

**RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF INSURANCE**

**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: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, T.C.A. § 56-13-108, -115 and 121. **Administrative History:** Original rule filed May 10, 1978; effective June 9, 1978. Repeal and new rule filed March 16, 2005; effective May 30, 2005. Repeal and new rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.02 ANNUAL REPORTING REQUIREMENTS.

- (1) 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) 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.

(Rule 0780-01-41-.02, continued)

- (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.
- (4) In the case of an alternative reporting date of the annual report, the full premium tax due should be submitted to the Department by the March 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.
- (5) If, in accordance with Paragraph (4) above, the submitted 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, 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, 56-13-305 and 56-13-416. **Administrative History:** Original rule filed March 16, 2005; effective May 30, 2005. Repeal and new rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.03 AUDITS.

- (1) Each captive insurance company shall be examined at least once every three years by the commissioner. The three year period may be extended to a five (5) year period provided that the company is subject to a comprehensive annual audit. The comprehensive audit shall be conducted by an independent certified public accountant authorized by the commissioner, 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 annual 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.

(Rule 0780-01-41-.03, continued)

(2) Designation of Independent Certified Public Accountant.

Companies, after becoming subject to this 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 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 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 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

(Rule 0780-01-41-.03, continued)

- (3) Number of jurisdictions in which the insurer transacts business.
- (5) The annual audit 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 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.

(Rule 0780-01-41-.03, continued)

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 shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves. The individual who certifies as to the adequacy 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.

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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

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 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, 56-13-108, 56-13-115 and 56-13-121. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

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, 56-13-103, 56-13-108, 56-13-115 and 56-13-121. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.06 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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.07 DIRECTORS.

- (1) Every company shall report to the commissioner within thirty days after any change in its executive officers or directors, including in its report a biographical affidavit.
- (2) No director, officer, 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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.08 CONFLICT OF INTEREST.

- (1) Each company chartered in this state is required to adopt a conflict of interest statement for officers, directors 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, 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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.09 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 days after receipt of notice. The commissioner shall take into consideration

(Rule 0780-01-41-.09, continued)

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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.10 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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.11 CHANGE OF BUSINESS.

- (1) Any material change in a company's business plan that was filed with the commissioner at the time of the initial application and any subsequent amendment of the plan requires prior approval of the commissioner.
- (2) Any change in any other information filed with the application must be filed with the commissioner within 60 days but does not require prior approval.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.12 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.

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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-41-.13 REGULATION FOR CAPTIVE INSURANCE COMPANIES ISSUING ANNUITIES.

- (1) This Rule 0780-01-41-.13 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).

(Rule 0780-01-41-.13, continued)

- (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. **Administrative History:** Original rule filed November 30, 2012; effective May 28, 2013.

0780-01-41-.14 REGULATION FOR CAPTIVE INSURANCE COMPANIES REINSURING LIFE INSURANCE POLICIES.

- (1) This Rule 0780-01-41-.14 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-.14(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-.14(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-.14(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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.

0780-01-94-.15 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. **Administrative History:** Original rule filed November 30, 2012; effective February 28, 2013.