  
7 formulas approved by the director. Notwithstanding the provisions of  
8 section 355.661, RSMo, a captive insurance company organized under  
9 chapter 355, RSMo, may make such distributions as are in conformity  
10 with its purposes and approved by the director.

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

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

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

9 (2) Incorporated as a mutual insurer without capital stock, the

10 governing body of which is elected by its insureds; or

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

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

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

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

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

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

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

28 The articles of incorporation, such certificate, and the organization fee  
29 shall be transmitted to the secretary of state, who shall thereupon  
30 record both the articles 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  
33 shall petition the director to issue a certificate setting forth the  
34 director's finding that the establishment and maintenance of the  
35 proposed company will promote the general good of the state. In  
36 arriving at such a finding, the director shall consider the items set  
37 forth in paragraphs (a) to (c) of subdivision (1) of this subsection.

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

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

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

43 (2) Formed as a limited liability company, at least one of the  
44 managers shall be a resident of this state.

45 7. Other than captive insurance companies formed as limited  
46 liability companies under chapter 347, RSMo, or as nonprofit



47 corporations under chapter 355, RSMo, captive insurance companies  
48 formed as corporations under sections 379.1300 to 379.1350 shall have  
49 the privileges and be subject to chapter 351, RSMo, as well as the  
50 applicable provisions contained in sections 379.1300 to 379.1308. In the  
51 event of conflict between the provisions of such general corporation  
52 law and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall  
53 control.

54 8. Captive insurance companies formed under sections 379.1300  
55 to 379.1350:

56 (1) As limited liability companies shall have the privileges and  
57 be subject to the provisions of chapter 347, RSMo, as well as the  
58 applicable provisions contained in sections 379.1300 to 379.1350. In the  
59 event of a conflict between chapter 347, RSMo, and sections 379.1300 to  
60 379.1350, sections 379.1300 to 379.1350 shall control; or

61 (2) As nonprofit corporations shall have the privileges and be  
62 subject to the provisions of chapter 355, RSMo, as well as the applicable  
63 provisions contained in sections 379.1300 to 379.1350. In the event of  
64 conflict between chapter 355, RSMo, and sections 379.1300 to 379.1350,  
65 sections 379.1300 to 379.1350 shall control.

66 9. The provisions of section 375.355, RSMo, sections 379.980 to  
67 379.988, and chapter 382, RSMo, pertaining to mergers, consolidations,  
68 conversions, mutualizations, redomestications, and mutual holding  
69 companies shall apply in determining the procedures to be followed by  
70 captive insurance companies in carrying out any of the transactions  
71 described therein; except that:

72 (1) The director may waive or modify the requirements for public  
73 notice and hearing in accordance with rules which the director may  
74 adopt addressing categories of transactions. If a notice of public  
75 hearing is required, but no one requests a hearing, then the director  
76 may cancel the hearing;

77 (2) An alien insurer may be a party to a merger authorized under  
78 this subsection, if approved by the director.

79 10. The articles of incorporation or bylaws of a captive insurance  
80 company formed as a corporation may authorize a quorum of its board  
81 of directors to consist of no fewer than one-third of the full board of  
82 directors determined, provided that a quorum shall not consist of fewer  
83 than two directors.

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

4 2. Prior to March first of each year, each captive insurance  
5 company shall submit to the director a report of its financial condition,  
6 verified by oath of two of its executive officers. Each captive insurance  
7 company shall report using generally accepted accounting principles,  
8 unless the director approves the use of statutory accounting principles,  
9 with any appropriate or necessary modifications or adaptations thereof  
10 required or approved or accepted by the director for the type of  
11 insurance and kinds of insurers to be reported upon, and as  
12 supplemented by additional information required by the  
13 director. Except as otherwise provided, each association captive  
14 insurance company shall file its report in the form required by section  
15 375.041, RSMo. The director shall by rule propose the forms in which  
16 pure captive insurance companies and industrial insured captive  
17 insurance companies shall report. Subdivision (3) of subsection 2 of  
18 section 379.1302 shall apply to each report filed under this section.

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

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

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

379.1314. 1. At least once every three years and whenever the  
2 director determines it to be prudent, the director shall personally, or  
3 by some competent person appointed by the director, visit each captive  
4 insurance company and thoroughly inspect and examine its affairs to  
5 ascertain its financial condition, its ability to fulfill its obligations, and  
6 whether it has complied with the provisions of sections 379.1300 to  
7 379.1350. The director may enlarge such three-year period to five  
8 years, provided the captive insurance company is subject to a

9 comprehensive annual audit during such period of a scope satisfactory  
10 to the director by independent auditors approved by the director. The  
11 expenses and charges of the examination shall be paid to the state by  
12 the company or companies examined and the director shall issue his or  
13 her warrants for the proper charges incurred in all examinations, as  
14 provided in sections 374.160 and 374.162, RSMo.

15 2. The provisions of sections 374.202 to 374.207, RSMo, shall  
16 apply to examinations conducted under this section.

17 3. All examination reports, preliminary examination reports or  
18 results, working papers, recorded information, documents and copies  
19 thereof produced by, obtained by or disclosed to the director or any  
20 other person in the course of an examination made under this section  
21 are confidential and are not subject to subpoena and shall not be made  
22 public by the director or an employee or agent of the director without  
23 the written consent of the company, except to the extent provided in  
24 this subsection. Nothing in this subsection shall prevent the director  
25 from using such information in furtherance of the director's regulatory  
26 authority under this title. The director may, in the director's  
27 discretion, grant access to such information to public officers having  
28 jurisdiction over the regulation of insurance in any other state or  
29 country, or to law enforcement officers of this state or any other state  
30 or agency of the federal government at any time, so long as such  
31 officers receiving the information agree in writing to hold it in a  
32 manner consistent with this section.

379.1316. 1. The license of a captive insurance company may be  
2 suspended or revoked by the director for any of the following reasons:

- 3 (1) Insolvency or impairment of capital or surplus;
- 4 (2) Failure to meet the requirements of section 379.1306;
- 5 (3) Refusal or failure to submit an annual report, as required by  
6 sections 379.1300 to 379.1350, or any other report or statement required  
7 by law or by lawful order of the director;
- 8 (4) Failure to comply with the provisions of its own charter,  
9 bylaws, or other organizational document;
- 10 (5) Failure to submit to or pay the cost of examination or any  
11 legal obligation relative thereto, as required by sections 379.1300 to  
12 379.1350;
- 13 (6) Use of methods that, although not otherwise specifically

14 prohibited by law, nevertheless render its operation detrimental or its  
15 condition unsound with respect to the public or to its policyholders; or

16 (7) Failure otherwise to comply with the laws of this state.

17 2. Notwithstanding any other provision of sections 379.1300 to  
18 379.1350, if the director finds upon examination, hearing, or other  
19 evidence that any captive insurance company has violated any  
20 provision of subsection 1 of this section, the director may suspend or  
21 revoke such company's license if the director deems it in the best  
22 interest of the public and the policyholders of such captive insurance  
23 company.

379.1318. 1. Association captive insurance companies shall  
2 comply with the investment requirements contained in chapter 375,  
3 RSMo, and sections 379.080 and 379.082, as applicable. Investments of  
4 association captive insurance companies shall be valued in accordance  
5 with the valuation procedures established by the National Association  
6 of Insurance Commissioners for insurance companies, except to the  
7 extent it is inconsistent with accounting standards in use by the  
8 company and approved by the director. Notwithstanding any other  
9 provision of sections 379.1300 to 379.1350, the director may approve the  
10 use of alternative reliable methods of valuation and rating.

11 2. No pure captive insurance company or industrial insured  
12 captive insurance company shall be subject to any restrictions on  
13 allowable investments whatever, including those limitations contained  
14 in sections 379.080 and 379.082; provided, however, that the director  
15 may prohibit or limit any investment that threatens the solvency or  
16 liquidity of any such company.

17 3. No pure captive insurance company shall make a loan to or an  
18 investment in its parent company or affiliates without prior written  
19 approval of the director, and any such loan or investment shall be  
20 evidenced by documentation approved by the director.

379.1320. 1. Any captive insurance company may provide  
2 reinsurance, comprised in section 376.010, RSMo, and subsection 1 of  
3 section 379.010, on risks ceded by any other insurer.

4 2. Any captive insurance company may take credit for the  
5 reinsurance of risks or portions of risks ceded to reinsurers complying  
6 with the provisions of section 375.346, RSMo. Prior approval of the  
7 director shall be required for ceding or taking credit for the

8 reinsurance of risks or portions of risks ceded to reinsurers or under  
9 reinsurance agreements not complying with section 375.246, RSMo,  
10 except for business written by an alien captive insurance company  
11 outside of the United States.

12 3. In addition to reinsurers authorized under the provisions of  
13 section 375.246, RSMo, a captive insurance company may take credit for  
14 the reinsurance of risks or portions of risks ceded to a pool, exchange,  
15 or association acting as a reinsurer which has been authorized by the  
16 director. The director may require any other documents, financial  
17 information, or other evidence that such a pool, exchange, or  
18 association will be able to provide adequate security for its financial  
19 obligations. The director may deny authorization or impose any  
20 limitations on the activities of a reinsurance pool, exchange, or  
21 association that, in the director's judgment, are necessary and proper  
22 to provide adequate security for the ceding captive insurance company  
23 and for the protection and consequent benefit of the public at large.

24 4. For all purposes of sections 379.1300 to 379.1350, insurance by  
25 a captive insurance company of any workers' compensation qualified  
26 self-insured plan of its parent and affiliates shall be deemed to be  
27 reinsurance.

379.1322. No captive insurance company shall be required to join  
2 a rating organization.

379.1324. No captive insurance company shall be permitted to  
2 join or contribute financially to any plan, pool, association, or  
3 guaranty, or insolvency fund in this state, nor shall any such captive  
4 insurance company or any insured or affiliate thereof receive any  
5 benefit from any such plan, pool, association, or guaranty, or  
6 insolvency fund for claims arising out of the operations of such captive  
7 insurance company.

379.1326. 1. Each captive insurance company shall pay to the  
2 director of revenue, on or before May first of each year, a tax at the  
3 rate of thirty-eight-hundredths of one percent on the first twenty  
4 million dollars and two hundred eighty-five-thousandths of one percent  
5 on the next twenty million dollars and nineteen-hundredths of one  
6 percent on the next twenty million dollars and seventy-two-thousandths  
7 of one percent on each dollar thereafter on the direct premiums  
8 collected or contracted for on policies or contracts of insurance written

9 by the captive insurance company during the year ending December  
10 thirty-first next preceding, after deducting from the direct premiums  
11 subject to the tax the amounts paid to policyholders as return  
12 premiums which shall include dividends on unabsorbed premiums or  
13 premium deposits returned or credited to policyholders; provided,  
14 however, that no tax shall be due or payable as to considerations  
15 received for annuity contracts.

16         2. Each captive insurance company shall pay to the director of  
17 revenue on or before May first of each year a tax at the rate of two  
18 hundred fourteen-thousandths of one percent on the first twenty  
19 million dollars of assumed reinsurance premium, and one hundred  
20 forty-three-thousandths of one percent on the next twenty million  
21 dollars and forty-eight-thousandths of one percent on the next twenty  
22 million dollars and twenty-four-thousandths of one percent of each  
23 dollar thereafter. However, no reinsurance tax applies to premiums for  
24 risks or portions of risks which are subject to taxation on a direct basis  
25 under subsection 1 of this section. No reinsurance premium tax shall  
26 be payable in connection with the receipt of assets in exchange for the  
27 assumption of loss reserves and other liabilities of another insurer  
28 under common ownership and control if such transaction is part of a  
29 plan to discontinue the operations of such other insurer, and if the  
30 intent of the parties to such transaction is to renew or maintain such  
31 business with the captive insurance company.

32         3. The annual minimum aggregate tax to be paid by a captive  
33 insurance company calculated under subsections 1 and 2 of this section  
34 shall be seven thousand five hundred dollars, and the annual maximum  
35 aggregate tax shall be two hundred thousand dollars.

36         4. Every captive insurance company shall, on or before February  
37 first each year, make a return on a form provided by the director,  
38 verified by the affidavit of the company's president and secretary or  
39 other authorized officers, to the director stating the amount of all  
40 direct premiums received and assumed reinsurance premiums received,  
41 whether in cash or in notes, during the year ending on December  
42 thirty-first next preceding. Upon receipt of such returns, the director  
43 of the department of insurance shall verify the same and certify the  
44 amount of tax due from the various companies on the basis and at the  
45 rate provided in subsections 1 to 3 of this section, and shall certify the

46 same to the director of revenue, on or before March thirty-first of each  
47 year. The director of revenue shall immediately thereafter notify and  
48 assess each company the amount of tax due.

49 5. A captive insurance company failing to make returns as  
50 required by subsection 4 of this section or failing to pay within the  
51 time required all taxes assessed by this section, shall be subject to the  
52 provisions of sections 148.375 and 148.410, RSMo.

53 6. Two or more captive insurance companies under common  
54 ownership and control shall be taxed, as though they were a single  
55 captive insurance company.

56 7. For the purposes of this section, "common ownership and  
57 control" shall mean:

58 (1) In the case of stock corporations, the direct or indirect  
59 ownership of eighty percent or more of the outstanding voting stock of  
60 two or more corporations by the same shareholder or shareholders; and

61 (2) In the case of mutual or nonprofit corporations, the direct or  
62 indirect ownership of eighty percent or more of the surplus and the  
63 voting power of two or more corporations by the same member or  
64 members.

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

71 9. The state treasurer shall annually transfer the premium tax  
72 revenues collected under this section to the general revenue fund,  
73 except as provided in section 379.1332.

74 10. The tax provided for in this section shall be calculated on an  
75 annual basis, notwithstanding policies or contracts of insurance or  
76 contracts of reinsurance issued on a multiyear basis. In the case of  
77 multiyear policies or contracts, the premium shall be prorated for  
78 purposes of determining the tax under this section.

379.1328. The director may promulgate rules under section  
2 374.045, RSMo, and from time to time amend such rules relating to  
3 captive insurance companies as are necessary to enable the director to  
4 carry out the provisions of sections 379.1300 to 379.1350.

379.1330. No provisions of the insurance laws of this state, other  
2 than those contained in sections 379.1300 to 379.1350 or contained in  
3 specific references contained therein, shall apply to captive insurance  
4 companies.

379.1332. 1. (1) The insurance dedicated fund under section  
2 374.150, RSMo, shall be adequately funded through the collection of fees  
3 and taxes for the purpose of providing the financial means for the  
4 director of insurance to administer sections 379.1300 to 379.1350 and  
5 for reasonable expenses incurred in promoting the captive insurance  
6 industry in Missouri. All fees and assessments received by the  
7 department for the administration of sections 379.1300 to 379.1350 shall  
8 be paid into the fund. In addition, the transfer of twenty percent of the  
9 premium tax under section 375.1014, RSMo, shall be made to the  
10 insurance dedicated fund until two hundred thousand dollars has been  
11 transferred. Thereafter, up to ten percent of the premium tax under  
12 section 379.1326 may be transferred to the insurance dedicated fund for  
13 the administration of sections 379.1300 to 379.1350, and up to two  
14 percent of the premium tax under section 379.1326 may be transferred  
15 to the department of economic development, with approval of the  
16 commissioner of administration, for promotional expenses. All fees  
17 received by the department from reinsurers who assume risk solely  
18 from captive insurance companies and are subject to the provisions of  
19 section 375.246, RSMo, shall be deposited into the insurance dedicated  
20 fund.

21 (2) All payments from the insurance dedicated fund for the  
22 maintenance of staff and expenses associated with the administration  
23 of sections 379.1300 to 379.1350, including contractual services as  
24 necessary, shall be disbursed from the state treasury only upon  
25 warrants issued by the director, after receipt of proper documentation  
26 regarding services rendered and expenses incurred.

27 2. The director may anticipate receipts to the insurance  
28 dedicated fund through the administration of sections 379.1300 to  
29 379.1350 and issue warrants based thereon.

379.1336. Except as otherwise provided in sections 379.1300 to  
2 379.1350, the terms and conditions set forth in sections 375.1150 to  
3 375.1246, RSMo, pertaining to insurance reorganizations, receiverships  
4 and injunctions shall apply in full to captive insurance companies



5 formed or licensed under sections 379.1300 to 379.1350.

379.1338. The director may promulgate rules under section  
2 374.045, RSMo, establishing standards to ensure that a parent or  
3 affiliated company is able to exercise control of the risk management  
4 function of any controlled unaffiliated business to be insured by the  
5 pure captive insurance company; provided, however, that, until such  
6 time as rules under this section are adopted, the director may approve  
7 the coverage of such risks by a pure captive insurance company.

379.1340. 1. A branch captive may be established in this state in  
2 accordance with the provisions of sections 379.1300 to 379.1350 to write  
3 in this state only insurance or reinsurance of the employee benefit  
4 business of its parent and affiliated companies which is subject to the  
5 provisions of the federal Employee Retirement Income Security Act of  
6 1974, as amended. In addition to the general provisions of sections  
7 379.1300 to 379.1350, the provisions of sections 379.1340 to 379.1350  
8 shall apply to branch captive insurance companies.

9 2. No branch captive insurance company shall do any insurance  
10 business in this state unless it maintains the principal place of business  
11 for its branch operations in this state.

379.1342. In the case of a branch captive insurance company, as  
2 security for the payment of liabilities attributable to the branch  
3 operations, the director shall require that a trust fund, funded by an  
4 irrevocable letter of credit or other acceptable asset, be established and  
5 maintained in the United States for the benefit of United States  
6 policyholders and United States ceding insurers under insurance  
7 policies issued or reinsurance contracts issued or assumed by the  
8 branch captive insurance company through its branch operations. The  
9 amount of such security shall be no less than the amount set forth in  
10 subdivision (1) of subsection 1 of section 379.1306 and the reserves on  
11 such insurance policies or such reinsurance contracts, including  
12 reserves for losses, allocated loss adjustment expenses, incurred but not  
13 reported losses, and unearned premiums with regard to business  
14 written through the branch operations; provided, however, the director  
15 may permit a branch captive insurance company that is required to  
16 post security for loss reserves on branch business by its reinsurer to  
17 reduce the funds in the trust account required by this section by the  
18 same amount so long as the security remains posted with the reinsurer.

19 If the form of security selected is a letter of credit, the letter of credit  
20 shall be established by or issued or confirmed by a bank chartered in  
21 this state or a member bank of the Federal Reserve System.

379.1344. In the case of a captive insurance company licensed as  
2 a branch captive, the alien captive insurance company shall petition  
3 the director to issue a certificate setting forth the director's finding  
4 that, after considering the character, reputation, financial  
5 responsibility, insurance experience, and business qualifications of the  
6 officers and directors of the alien captive insurance company, the  
7 licensing and maintenance of the branch operations will promote the  
8 general good of the state. The alien captive insurance company may  
9 register to do business in this state after the director's certificate is  
10 issued.

379.1346. Prior to March first of each year, or with the approval  
2 of the director within sixty days after its fiscal year end, a branch  
3 captive insurance company shall file with the director a copy of all  
4 reports and statements required to be filed under the laws of the  
5 jurisdiction in which the alien captive insurance company is formed,  
6 verified by oath of two of its executive officers. If the director is  
7 satisfied that the annual report filed by the alien captive insurance  
8 company in its domiciliary jurisdiction provides adequate information  
9 concerning the financial condition of the alien captive insurance  
10 company, the director may waive the requirement for completion of the  
11 captive annual statement for business written in the alien jurisdiction.

379.1348. 1. The examination of a branch captive insurance  
2 company under section 379.1314 shall be of branch business and branch  
3 operations only, so long as the branch captive insurance company  
4 provides annually to the director a certificate of compliance, or its  
5 equivalent, issued by or filed with the licensing authority of the  
6 jurisdiction in which the branch captive insurance company is formed,  
7 and demonstrates to the director's satisfaction that it is operating in  
8 sound financial condition in accordance with all applicable laws and  
9 regulations of such jurisdiction.

2. As a condition of licensure, the alien captive insurance  
11 company shall grant authority to the director for examination of the  
12 affairs of the alien captive insurance company in the jurisdiction in  
13 which the alien captive insurance company is formed.

**379.1350. In the case of a branch captive insurance company, the**  
**2 tax provided for in section 379.1326 shall apply only to the branch**  
**3 business of such company.**

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