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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Commerce and Insurance
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Revision Type (check all that apply):

- ☒ Amendment
☒ New
☒ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-41	Tennessee Captive Insurance Companies
Rule Number	Rule Title
0780-01-41-.01	Purpose and Authority.
0780-01-41-.02	Annual Reporting and Premium Tax Payment Requirements.
0780-01-41-.03	Audits.
0780-01-41-.04	Deposit Requirement.
0780-01-41-.05	Organizational Examination.
0780-01-41-.06	Limited Scope Examination and Informal Visitation.
0780-01-41-.07	Insurance Managers and Intermediaries.
0780-01-41-.08	Biographical Affidavits and Compensation.
0780-01-41-.09	Conflict of Interest.
0780-01-41-.10	Revocation or Suspension of Captive License.

0780-01-41-.11	Acquisition of Control of or Merger with Domestic Company.
0780-01-41-.12	Change of Business Plan.
0780-01-41-.13	Designation of a Captive Manager.
0780-01-41-.14	Regulation for Captive Insurance Companies Issuing Annuities.
0780-01-41-.15	Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.
0780-01-41-.16	Severability Provision.
APPENDIX A	Tennessee Captive Insurer Annual Report.

Amendments

Chapter 0780-1-41 Tennessee Captive Insurance Companies is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

Chapter 0780-01-41 Tennessee Captive Insurance Companies

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0780-01-41-.01 Purpose and Authority.

The purpose of this Chapter is to set forth the financial and reporting requirements that the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Revised Tennessee Captive Insurance Act, Title 56, Chapter 13 of the Tennessee Code Annotated, (the "Act"). Reference in this Chapter to "company" shall mean captive insurance company or companies, unless otherwise specified. Terms of this Chapter employ definitions found in the Act as the context may require.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, T.C.A. §§ 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.02 Annual Reporting and Premium Tax Payment Requirements.

- (1) The report of financial condition required by T.C.A. §§ 56-13-108, 56-13-204(12), 56-13-305 and 56-13-416(d) and shall be made by completing and submitting each of the forms and schedules prescribed by the Tennessee Captive Insurer Annual Report found at Appendix A of this rule, which is incorporated herein by reference.
- (2) The OPTins system is hereby designated as the approved method of receiving premium tax, penalty, and interest forms and payments owed by a captive insurance company.
 - (a) Premium tax forms and payments shall be filed and paid in electronic form through the OPTins system no later than the date such payment is required.
 - (b) Filings and payments made through OPTins on or before the due date shall be deemed received by the department on the date received by OPTins.
 - (c) Every filing and payment made through OPTins shall be subject to a convenience fee of up to ten dollars (\$10.00) per filing to cover the department's actual costs incurred by accepting electronic payments through OPTins. Such convenience fee shall be assessed in addition to any applicable premium tax, penalty, or interest.
 - (d) If a tax payment due date falls on a Saturday, Sunday or banking holiday, the electronic payment must be made so that the funds are immediately available on the first business day after the due date.
 - (e) The commissioner may waive the requirement for electronic payment through OPTins and allow filing and payment by mail on a case by case basis for good cause shown.
- (3) For a company that has received approval from the commissioner to utilize an alternative reporting date of its annual report pursuant to T.C.A. § 56-13-108(c), the full estimated premium tax due should be paid to the Department by March 15 of each year along with an estimated premium tax return.
- (4) If, in accordance with paragraph (3) above, the paid premium tax is less than eighty percent (80%) of the premium tax due as calculated from the annual report filed at the end of the fiscal year, the commissioner may impose monetary penalties on said company in an amount up to one thousand dollars (\$1,000).

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-114, 56-13-115, 56-13-120, 56-13-121, 56-13-204, 56-13-305 and 56-13-416.

0780-01-41-.03 Audits.

- (1) (a) Each captive insurance company shall be thoroughly examined at least once every three (3) years by the commissioner. The three year period may be extended up to a five (5) year period provided that the company is subject to comprehensive annual financial

audits as provided for in T.C.A. § 56-13-109(a). To qualify for this extension, the comprehensive audits shall be conducted by an independent certified public accountant authorized by the commissioner. The authorized accountant shall prepare and sign an audited annual financial report in a format specified by the commissioner. This report is hereinafter referred to in this rule as the "audited annual financial report." To qualify for the extension provided for in T.C.A. § 56-13-109(a), the audited annual financial report shall be filed on or before June 30th of each year or 180 days after the end of the fiscal year. The audited annual financial report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

- (b) To be eligible for an extension up to a five (5) year period between thorough examinations, the captive insurance company must have filed timely audited annual financial reports covering all periods of operation from the later of the date of formation or the end date of the previous examination. For good cause shown in exceptional circumstances, the commissioner may allow the late filing of the audited annual financial report to preserve a captive insurance company's eligibility for a thorough examination extension.
- (c) A newly formed captive insurance company or a newly formed protected cell or incorporated protected cell of a captive insurance company that is in operation for less than ninety (90) days before the end of its fiscal year may elect to defer conducting a comprehensive annual audit under this Chapter so long as the first filed audited annual financial report includes audit data from the date of formation to the end of the first complete fiscal year that the captive insurance company or protected cell was in operation.
- (d) A protected cell or incorporated protected cell captive insurance company may elect to omit from its audited annual financial report one or more individual cells that collected no premium and wrote no policies during the calendar or fiscal year and was under no liability or potential liability for any policies issued in prior years. This action is hereinafter referred to in this rule as an "omission election." The omission election shall be made on a form prescribed by the commissioner and signed under oath by the captive manager and at least one officer of the company and filed with the audited annual financial report. No omission election may be made in the calendar or fiscal year in which occurs the fifth anniversary of the company's formation or fifth anniversary of the final date covered by the company's last T.C.A. § 56-13-109 thorough examination. In the next year subsequent to the taking of an omission election where no omission election is made or following after a year in which no omission election may be made, the filed audited annual financial report shall include a cumulative report on the protected cell's activity during all preceding years for which an omission election was made. No omission election may be made on a protected cell or incorporated protected cell's core or general account. The commissioner, in his or her sole discretion, may disallow a protected cell or incorporated protected cell captive insurance company from taking any future omission elections on one or more cells upon notice.
- (e) A captive insurance company that has been issued a letter of dormancy may elect to defer conducting a comprehensive annual audit under this Chapter and maintain eligibility for a five (5) year period between thorough examinations. To maintain this eligibility, the captive insurance company must file a cumulative audited financial report that includes audit data from the preceding years since the last filed audited annual financial report. Such filing shall be due with the first audited annual financial report filed subsequent to the rescission or expiration of the letter of dormancy.

(2) Designation of Independent Certified Public Accountant.

Companies, after becoming subject to this rule, shall within ninety days report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this rule. The certified public accountant that is

retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner. The independent certified public accountant retained to conduct the annual audit shall apply, on a form adopted by the commissioner, for approval by the commissioner.

(3) Notification of Adverse Financial Condition.

A company shall require the certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required in T.C.A. § 56-13-108. The company shall furnish such notification to the commissioner within five (5) working days of receipt thereof.

(4) Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(a) Each company shall require the independent certified public accountant to make available for review by the commissioner or the commissioner's appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(b) The aforementioned review by the commissioner shall be considered examinations and all working papers obtained during the course of such examinations shall be confidential. The company shall require that the independent certified public accountant provide photocopies or equivalent copy of any of the working papers which the Department considers relevant. Such working papers may be retained by the Department.

(c) "Work Papers" or "Working Papers" as referred to in this rule include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their examination of the company.

(d) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer; or
3. Number of jurisdictions in which the insurer transacts business.

(5) The audited annual financial report shall consist of the following:

(a) Opinion of Independent Certified Public Accountant.

Financial statements furnished pursuant to this rule shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants or statutory accounting principles in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in effect for the period covered by the report. The opinion of the independent certified public accountant shall

cover all years presented. The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures, and shall be dated.

(b) Report of Evaluation of Internal Controls.

Every company that has annual direct written and assumed premiums of five hundred million dollars (\$500,000,000) or more shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards or statutory accounting principles and the report shall be filed with the commissioner. An exemption from this evaluation may be granted on a case by case basis upon written request to the Commissioner.

(c) Accountant's Letter.

The accountant shall furnish the company, for inclusion in the filing of the audited annual financial report, a letter stating:

1. That the accountant is independent with respect to the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.
2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.
3. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this Chapter with the Tennessee Department of Commerce and Insurance.
4. That the accountant consents to the requirements of Rule 0780-01-41-.03(4) of this Chapter and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee or the commissioner's appointed agent, the work papers as defined therein.
5. That the accountant is properly licensed by an appropriate state licensing authority and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial Statements as required under Rule 0780-01-41-.02, Annual Reporting Requirements.

(e) Certification of Loss Reserves and Loss Expense Reserves.

The audited annual financial report shall include an opinion as to the reasonableness of the company's loss reserves and loss expense reserves. The individual who certifies as to the reasonableness of reserves shall apply, on a form adopted by the commissioner, for approval by the commissioner, and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his or her competence in loss reserve evaluation to the commissioner. Certification shall be in such form as the commissioner deems appropriate. For protected cell captive insurance companies, this opinion shall also include a statement identifying any one or more protected cells for which the carried reserves are either inadequate (i.e. – below the minimum amount the actuary believes is reasonable) or redundant (i.e. – greater than the maximum amount the actuary believes

is reasonable). For exceptional cause shown, the commissioner may waive the requirement of filing an opinion as to reasonableness of loss reserves and loss expense reserves by a company.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-109, 56-13-115 and 56-13-121. 2017 Tenn. Public Acts Ch. 354, § 3.

0780-01-41-.04 Deposit Requirement.

- (1) Whenever the commissioner deems that the financial condition of the company warrants additional security, the commissioner may require a company to deposit cash or securities approved by the commissioner in addition to statutory prescribed amounts. The deposit shall be in the form of cash or cash equivalent or an irrevocable letter of credit issued by a bank acceptable to the commissioner.
- (2) The company may receive interest or dividends from said deposit; however the company may not exchange the deposits for others of equal value without the approval of the commissioner.
- (3) If such company discontinues business, the commissioner shall release any claim to such deposit only after being satisfied that all obligations of the company have been discharged.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-105, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.05 Organizational Examination.

In addition to the processing of the application, an organizational examination shall be performed before an applicant is licensed. Such examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-1-401, 56-13-103, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.06 Limited Scope Examination and Informal Visitation

- (1) Pursuant to T.C.A. § 56-13-109(a) the commissioner may direct a limited scope examination be conducted upon a captive insurance company. Such an exam may be ordered when questions arise about a captive insurance company's solvency, governance, operating practices, or other specific areas that the commissioner may determine.
- (2) The limited scope examination order shall identify the specific limited areas that the examination will cover. If, in the course of the examination, the examiner believes that the scope of the examination should be broadened, the examiner shall file a recommendation with the commissioner and with the captive insurance company under examination, which company shall have ten (10) days to file any response to the recommendation. The commissioner shall thereafter determine if the scope of the examination should be broadened and the additional areas that the examination should cover.
- (3) A limited scope examination under this rule does not waive or extend the period of time between thorough examinations conducted pursuant to T.C.A. § 56-13-109. A copy of any limited scope examination reports should be reviewed and included in the thorough examination of any captive insurance company. However, within ten (10) days of issuance of the limited scope examination order, the captive insurance company may file an election with the commissioner to convert the examination to a thorough examination conducted pursuant to T.C.A. § 56-13-109(a).
- (4) At the request of a captive insurance company, the commissioner may, in person or by designee, conduct an informal visitation of such captive insurance company. Such informal visitation may include, but is not limited to, a review of the books and records of the captive insurance company, review of governance, internal practices, controls, policies and procedures. A visitation may

include a site visit to the captive insurance company's principal place of business, the offices of its captive manager, accountant, and/or principal or beneficial owner, or other service provider. At the conclusion of such a visitation, the commissioner or commissioner's designee shall send a report to the captive insurance company that shall include any suggestions or recommendations. This report shall be reviewed and included in the next subsequent thorough examination of the captive insurance company.

- (5) The expenses and charges of any limited scope examination and informal visitation shall be paid by the captive insurance company.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-1-409, 56-1-413, 56-13-103, 56-13-108, 56-13-109, 56-13-115 and 56-13-121.

0780-01-41-.07 Insurance Managers and Intermediaries.

No person shall, in or from within this state, act as a managing general agent, producer, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.08 Biographical Affidavits and Compensation.

- (1) Every company shall report to the commissioner within thirty (30) days after any change in its executive officers, managers, or directors, including in its report a biographical affidavit on any individual serving as an executive officer, manager, or director. If a manager is a corporation, trustee, partnership or limited liability company, the report shall include a biographical affidavit from such person or persons who exercise ultimate control over the manager as determined by the commissioner. For good cause shown, the commissioner may waive the requirement for a biographical affidavit under this rule.
- (2) No director, officer, manager, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.09 Conflict of Interest.

- (1) Each company chartered in this state is required to adopt a conflict of interest statement for officers, directors, managers, and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from their duty to further the interests of the company they represent but this shall not preclude such person from being a director or officer in more than one insurance company.
- (2) Each officer, director, manager, and key employee shall file such disclosure with the Board of Directors yearly.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.10 Revocation or Suspension of Captive License.

The commissioner may, subject to the provisions of this rule, by order suspend or revoke the license of the company for any of the following:

- (1) At the request of the company; or

- (2) For any reason provided in T.C.A. § 56-13-110.

Before the commissioner rescinds the license of a company under (1) or (2), the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty (30) days after receipt of notice. The commissioner shall take into consideration any objection received by the commissioner within that period and, if the commissioner decides to cancel the license, cause the order of cancellation to be served on the company.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-110, 56-13-115 and 56-13-121.

0780-01-41-.11 Acquisition of Control of or Merger with Domestic Company.

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-107, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.12 Change of Business Plan.

A change in any information filed with the application that does not constitute a material change as identified in T.C.A. §§ 56-13-103(c)(2)(B) or 56-13-416 or a change requiring commissioner approval in T.C.A. § 56-13-204(14) must be filed with the commissioner within sixty (60) days but does not require prior approval.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-103, 56-13-108, 56-13-115, 56-13-121, 56-13-204, and 56-13-416.

0780-01-41-.13 Designation of a Captive Manager.

Companies, before becoming licensed, shall report to the commissioner in writing, the name and address of the designated captive manager retained to manage the company. The captive manager shall apply, on a form adopted by the commissioner, for approval by the commissioner. Any change of designated captive manager for a captive insurance company must be approved, in advance, by the commissioner.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.14 Regulation for Captive Insurance Companies Issuing Annuities.

- (1) This Rule 0780-01-41-.14 establishes reserve requirements, separate accounts and the form of the annual statement required of any captive insurance company that issues annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of Title 56, Chapter 13 of the Tennessee Code Annotated issuing annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).
- (3) Any captive insurance company that issues contracts that provide variable benefits shall establish separate accounts. Such accounts shall be subject to the requirements of T.C.A. § 56-3-501.
- (4) A captive insurance company that issues annuity contracts shall maintain reserves that are

actuarially sufficient to support the liabilities provided by the contracts.

- (5) A captive insurance company that issues annuity contracts shall submit its annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the commissioner.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-3-501, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.15 Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.

- (1) This Rule 0780-01-41-.15 establishes reserve requirements and the form of the annual report required of a captive insurance company that reinsures life insurance policies, including term, universal and variable life policies, and related guarantees and riders (collectively, "Life Insurance Policies").
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of Title 56, Chapter 13 of the Tennessee Code Annotated that reinsures Life Insurance Policies, with respect to fiscal years ending on and after December 31, 2013.
- (3) A captive insurance company described in rule 0780-01-41-.15(2) shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring Life Insurance Policies.
- (4) For purposes of the annual report required by Tenn. Code Ann. § 56-13-108(b):
 - (a) A captive insurance company described in rule 0780-01-41-.15(2) that uses statutory accounting principles (i.e., the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner of Commerce and Insurance) shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the commissioner, unless the commissioner requires or approves a different form of annual report; and
 - (b) A captive insurance company described in rule 0780-01-41-.15(2) that uses generally accepted accounting principles, including any appropriate or necessary modifications or adaptations thereto approved by the commissioner, shall submit the annual report in the form approved by the commissioner.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.16 Severability Provision.

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this Chapter are declared severable.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

**APPENDIX A
TENNESSEE CAPTIVE INSURER ANNUAL REPORT**

As of _____ (date)
of the Condition and Affairs of
(Name of Captive Insurance Company)

Date of License: _____
Company Street Address: _____
Company City, State, Zip Code: _____
Books and Records Street Address: _____
Captive Manager Name: _____
Captive Manager Street Address: _____
Annual Report Contact Name: _____
Annual Report Contact Number: _____
Annual Report Contact Email: _____

Officers:

President: _____
Secretary: _____
Treasurer: _____

Directors / Managers:

1. List the name(s) and address(es) of the beneficial owners of the captive and corresponding percentages of ownership:

Name	Address	% Ownership

2. Type of Captive: ☐ Pure ☐ Association ☐ Risk Retention Group ☐ Protected Cell
☐ Industrial Insured ☐ Special Purpose

3. Organizational form: _____
If organized as a stock company, please include a description of all authorized stock classes, whether the class is preferred or common stock, and for each class, the number of shares authorized, shares outstanding, and the par value.

4. Provide the name and address of the Captive Manager.

Has the Captive Manager changed from the last annual filing? ☐ Yes ☐ No

5. Provide the individual name, firm name and firm address of the Actuary.

Has the Actuary changed from the last annual filing? ☐ Yes ☐ No

6. Provide the individual name, firm name and firm address of the Certified Public Accountant.

Has the Certified Public Accountant changed from the last annual filing? ☐ Yes ☐ No

7. Attach a complete copy of the company's unaudited financial statements as of prior year end that include the Balance Sheet and Income Statement.

8. Were any changes made to the charter, bylaws or articles since the last annual filing? ☐ Yes ☐ No

9. Did the company provide notification to and receive approval from the Captive Insurance Section for all material transactions? ☐ Yes ☐ No

If no, provide a brief description including the dollar amount on a separate attachment.

10. Since the last annual filing, were there any related party transactions? ☐ Yes ☐ No

If yes, provide a brief description including the dollar amount on a separate attachment.

11. Have all assets been valued in accordance with GAAP? ☐ Yes ☐ No

If other than GAAP was used, please explain:

12. Do the company's assets include any loans to its parent, affiliates, or unaffiliated companies?

☐ Yes ☐ No

If yes, please answer the following:

(a) Were any of these loans entered into this year? ☐ Yes ☐ No

If yes, what is the date of Captive Insurance Section approval? _____

(b) Amount of the loan as of the end of the year: _____

(c) Describe the terms of the loan on a separate attachment.

(d) Have all interest payments due for the year been collected? ☐ Yes ☐ No

If no, when are the interest payments expected? _____

(e) Attach copies of current financial statements of the company or companies to whom loans have been made.

13. Were any of the company's assets or stock pledged as collateral at any time during the year or did the captive provide any outside guarantees? ☐ Yes ☐ No

If yes, please provide the date of Captive Insurance Section approval and a brief description on a separate attachment.

14. Has each officer, director and key employee for the current reporting year filed a disclosure with the captive's board of directors disclosing any potential conflicts of interest as outlined in the captive's conflict of interest policy? ☐ Yes ☐ No

15. Have loss and loss adjustment expense (LAE) reserves been discounted? ☐ Yes ☐ No

If yes, what interest rate was used? _____

16. Were any dividends paid during the year? ☐ Yes ☐ No

If yes, provide the date of approval by the Captive Insurance Section, the date(s) paid and amounts paid.

17. Did the company hold a board of directors meeting in Tennessee during the reporting period as required by Tenn. Code Ann. § 56-13-103(b)? ☐ Yes ☐ No

18. Does the company participate in a reinsurance pooling arrangement? ☐ Yes ☐ No

If yes, identify the name of the pool and either the pool's domicile or the domiciles of the other pool participants.

19. Did the company write any new lines of business this year? ☐ Yes ☐ No

If yes, provide the date of Captive Insurance Section approval and a listing of new lines on a separate attachment.

20. Did the company write premiums this year? ☐ Yes ☐ No

If not, does the company plan to write insurance in the next year? ☐ Yes ☐ No

If not, does the company plan on going dormant or dissolving in the next year? ☐ Yes, Dormancy
☐ Yes, Dissolving ☐ No

21. In the past year were there any material changes in the management's understanding of the company's financial condition or any trends, events or uncertainties that have had or will likely cause the company to substantially deviate from its filed business plan. If yes, please attach an explanatory statement. ☐ Yes ☐ No

22. Please complete the following:

EXHIBIT OF PREMIUMS AND LOSSES

Premium Schedule				
1	2	3	4	5
Lines of Coverage	Direct Business	Reinsurance Assumed	Reinsurance Ceded	Net Premiums Written
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
Totals				

Paid Loss Schedule				
1	2	3	4	5
Lines of Coverage	Direct Business	Assumed Reinsurance	Ceded Reinsurance	Net Losses Paid
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
Totals				

Loss Reserve Schedule				
1	2	3	4	5
Lines of Coverage	Direct Business	Assumed Reinsurance	Ceded Reinsurance	Net Loss Reserves
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
Totals				

SCHEDULE OF REINSURANCE					
Assumed Reinsurance as of Current Year End					
1	2	3	4*	5**	6***
Federal ID Number	Name of Reinsured (include pool participants)	State or Country of Domicile	Assumed Premiums	Assumed Paid Losses	Assumed Loss Reserves
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
Totals					

* Total for Column 4 must agree to Premium Schedule

** Total for Column 5 must agree to Paid Loss Schedule

*** Total for Column 6 must agree to Loss Reserve Schedule

Ceded Reinsurance as of Current Year End					
1	2	3	4*	5**	6***
Federal ID Number	Name of Reinsured (include pool participants)	State or Country of Domicile	Ceded Premiums	Ceded Paid Losses	Ceded Loss Reserves
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
Totals					

* Total for Column 4 must agree to Premium Schedule

** Total for Column 5 must agree to Paid Loss Schedule

*** Total for Column 6 must agree to Loss Reserve Schedule

INVESTMENTS OWNED AT CURRENT YEAR END

1	2	3	4
Description	Investment Type*	Cost	Statement Value
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
Totals			

* Enter the corresponding numbers for the investment type as noted below:

1. Bonds
2. Stocks
3. Cash and Short-Term Investments
4. Loans and Notes Receivable
5. Cash Surrender Value of Life Insurance
6. Letters of Credit
7. Other

CERTIFICATION

The officers of this company, being duly sworn, each depose and say that they are the described officers of said insurer and attest to the following:

(1) that as of the date of this Annual Report (as noted above), the company has maintained the minimum capital and surplus requirements pursuant to Tenn. Code Ann. § 56-13-105.

(2) the attached schedules, exhibits, and explanations therein contained, annexed or referred to are a full and true statement, in all material respect of the company's financial condition and results of operations, according to the best of their information, knowledge, and belief respectively.

(3) that pursuant to Tenn. Code Ann. § 56-13-109 and Tenn. Comp. R. & Regs. 0780-01-41-.03, the company ☐ will ☐ will not (check one) file an independently audited financial report, including an actuarial opinion, with the Tennessee Department of Commerce and Insurance on or before June 30 for the period covered by this Annual Report, or alternative filing date of _____ as approved by the Department. NOTE: A company that does not annually file independently audited financial reports must be examined at least every three years. Tenn. Code Ann. § 56-13-109. Companies who file independently audited financial reports must be examined at least every five years.

Original, sworn, and notarized signatures of two officers are required. Tenn. Code Ann. § 56-13-108.

Printed Name: _____
Title: _____

Printed Name: _____
Title: _____

Subscribed to and sworn before me this _____ day of _____, _____.

(seal)

Notary Public

Is this an original filing? ☐ yes ☐ no

If no,

1. State the amendment #: _____
2. Date filed: _____
3. Number of pages attached: _____

OVERSIGHT DOCUMENT CHECKLIST

Please certify that the following documents are current as filed with the Captive Insurance Section, are new (and attached), or are not applicable at this time for: (Name of Captive Insurance Company)

1. Executed agreement between the captive and the captive manager. ☐ Current as filed ☐ New ☐ N/A
2. Executed agreement with audit firm. ☐ Current as filed ☐ New ☐ N/A
3. Executed agreement with actuarial firm. ☐ Current as filed ☐ New ☐ N/A
4. Sample policy form(s) used by captive. ☐ Current as filed ☐ New ☐ N/A
5. Minutes and resolutions of all board meetings. ☐ Current as filed ☐ New ☐ N/A
6. Executed reinsurance and/or pooling agreements. ☐ Current as filed ☐ New ☐ N/A
7. Statement of Investment Policy. ☐ Current as filed ☐ New ☐ N/A
8. Code of ethics and certificate of acknowledgement by owners. ☐ Current as filed ☐ New ☐ N/A
9. Conflict of interest policy statement and owner's certificate of acknowledgement.
☐ Current as filed ☐ New ☐ N/A

To the best of my knowledge, the above documents have either been filed with the Captive Insurance Section (and no changes have been made), are attached hereto, or are not applicable.

Captive Manager

Date

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 09/12/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/10/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 07/26/2017



Date: 9/12/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9/12/17

Notary Public Signature: Denise M. Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce & Insurance

Rule Chapter Number(s): 0780-01-41

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
9/20/2017
Date

Department of State Use Only

Filed with the Department of State on: 9/22/17

Effective on: 12/31/17

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

Comment 1

One comment received asked the department to modify proposed Rule 0780-01-41-.03(1)(d) to only require on an omission election the signature of the captive manager and one officer, as this would aid captive managers in gathering the required signatures.

Response to Comment 1

Rule 0780-01-41-.03(1)(d) has been modified to require the signature of at least one officer instead of two officers along with the signature of the captive manager.

Comment 2

One comment was received in regard to proposed Rule 0780-01-41-.03(5)(e) recommending that the loss reserve certification should be filed independently of the audited annual financial report prepared by a Certified Public Accountant. A second comment received asked the Department to clarify in the rule whether or not the actuarial report must be filed separately from the audited financial statements or included with the audited financial statements.

Response to Comment 2

These comments exceed the scope of the proposed rulemaking. The Department will take these concerns raised into consideration at a future rulemaking.

Comment 3

One comment was received asking the Department to use the word "examination" instead of "audit" in proposed Rule 0780-01-41-.03.

Response to Comment 3

The Department believes that the word choice used in Rule 0780-01-41-.03 is appropriate and reflects the commonly understood usage in the industry.

Comment 4

One comment was received expressing support for the modifications made in proposed Rules 0780-01-41-.03, 0780-01-41-.06, 0780-01-41-.12, and 0780-01-41-.13.

Response to Comment 4

No response required.

Comment 5

Two comments were received inquiring whether in proposed Rule 0780-01-41-.09 the word "manager" referred to a captive manager or the manager of a limited liability company.

Response to Comment 5

The Department's intent is to use the phrase "captive manager" when referring to a captive manager. Any other use of the word manager would rely upon the ordinary meaning of the word when used in its context. In Rule 0780-01-41-.09, the word "manager" would apply to the manager of a limited liability company sitting in the equivalent position of a director of a corporation.

Comment 6

One comment received asked if proposed Rule 0780-01-41-.02(2)(c), which authorizes the Department to impose a \$10 fee for use of the OptIns system, created a new tax by rule.

Response to Comment 6

The fee created in this rule was specifically authorized in 2017 Tenn. Public Acts Ch. 354, § 1.

Comment 7

One comment received asked for a clarification of proposed Rule 0780-01-41-.02(2)(d) as to how a taxpayer would know when electronic funds would be available. The commenter stated that he thought it would be more appropriate to require that the transfer of funds be ordered or posted by the due date.

Response to Comment 7

The date of electronic filing is the "date available" as specified in the rule, so long as the funds clear in the normal course of the electronic payment process. Should the funds not be available, the taxpayer would not be able to claim the electronic filing date as the date of filing.

Comment 8

One comment received asked that in proposed Rule 0780-01-41-.02(3) the word "full" be changed to "estimated."

Response to Comment 8

Rule 0780-01-41-.02(3) has been modified from requiring payment of the "full premium tax due" to requiring payment of the "full estimated premium tax due."

Comment 9

One comment asked for clarification in proposed Rule 0780-01-41-.03(2) of when an auditor must be identified since the filing of audited financials is optional.

Response to Comment 9

An auditor must be identified when the captive elects to file audited financial statements.

Comment 10

One comment was received concerning proposed Rule 0780-01-41-.03(5)(e), Certification of Loss Reserves and Loss Expense Reserves. The commenter expressed concern that this was creating an additional requirement for actuaries to individually review each cell to determine whether the cell was inadequate or redundant. The commenter expressed concern that this additional requirement would take additional time for reviewing actuaries to prepare and increase the compliance costs on captive insurance companies.

Three comments were received by separate actuarial firms in support of this proposed rule. The three actuarial firms stated that they already as a matter of practice reviewed the reserving of individual cells and that this proposed rule was merely a clarification of existing practice. All three comments received from the actuarial firms stated that they did not envision compliance with the proposed rule to lengthen the time required to complete the review or place additional costs on captive insurance companies.

Response to Comment 10

The concerns about the compliance cost for this rule are noted. However, the comments received from three actuarial firms indicating that the work required by this rule is already performed as a matter of routine practice and that captive insurance companies would not be subject to any higher costs to comply with this rule are persuasive. Accordingly, no modifications were made to Rule 0780-01-41-.03(5)(e).

Comment 11

One comment received from an actuary noted that proposed Rule 0780-01-41-.03(5)(e) used the term "adequacy" when referring to the actuarial review of a captive insurance company's loss reserves and loss expense reserves. The commenter stated that the more appropriate word that is used by the actuarial community in this context is "reasonableness" and recommended that the rule be modified to change the word "adequacy" to "reasonableness."

Response to Comment 11

Rule 0780-01-41-.03(5)(e) was modified to change the word "adequacy" in three instances to the word "reasonableness."

Comment 12

One comment was received requesting that proposed Rule 0780-01-41-.03(5)(e) be modified to allow the Commissioner to grant a waiver of the required statement of actuarial opinion.

Response to Comment 12

This comment exceeds the scope of the proposed rulemaking. The Department will take this suggestion into consideration at a future rulemaking.

Comment 13

One comment noted that in proposed Rule 0780-01-41-.06, the terms "thorough examination" and "comprehensive examination" were used interchangeably and asked that the final rule use one term.

Response to Comment 13

Rule 0780-01-41-.06(3) and (4) were modified to replace the word "comprehensive" and substitute the word "thorough."

Comment 14

One commenter recommended that in proposed Rule 0780-01-41-.06, the word "a" be changed with the word "such."

Response to Comment 14

This comment is taken as a request to clarify that a captive insurance company can only request an informal visitation on itself, and may not request that an informal visitation be conducted on another unrelated captive. Rule 0780-01-41-.06 was modified to make the recommended change.

Comment 15

One comment asked that proposed Rules 0780-01-41-.08 and 0780-01-41-.09 be modified to clarify that these rules apply to a captive insurance company's governing body.

Response to Comment 15

This comment exceeds the scope of the proposed rulemaking. The Department will take this suggestion into consideration at a future rulemaking.

Comment 16

Two comments were received regarding proposed Rule 0780-01-41-.12. One noted that this proposed rule is titled "change of business plan" while the statute uses the phrase "plan of operation" and recommended that the

rule's title be changed to be consistent with the statute. A second commenter asked whether this proposed rule would apply to minor changes to a company's business plan that are not subject to a fee.

Response to Comment 16

The title of Rule 0780-0-1-41-.12 was changed from "Change of Business" to "Change of Business Plan" in this rulemaking. The rule references three statutory business plan change procedures. They are: T.C.A. §§ 56-13-103(c)(2)(B) (applicable to most captive insurance companies; 56-13-204(14) (applicable to protected cell companies); and 56-13-416 (applicable to special purpose captives). The phrase "plan of operation" is used by T.C.A. § 56-13-204 and also referenced in T.C.A. § 56-13-416, which applies to special purpose captives that could also operate as protected cell captives. T.C.A. § 56-13-103(c)(2)(B) assigns no specific label to the action of changing a business plan.

The statute which imposes the applicable fee, T.C.A. § 56-4-101(a)(8), does specifically refer to a "change of business plan." The Department believes that the phrase "Change of Business Plan" is appropriate in the context of T.C.A. § 56-4-101(a)(8) and fairly encompasses changes in a plan of operations. As the relevant statutes are specifically referenced in the rule, additional descriptive words are not required.

A change of business plan fee (T.C.A. § 56-4-101(a)(8)) is only intended to apply to required material changes that are outlined in T.C.A. §§ 56-13-103(c)(2)(B) or 56-13-204(14). The purpose of the changes to rule 0780-01-41-.12 is to clarify that any business plan change that does not constitute a change under T.C.A. §§ 56-13-103(c)(2)(B) or 56-13-204(14) would not incur a fee under § 56-4-101(a)(8).

Comment 17

One comment received asked whether in proposed Appendix A, page 1, for the listing of directors, if this was applicable to a manager-managed LLC.

Response to Comment 17

Appendix A was modified to clarify that the Department was asking captive insurance company to list their Directors or Managers as appropriate.

Comment 18

One comment received asked whether in proposed Appendix A, Item 4 which asks for the name of the "Management Firm or Administrator," whether this was asking for the address of the captive manager or some other service provider like a third party administrator.

Response to Comment 18

Appendix A, Item 4 was modified to clarify that the Department is asking for the address of the Captive Manager.

Comment 19

Two comments received expressed concerns about proposed Appendix A, Item 7, requiring the filing of a Statement of Retained Earnings and a Statement of Cash Flows as these are items not always compiled by all captive insurance companies.

Response to Comment 19

Appendix A, Item 7 was modified to not require the filing of a Statement of Retained Earnings or Statement of Cash Flows. Captive insurance companies must still file a balance sheet and income statement.

Comment 20

Three comments received expressed concern about proposed Appendix A, Item 18 requiring captive insurance companies that participate in a reinsurance pool to include details about assumed and ceded reinsurance by other pool members. Comments received noted that this requirement would be extremely burdensome and

require in some instances the filing of a large quantity of documentation. Commenters also stated that the information requested is not always shared with other pool participants and would potentially not be available to an individual captive that is a pool participant.

Response to Comment 20

Appendix A, Item 18 was modified to only require captives who participate in pooling arrangements to identify the name of the pool and the pool's domicile or the names and domiciles of the other pool participants. The requirement to file information about other pool participants' reinsurance transactions was eliminated.

Comment 21

Three comments received expressed concern about proposed Appendix A, Item 21, which would require each captive to file a narrative of the management's understanding of the captive's financial condition. Commenters expressed concern that this requirement was unreasonably burdensome. Commenters noted that captive managers have an obligation to report to regulators any adverse developments.

Response to Comment 21

Appendix A, Item 21 was modified to only require checking a Yes or No box as to whether there were any material changes in the management's understanding of a company's financial condition or any trends or uncertainties which have or would cause the company to deviate from its filed business plan. Only if a "Yes" answer was indicated would an explanatory statement be required.

Comment 22

One comment received noted that in proposed Appendix A, Oversight Documents Checklist, Item 1, the item asks for a copy of the executed agreement between the owner and the captive manager. However, the agreement with the captive manager was ordinarily with the captive insurance company and not with the captive's owner.

Response to Comment 22

Appendix A, Oversight Documents Checklist, Item 1 was modified to replace the phrase "Executed agreement between owner and captive manager" with the phrase "Executed agreement between the captive and the captive manager."

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). These rules directly regulate the operation of captive insurance companies licensed by the Department. By their nature, captive insurance companies are themselves small businesses that rarely, if ever, directly employ any person. Captive insurance companies are almost always run for the benefit of their parent company, which may itself be a small business but more frequently ranges in size from a mid-size company to a large multinational family of companies. Captive insurance companies are typically run exclusively by contracted service providers which also range in size from boutique professional businesses to the largest financial and insurance institutions in the world.

The proposed rules embody an assortment of changes to the regulatory system first made by the Revised Tennessee Captive Insurance Act of 2011. These changes reflect six years of lessons learned in licensing and regulating captive insurance companies.

(1) There are 162 captive insurance companies licensed by the Department as of August 1, 2017. There are also 393 approved protected cells operating through Tennessee captive insurance companies.

(2) The proposed changes to the existing rule are not anticipated to measurably increase the administrative cost of compliance over the requirements of the previously enacted rule. Preparation of the reports required by this rule will typically require the use of a professional captive manager, actuary, and accountancy services. The cost of compliance varies greatly depending on the complexity of the captive insurance company. The minimum annual administrative cost of compliance is estimated to be approximately \$5000.

(3) The proposed rules are designed to strengthen Tennessee as a captive insurance domicile by clarifying reporting requirements, rights, and responsibilities of captive insurance companies and their service providers. The proposed rules make it easier to do business in Tennessee. As such, the proposed rules are anticipated to have a positive impact on the Tennessee captive insurance industry.

(4) The proposed rules embody the Department's commitment to the reasonable regulation of captive insurance. While less burdensome requirements could be adopted, captive insurance companies depend on the reputation of their regulator assuring other marketplace participants that the captive is under proper oversight. Captive insurance company owners have in most cases the ability to domicile their company in a wide array of jurisdictions. The Department believes that the proposed rules strike the right balance between appropriate oversight of captive insurance companies and the flexibility and minimization of cost to ensure their success.

(5) There are no counterpart federal rules for captive insurance. The proposed rules are consistent with the regulatory systems in other leading captive insurance domiciles.

(6) As all captive insurance companies qualify under the definition of a small business, it is impractical to implement a small business exception to any of the proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules embody six years of lessons learned in licensing and regulating captive insurance companies. In addition to a number of typographical and stylistic amendments, there are numerous substantive changes which are explained below:

0780-01-41-.02. Annual Reporting Requirements. The revisions to this section were made to eliminate rules that duplicated T.C.A. § 56-13-108 and to reflect changes made in 2016 Tenn. Pub. Acts Ch. 1018. The 2016 update changed the premium tax due date to March 15 annually and eliminated specific references to certain forms for companies that are on a fiscal year. The proposed change likewise eliminates specific references to certain titled forms that are no longer used by the Captive Section. The revision also incorporates a new Appendix into the rule, which is required by T.C.A. § 56-13-108 to be adopted by rule. The new appendix is the annual statement form that captive insurance companies file annually with the Department.

This section also implements changes made in 2017 Tenn. Public Acts Ch. 354, § 1 (to be codified at T.C.A. § 56-13-114(k)) which authorizes the Commissioner to require that premium taxes be paid electronically and authorizes a fee to pay for this cost.

0780-01-41-.03. Audits. The revisions in paragraph (1) clarify the statutory intent that a company must file audited financials each year in order to receive an exam deferral from 3 to 5 years. This also clarifies the procedures when such reports may be filed late and still count toward a deferral. This rule also allows for a deferral of audited financial reporting for newly formed captives or cells when formed within the last quarter of their operating year.

Paragraph (5)(e) clarifies the expectations on actuarial review of protected cell companies. As originally written, protected cell captives were reviewed on an aggregate basis. However, each cell carries some or all of its own risk, often without recourse to any other cell. This revision was designed to better identify situations where one cell may be overcapitalized and, on paper, obscure the financial condition of another cell if it were undercapitalized.

0780-01-41-.04. Deposit Requirements. Updates requirements to reflect 2015 statutory revisions allowing for cash equivalents. See T.C.A. § 56-13-105(c).

0780-01-41-.06. Limited Scope Examination and Informal Visitation. This is an entirely new section drafted from scratch and is designed to clarify the procedures on the examination of captive insurance companies short of triggering a full scope exam. T.C.A. § 56-13-109 authorizes the commissioner to visit and examine a company whenever it is deemed prudent. This rule carries out that authority for situations where specific limited questions have arisen about the operation of a company but the company and the department both wish to avoid the time and expense of a full exam.

0780-01-41-.08. Directors. Revision to clarify who is required to submit a biographical affidavit. Allows Commissioner to waive the requirement.

0780-01-41-.09. Managers. Adds captive managers to the list of persons to whom the conflict of interest rule applies.

0780-01-41-.12. Change of Business Plan. This rewrites the existing rule, which used similar wording about business plan changes. The old wording is removed to avoid any conflict between the statute and rule over the definition of a material change of business plan. See T.C.A. § 56-13-103(c)(1)(E). This clarifies the procedure for filing changes of business plans that do not meet the statutory definition of a material change and thus not subject to an additional fee.

0780-01-41-.13. Designation of a Captive Manager. This adds a new requirement that the Commissioner must approve any change in captive manager. The role of the captive manager is critical in the Department's oversight of a captive insurance company, as the department holds the captive manager responsible for

ensuring that the captive is run in accordance with the law. It is common in the captive insurance industry to refer to the captive manager as the eyes and ears of the regulator. Under existing law, the Department only approves the captive manager as part of the initial application. After formation, a captive insurance company could terminate the contract of its approved captive manager and install a new manager that was never approved by the Department. The position of captive manager is not, in and of itself, a position requiring a formal license or credential. The captive section approves captive managers for individual captives on a case by case basis, based on their reputation and experience. This requirement ensures that only approved captive managers may serve in that capacity.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no federal regulations mandating promulgation of this rule. The Commissioner is authorized to promulgate rules to effect the Revised Tennessee Captive Insurance Act of 2011. T.C.A. § 56-13-121. This rule also implements the authorization given in 2017 Tenn. Public Acts Ch. 354, § 1 (to be codified at T.C.A. § 56-13-114(k)) to establish a fee for the electronic payment of premium taxes.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Tennessee Captive Insurance Association is expected to urge adoption of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None known.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Michael Humphreys, Assistant Commissioner for Insurance; Rachel Jade-Rice, Director of Insurance; Michael Corbett, Director of Captive Insurance; Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-741-2616; ben.whitehouse@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Chapter 0780-01-41
Tennessee Captive Insurance Companies

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0780-01-41-.089	Conflict of Interest		
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0780-01-41-.01 Purpose and Authority.

The purpose of this Chapter is to set forth the financial and reporting requirements that the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Revised Tennessee Captive Insurance Act, Title 56, Chapter 13 of the Tennessee Code Annotated, (the "Act"). Reference in this Chapter to "company" shall mean captive insurance company or companies, unless otherwise specified. Terms of this Chapter employ definitions found in the Act as the context may require.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, T.C.A. §§ 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.02 Annual Reporting and Premium Tax Payment Requirements.

- (1) The report of financial condition required by T.C.A. §§ 56-13-108, 56-13-204(12), 56-13-305 and 56-13-416(d) shall be made by completing and submitting each of the forms and schedules prescribed by the Tennessee Captive Insurer Annual Report found at Appendix A of this rule, which is incorporated herein by reference. Prior to March 1, each association captive insurance company doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that report prescribed by the commissioner as "Captive Annual Statement: Association Captive."
- (2) The OPTins system is hereby designated as the approved method of receiving premium tax, penalty, and interest forms and payments owed by a captive insurance company.
 - (a) Premium tax forms and payments shall be filed and paid in electronic form through the OPTins system no later than the date such payment is required.
 - (b) Filings and payments made through OPTins on or before the due date shall be deemed received by the department on the date received by OPTins.
 - (c) Every filing and payment made through OPTins shall be subject to a convenience fee of up to ten dollars (\$10.00) per filing to cover the department's actual costs incurred by accepting electronic payments through OPTins. Such convenience fee shall be assessed in addition to any applicable premium tax, penalty, or interest.

(d) If a tax payment due date falls on a Saturday, Sunday or banking holiday, the electronic payment must be made so that the funds are immediately available on the first business day after the due date.

(e) The commissioner may waive the requirement for electronic payment through OPTins and allow filing and payment by mail on a case by case basis for good cause shown.

~~Prior to March 15, all other captive insurance companies doing business in this state, except for Branch Captive insurance companies and Special Purpose Financial Captive insurance companies, shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the commissioner as "Captive Annual Statement: Pure or Industrial Insured." The current version of the report is found on the website of the Tennessee Department of Commerce and Insurance, Insurance Division, Captives section. The report shall be that required by T.C.A. § 56-13-108. Branch Captive insurance companies shall file the "Captive Annual Statement: Pure or Industrial Insured" in accordance with T.C.A. § 56-13-305. Special Purpose Financial Captive insurance companies shall report in accordance with all applicable laws in Title 56, Chapter 13, Part 4.~~

~~(3) An alternative reporting date at fiscal year end may be granted by the commissioner upon written request by a pure captive insurance company or an industrial insured captive insurance company. If such request is granted the report is due one hundred and eighty (180) days after the fiscal year end per T.C.A. § 56-13-108.~~

~~(34) For a company that has received approval from the commissioner to utilize in the case of an alternative reporting date of its the annual report pursuant to T.C.A. § 56-13-108(c), the full estimated premium tax due should be ~~submitted~~paid to the Department by the March 15 of each year along with an estimated premium tax return deadlines. In order to provide sufficient detail to support the premium tax return, the company shall file, prior to March 15 of each year for each calendar year end, pages 1, 2, 3, and 5 of the annual statement, verified by oath of two (2) of its executive officers per T.C.A. § 56-13-108.~~

~~(45) If, in accordance with Pparagraph (43) above, the ~~submitted~~paid premium tax is less than eighty percent (80%) of the premium tax due as calculated from the annual report filed at the end of the ~~extension period~~fiscal year, the commissioner may impose monetary penalties on said company in an amount up to one thousand dollars (\$1,000).~~

~~(6) Financial Statements~~

~~Statements required shall be as follows:~~

~~1. Balance sheet reporting assets, liabilities, capital and surplus;~~

~~2. Statement of gain or loss from operations;~~

~~3. Statement of changes in capital and surplus;~~

~~4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus);~~

~~5. The notes to financial statements shall be those required by generally accepted accounting principles;~~

~~6. A summary of ownership and relationship of the company and all affiliated~~

~~corporations or companies insured by the captive; and,~~

~~7. A narrative explanation of all material transactions and balances with the company.~~

Authority: ~~2011 Public Acts, Chapter 468,~~ T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-114, 56-13-115, 56-13-120, 56-13-121, 56-13-204, 56-13-305 and 56-13-416.

0780-01-41-.03 Audits.

- (1) (a) Each captive insurance company shall be thoroughly examined at least once every three (3) years by the commissioner. The three year period may be extended up to a five (5) year period provided that the company is subject to a comprehensive annual financial audits as provided for in T.C.A. § 56-13-109(a). To qualify for this extension, the comprehensive audits shall be conducted by an independent certified public accountant authorized by the commissioner. The authorized accountant shall prepare and sign an audited annual financial report in a format specified by the commissioner. This report is hereinafter referred to in this rule as the "audited annual financial report." To qualify for the extension provided for in T.C.A. § 56-13-109(a), the audited annual financial report shall be filed and shall file such audited financial report with the commissioner on or before June 30th of each year or 180 days after the end of the fiscal year. The audited annual financial audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.
- (b) To be eligible for an extension up to a five (5) year period between thorough examinations, the captive insurance company must have filed timely audited annual financial reports covering all periods of operation from the later of the date of formation or the end date of the previous examination. For good cause shown in exceptional circumstances, the commissioner may allow the late filing of the audited annual financial report to preserve a captive insurance company's eligibility for a thorough examination extension.
- (c) A newly formed captive insurance company or a newly formed protected cell or incorporated protected cell of a captive insurance company that is in operation for less than ninety (90) days before the end of its fiscal year may elect to defer conducting a comprehensive annual audit under this Chapter so long as the first filed audited annual financial report includes audit data from the date of formation to the end of the first complete fiscal year that the captive insurance company or protected cell was in operation.
- (d) A protected cell or incorporated protected cell captive insurance company may elect to omit from its audited annual financial report one or more individual cells that collected no premium and wrote no policies during the calendar or fiscal year and was under no liability or potential liability for any policies issued in prior years. This action is hereinafter referred to in this rule as an "omission election." The omission election shall be made on a form prescribed by the commissioner and signed under oath by the captive manager and at least one officer of the company and filed with the audited annual financial report. No omission election may be made in the calendar or fiscal year in which occurs the fifth anniversary of the company's formation or fifth anniversary of the final date covered by the company's last T.C.A. § 56-13-109 thorough examination. In the next year subsequent to the taking of an omission election where no omission election is made or following after a year in which no omission election may be made, the

filed audited annual financial report shall include a cumulative report on the protected cell's activity during all preceding years for which an omission election was made. No omission election may be made on a protected cell or incorporated protected cell's core or general account. The commissioner, in his or her sole discretion, may disallow a protected cell or incorporated protected cell captive insurance company from taking any future omission elections on one or more cells upon notice.

(e) A captive insurance company that has been issued a letter of dormancy may elect to defer conducting a comprehensive annual audit under this Chapter and maintain eligibility for a five (5) year period between thorough examinations. To maintain this eligibility, the captive insurance company must file a cumulative audited financial report that includes audit data from the preceding years since the last filed audited annual financial report. Such filing shall be due with the first audited annual financial report filed subsequent to the rescission or expiration of the letter of dormancy.

(2) Designation of Independent Certified Public Accountant.

Companies, after becoming subject to this ~~rule-regulation~~, shall within ninety days report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this ~~rule-regulation~~. The certified public accountant that is retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner. The independent certified public accountant retained to conduct the annual audit shall apply, on a form adopted by the commissioner, for approval by the commissioner.

(3) Notification of Adverse Financial Condition.

A company shall require the certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required in ~~Tenn. Code Ann.~~ § 56-13-108. The company shall furnish such notification to the commissioner within five (5) working days of receipt thereof.

(4) Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(a) Each company shall require the independent certified public accountant to make available for review by the commissioner or the commissioner's appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(b) The aforementioned review by the commissioner shall be considered examinations and all working papers obtained during the course of such examinations shall be confidential. The company shall require that the independent certified public accountant provide photocopies or equivalent copy of any of the working papers which the Department considers relevant. Such working papers may be retained by the Department.

(c) "Work Papers" or "Working Papers" as referred to in this rule include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other

documents prepared or obtained by the accountant and the accountant's employees in the conduct of their examination of the company.

- (d) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer; or
3. Number of jurisdictions in which the insurer transacts business.

- (5) The ~~annual~~ audited annual financial report shall consist of the following:

- (a) Opinion of Independent Certified Public Accountant.

Financial statements furnished pursuant to this rule shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants or statutory accounting principles in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in effect for the period covered by the report. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures, and shall be dated.

- (b) Report of Evaluation of Internal Controls.

Every company that has annual direct written and assumed premiums of five hundred million dollars (\$500,000,000) or more shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards or statutory accounting principles and the report shall be filed with the commissioner. An exemption from this evaluation may be granted on a case by case basis upon written request to the Commissioner.

- (c) Accountant's Letter.

The accountant shall furnish the company, for inclusion in the filing of the audited annual financial report, a letter stating:

1. That the accountant is independent with respect to the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the

Financial Accounting Standards Board.

2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.
 3. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this Chapter with the Tennessee Department of Commerce and Insurance.
 4. That the accountant consents to the requirements of Rule 0780-01-41-.03(4) of this Chapter and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee or the commissioner's appointed agent, the work papers as defined therein.
 5. That the accountant is properly licensed by an appropriate state licensing authority and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.
- (d) Financial Statements as required under Rule 0780-01-41-.02, Annual Reporting Requirements.
- (e) Certification of Loss Reserves and Loss Expense Reserves.

The ~~annual audit~~ audited annual financial report shall include an opinion as to the ~~reasonablenessadequacy~~ of the company's loss reserves and loss expense reserves. The individual who certifies as to the ~~reasonablenessadequacy~~ of reserves shall apply, on a form adopted by the commissioner, for approval by the commissioner, and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his or her competence in loss reserve evaluation to the commissioner. Certification shall be in such form as the commissioner deems appropriate. For protected cell captive insurance companies, this opinion shall also include a statement identifying any one or more protected cells for which the carried reserves are either inadequate (i.e. – below the minimum amount the actuary believes is reasonable) or redundant (i.e. – greater than the maximum amount the actuary believes is reasonable). For exceptional cause shown, the commissioner may waive the requirement of filing an opinion as to reasonableness of loss reserves and loss expense reserves by a company.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-109, 56-13-115 and 56-13-121. 2017 Public Acts, Chapter 354, § 3.

0780-01-41-.04 Deposit Requirement.

- (1) Whenever the commissioner deems that the financial condition of the company warrants additional security, the commissioner may require a company to deposit cash or securities approved by the commissioner in addition to statutory prescribed amounts. The deposit shall be in the form of cash or cash equivalent or an irrevocable letter of credit issued by a bank acceptable to the commissioner.
- (2) The company may receive interest or dividends from said deposit; however the company may not exchange the deposits for others of equal value without the approval of the commissioner.

- (3) If such company discontinues business, the commissioner shall release any claim to such deposit only after being satisfied that all obligations of the company have been discharged.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-105, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.05 Organizational Examination.

In addition to the processing of the application, an organizational examination shall be performed before an applicant is licensed. Such examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-1-401, 56-13-103, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.06 Limited Scope Examination and Informal Visitation

- (1) Pursuant to T.C.A. § 56-13-109(a) the commissioner may direct a limited scope examination be conducted upon a captive insurance company. Such an exam may be ordered when questions arise about a captive insurance company's solvency, governance, operating practices, or other specific areas that the commissioner may determine.
- (2) The limited scope examination order shall identify the specific limited areas that the examination will cover. If, in the course of the examination, the examiner believes that the scope of the examination should be broadened, the examiner shall file a recommendation with the commissioner and with the captive insurance company under examination, which company shall have ten (10) days to file any response to the recommendation. The commissioner shall thereafter determine if the scope of the examination should be broadened and the additional areas that the examination should cover.
- (3) A limited scope examination under this rule does not waive or extend the period of time between thorough examinations conducted pursuant to T.C.A. § 56-13-109. A copy of any limited scope examination reports should be reviewed and included in the thorough examination of any captive insurance company. However, within ten (10) days of issuance of the limited scope examination order, the captive insurance company may file an election with the commissioner to convert the examination to a thorough examination conducted pursuant to T.C.A. § 56-13-109(a).
- (4) At the request of a captive insurance company, the commissioner may, in person or by designee, conduct an informal visitation of such captive insurance company. Such informal visitation may include, but is not limited to, a review of the books and records of the captive insurance company, review of governance, internal practices, controls, policies and procedures. A visitation may include a site visit to the captive insurance company's principal place of business, the offices of its captive manager, accountant, and/or principal or beneficial owner, or other service provider. At the conclusion of such a visitation, the commissioner or commissioner's designee shall send a report to the captive insurance company that shall include any suggestions or recommendations. This report shall be reviewed and included in the next subsequent thorough examination of the captive insurance company.
- (5) The expenses and charges of any limited scope examination and informal visitation shall

be paid by the captive insurance company.

Authority: T.C.A. §§ 56-13-101 through 56-13-418, 56-1-409, 56-1-413, 56-13-103, 56-13-108, 56-13-109, 56-13-115 and 56-13-121.

0780-01-41-.~~067~~ Insurance Managers and Intermediaries.

No person shall, in or from within this state, act as a managing general agent, producer, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

Authority: ~~2011 Public Acts, Chapter 468,~~ T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.~~087~~ Directors--Biographical Affidavits and Compensation.

- (1) Every company shall report to the commissioner within thirty (30) days after any change in its executive officers, managers, or directors, including in its report a biographical affidavit. If a manager is a corporation, trustee, partnership or limited liability company, the report shall include a biographical affidavit from such person or persons who exercise ultimate control over the manager as determined by the commissioner. For good cause shown, the commissioner may waive the requirement for a biographical affidavit under this rule.
- (2) No director, officer, manager, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

Authority: ~~2011 Public Acts, Chapter 468,~~ T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.~~098~~ Conflict of Interest.

- (1) Each company chartered in this state is required to adopt a conflict of interest statement for officers, directors, managers, and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from their duty to further the interests of the company they represent but this shall not preclude such person from being a director or officer in more than one insurance company.
- (2) Each officer, director, manager, and key employee shall file such disclosure with the Board of Directors yearly.

Authority: ~~2011 Public Acts, Chapter 468,~~ T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.910 Revocation or Suspension of Captive License.

The commissioner may, subject to the provisions of this rule, by order suspend or revoke the license of the company for any of the following:

- (1) At the request of the company; or

- (2) For any reason provided in T.C.A. § 56-13-110.

Before the commissioner rescinds the license of a company under (1) or (2), the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty (30) days after receipt of notice. The commissioner shall take into consideration any objection received by the commissioner within that period and, if the commissioner decides to cancel the license, cause the order of cancellation to be served on the company.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-110, 56-13-115 and 56-13-121.

0780-01-41-.~~110~~ Acquisition of Control of or Merger with Domestic Company.

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-107, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.~~412~~ Change of Business Plan.

~~(1) — A change in any information filed with the application that does not constitute a material change as identified in T.C.A. §§ 56-13-103(c)(2)(B) or 56-13-416 or a change requiring commissioner approval in T.C.A. § 56-13-204(14)~~

~~(2) — Any change in any other information filed with the application~~ must be filed with the commissioner within sixty (60) days but does not require prior approval.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-103, 56-13-108, 56-13-115, ~~and 56-13-121, 56-13-204, and 56-13-416~~.

0780-01-41-.~~132~~ Designation of a Captive Manager.

Companies, before becoming licensed, shall report to the commissioner in writing, the name and address of the designated captive manager retained to manage the company. The captive manager shall apply, on a form adopted by the commissioner, for approval by the commissioner. Any change of designated captive manager for a captive insurance company must be approved, in advance, by the commissioner.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.~~143~~ Regulation for Captive Insurance Companies Issuing Annuities.

- (1) This Rule 0780-01-41-.~~134~~ establishes reserve requirements, separate accounts and the form of the annual statement required of any captive insurance company that issues

annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).

- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of Title 56, Chapter 13 of the Tennessee Code Annotated issuing annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).
- (3) Any captive insurance company that issues contracts that provide variable benefits shall establish separate accounts. Such accounts shall be subject to the requirements of T.C.A. § 56-3-501.
- (4) A captive insurance company that issues annuity contracts shall maintain reserves that are actuarially sufficient to support the liabilities provided by the contracts.
- (5) A captive insurance company that issues annuity contracts shall submit its annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the commissioner.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-3-501, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.~~154~~ Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.

- (1) This Rule 0780-01-41-.~~154~~ establishes reserve requirements and the form of the annual report required of a captive insurance company that reinsures life insurance policies, including term, universal and variable life policies, and related guarantees and riders (collectively, "Life Insurance Policies").
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of ~~T~~itle 56, ~~C~~hapter 13 of the Tennessee Code Annotated that reinsures Life Insurance Policies, with respect to fiscal years ending on and after December 31, 2013.
- (3) A captive insurance company described in ~~paragraph-rule~~ 0780-01-41-.~~154~~(2) shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring Life Insurance Policies.
- (4) For purposes of the annual report required by Tenn. Code Ann. § 56-13-108(b):
 - (a) A captive insurance company described in ~~paragraph-rule~~ 0780-01-41-.~~154~~(2) that uses statutory accounting principles (i.e., the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner of Commerce and Insurance) shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the ~~C~~ommissioner, unless the ~~C~~ommissioner requires or approves a different form of annual report; and
 - (b) A captive insurance company described in ~~paragraph-rule~~ 0780-01-41-.~~154~~(2) that uses generally accepted accounting principles, including any appropriate or necessary modifications or adaptations thereto approved by the commissioner, shall submit the annual report in the form approved by the commissioner.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.165 Severability Provision.

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this Chapter are declared severable.

Authority: ~~2011 Public Acts, Chapter 468~~, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

APPENDIX A
TENNESSEE CAPTIVE INSURER ANNUAL REPORT

As of _____ (date)
of the Condition and Affairs of _____
(Name of Captive Insurance Company)

Date of License: _____
Company Street Address: _____
Company City, State, Zip Code: _____
Books and Records Street Address: _____
Captive Manager Name: _____
Captive Manager Street Address: _____
Annual Report Contact Name: _____
Annual Report Contact Number: _____
Annual Report Contact Email: _____

Officers:

President: _____
Secretary: _____
Treasurer: _____
_____: _____
_____: _____
_____: _____

Directors / Managers:

1. List the name(s) and address(es) of the beneficial owners of the captive and corresponding percentages of ownership:

<u>Name</u>	<u>Address</u>	<u>% Ownership</u>

2. Type of Captive: ☐ Pure ☐ Association ☐ Risk Retention Group ☐ Protected Cell
☐ Industrial Insured ☐ Special Purpose

3. Organizational form:

If organized as a stock company, please include a description of all authorized stock classes, whether the class is preferred or common stock, and for each class, the number of shares authorized, shares outstanding, and the par value.

4. Provide the name and address of the Captive Manager.

Has the Captive Manager changed from the last annual filing? ☐ Yes ☐ No

5. Provide the individual name, firm name and firm address of the Actuary.

Has the Actuary changed from the last annual filing? ☐ Yes ☐ No

6. Provide the individual name, firm name and firm address of the Certified Public Accountant.

Has the Certified Public Accountant changed from the last annual filing? ☐ Yes ☐ No

7. Attach a complete copy of the company's unaudited financial statements as of prior year end that include the balance sheet and income statement.

8. Were any changes made to the charter, bylaws or articles since the last annual filing? ☐ Yes ☐ No

9. Did the company provide notification to and receive approval from the Captive Insurance Section for all material transactions? ☐ Yes ☐ No

If no, provide a brief description including the dollar amount on a separate attachment.

10. Since the last annual filing, were there any related party transactions? ☐ Yes ☐ No

If yes, provide a brief description including the dollar amount on a separate attachment.

11. Have all assets been valued in accordance with GAAP? ☐ Yes ☐ No

If other than GAAP was used, please explain:

12. Do the company's assets include any loans to its parent, affiliates, or unaffiliated companies?

☐ Yes ☐ No

If yes, please answer the following:

(a) Were any of these loans entered into this year? ☐ Yes ☐ No

If yes, what is the date of Captive Insurance Section approval?

(b) Amount of the loan as of the end of the year:

(c) Describe the terms of the loan on a separate attachment.

(d) Have all interest payments due for the year been collected? ☐ Yes ☐ No

If no, when are the interest payments expected?

(e) Attach copies of current financial statements of the company or companies to whom loans have been made.

13. Were any of the company's assets or stock pledged as collateral at any time during the year or did the captive provide any outside guarantees? ☐ Yes ☐ No

If yes, please provide the date of Captive Insurance Section approval and a brief description on a separate attachment.

14. Has each officer, director and key employee for the current reporting year filed a disclosure with the captive's board of directors disclosing any potential conflicts of interest as outlined in the captive's conflict of interest policy? ☐ Yes ☐ No

15. Have loss and loss adjustment expense (LAE) reserves been discounted? ☐ Yes ☐ No

If yes, what interest rate was used?

16. Were any dividends paid during the year? ☐ Yes ☐ No

If yes, provide the date of approval by the Captive Insurance Section, the date(s) paid and amounts paid.

17. Did the company hold a board of directors meeting in Tennessee during the reporting period as required by Tenn. Code Ann. § 56-13-103(b)? ☐ Yes ☐ No

18. Does the company participate in a reinsurance pooling arrangement? ☐ Yes ☐ No

If yes, include other pool members in the assumed and/or ceded section of the reinsurance schedule below.

19. Did the company write any new lines of business this year? ☐ Yes ☐ No

If yes, identify the name of the pool and either the pool's domicile or the domiciles of the other pool participants.

20. Did the company write premiums this year? ☐ Yes ☐ No

If not, does the company plan to write insurance in the next year? ☐ Yes ☐ No

If not, does the company plan on going dormant or dissolving in the next year? ☐ Yes, Dormancy

☐ Yes, Dissolving ☐ No

21. In the past year were there any material changes in the management's understanding of the company's financial condition or any trends, events or uncertainties that have had or will likely cause the company to substantially deviate from its filed business plan. If yes, please attach an explanatory statement. ☐ Yes ☐ No

22. Please complete the following:

EXHIBIT OF PREMIUMS AND LOSSES

Premium Schedule				
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Lines of Coverage</u>	<u>Direct Business</u>	<u>Reinsurance Assumed</u>	<u>Reinsurance Ceded</u>	<u>Net Premiums Written</u>
<u>1.</u>				
<u>2.</u>				
<u>3.</u>				
<u>4.</u>				
<u>5.</u>				
<u>6.</u>				
<u>7.</u>				
<u>8.</u>				
<u>9.</u>				
<u>Totals</u>				

<u>Paid Loss Schedule</u>				
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Lines of Coverage</u>	<u>Direct Business</u>	<u>Assumed Reinsurance</u>	<u>Ceded Reinsurance</u>	<u>Net Losses Paid</u>
<u>1.</u>				
<u>2.</u>				
<u>3.</u>				
<u>4.</u>				
<u>5.</u>				
<u>6.</u>				
<u>7.</u>				
<u>8.</u>				
<u>9.</u>				
<u>Totals</u>				

<u>Loss Reserve Schedule</u>				
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Lines of Coverage</u>	<u>Direct Business</u>	<u>Assumed Reinsurance</u>	<u>Ceded Reinsurance</u>	<u>Net Loss Reserves</u>
<u>1.</u>				
<u>2.</u>				
<u>3.</u>				
<u>4.</u>				
<u>5.</u>				
<u>6.</u>				
<u>7.</u>				
<u>8.</u>				
<u>9.</u>				
<u>Totals</u>				

<u>SCHEDULE OF REINSURANCE</u>					
<u>Assumed Reinsurance as of Current Year End</u>					
<u>1</u>	<u>2</u>	<u>3</u>	<u>4*</u>	<u>5**</u>	<u>6***</u>
<u>Federal ID Number</u>	<u>Name of Reinsured (include pool participants)</u>	<u>State or Country of Domicile</u>	<u>Assumed Premiums</u>	<u>Assumed Paid Losses</u>	<u>Assumed Loss Reserves</u>
<u>1.</u>					
<u>2.</u>					
<u>3.</u>					
<u>4.</u>					
<u>5.</u>					
<u>6.</u>					
<u>7.</u>					
<u>8.</u>					
<u>9.</u>					
<u>Totals</u>					

* Total for Column 4 must agree to Premium Schedule

** Total for Column 5 must agree to Paid Loss Schedule

*** Total for Column 6 must agree to Loss Reserve Schedule

<u>Ceded Reinsurance as of Current Year End</u>					
<u>1</u>	<u>2</u>	<u>3</u>	<u>4*</u>	<u>5**</u>	<u>6***</u>
<u>Federal ID</u> <u>Number</u>	<u>Name of</u> <u>Reinsured (include</u> <u>pool participants)</u>	<u>State or</u> <u>Country of</u> <u>Domicile</u>	<u>Ceded</u> <u>Premiums</u>	<u>Ceded Paid</u> <u>Losses</u>	<u>Ceded Loss</u> <u>Reserves</u>
<u>1.</u>					
<u>2.</u>					
<u>3.</u>					
<u>4.</u>					
<u>5.</u>					
<u>6.</u>					
<u>7.</u>					
<u>8.</u>					
<u>9.</u>					
<u>Totals</u>					

* Total for Column 4 must agree to Premium Schedule

** Total for Column 5 must agree to Paid Loss Schedule

*** Total for Column 6 must agree to Loss Reserve Schedule

<u>INVESTMENTS OWNED AT CURRENT YEAR END</u>			
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>Description</u>	<u>Investment</u> <u>Type*</u>	<u>Cost</u>	<u>Statement Value</u>
<u>1.</u>			
<u>2.</u>			
<u>3.</u>			
<u>4.</u>			
<u>5.</u>			
<u>6.</u>			
<u>7.</u>			
<u>8.</u>			
<u>Totals</u>			

* Enter the corresponding numbers for the investment type as noted below:

1. Bonds

2. Stocks

3. Cash and Short-Term Investments

4. Loans and Notes Receivable

5. Cash Surrender Value of Life Insurance

6. Letters of Credit

7. Other

CERTIFICATION

The officers of this company, being duly sworn, each depose and say that they are the described officers of said insurer and attest to the following:

(1) that as of the date of this Annual Report (as noted above), the company has maintained the minimum capital and surplus requirements pursuant to Tenn. Code Ann. § 56-13-105.

(2) the attached schedules, exhibits, and explanations therein contained, annexed or referred to are a full and true statement, in all material respect of the company's financial condition and results of operations, according to the best of their information, knowledge, and belief respectively.

(3) that pursuant to Tenn. Code Ann. § 56-13-109 and Tenn. Comp. R. & Regs. 0780-01-41-.03, the company ☐will ☐will not (check one) file an independently audited financial report, including an actuarial opinion, with the Tennessee Department of Commerce and Insurance on or before June 30 for the period covered by this Annual Report, or alternative filing date of _____ as approved by the Department. NOTE: A company that does not annually file independently audited financial reports must be examined at least every three years. Tenn. Code Ann. § 56-13-109. Companies who file independently audited financial reports must be examined at least every five years.

Original, sworn, and notarized signatures of two officers are required. Tenn. Code Ann. § 56-13-108.

Printed Name:

Printed Name:

Title:

Title:

Subscribed to and sworn before me this _____ day of _____, _____.

(seal)

Notary Public

Is this an original filing? ☐yes ☐no

If no,

1. State the amendment #: _____

2. Date filed: _____

3. Number of pages attached: _____

OVERSIGHT DOCUMENT CHECKLIST

Please certify that the following documents are current as filed with the Captive Insurance Section, are new (and attached), or are not applicable at this time for: (Name of Captive Insurance Company)

1. Executed agreement between the captive and captive manager. ☐ Current as filed ☐ New ☐ N/A

2. Executed agreement with audit firm. ☐ Current as filed ☐ New ☐ N/A

3. Executed agreement with actuarial firm. ☐ Current as filed ☐ New ☐ N/A

4. Sample policy form(s) used by captive. ☐ Current as filed ☐ New ☐ N/A

5. Minutes and resolutions of all board meetings. ☐ Current as filed ☐ New ☐ N/A

6. Executed reinsurance and/or pooling agreements. ☐ Current as filed ☐ New ☐ N/A

7. Statement of Investment Policy. ☐ Current as filed ☐ New ☐ N/A

8. Code of ethics and certificate of acknowledgement by owners. ☐ Current as filed ☐ New ☐ N/A

9. Conflict of interest policy statement and owner's certificate of acknowledgement.

☐ Current as filed ☐ New ☐ N/A

To the best of my knowledge, the above documents have either been filed with the Captive Insurance Section (and no changes have been made), are attached hereto, or are not applicable.

Captive Manager

Date