

Title 56. Insurance

Chapter 13. Revised Tennessee Captive Insurance Act (Refs & Annos)

Part 1. General Provisions

**§ 56-13-101. Short title; purpose**

(a) This chapter shall be known and may be cited as the “Revised Tennessee Captive Insurance Act.”

(b) The purpose of this chapter is to establish the procedures for the organization and regulation of the operations of captive insurance companies within this state and thereby promote the general welfare of the people of this state.

**§ 56-13-102. Definitions**

As used in this chapter, unless the context requires otherwise:

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

(2) “Alien” means a company formed according to the legal requirements of a foreign country;

(3) “Association” means any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities, whereby:

(A) The member organizations of such or the association itself, whether or not in conjunction with some or all of the member organizations:

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

(ii) Have complete voting control over an association captive insurance company incorporat-

ed as a mutual insurer;

(iii) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(iv) Have complete voting control over an association captive insurance company formed as a limited liability company; or

(B) Each member organization of the association is either:

(i) A not-for-profit corporation, nonprofit association, or similar nonprofit organization;

(ii) An entity or organization exempt from taxation under [§ 501\(c\) of the Internal Revenue Code](#), compiled in [26 U.S.C. § 501\(c\)](#); or

(iii) A municipality, metropolitan government, county, authority, utility district or other public body generally classified as a governmental body or governmental entity, whether organized by private act or public act of the general assembly, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district or other public body generally classified as a governmental body or governmental entity. This subdivision (3)(B)(iii) shall be liberally construed;

(4) “Association captive insurance company” means any company that insures risks of the member organizations of an association, and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself;

(5) “Captive insurance company” means any pure captive insurance company, association captive insurance company, industrial insured captive insurance company, risk retention group, protected cell captive insurance company, incorporated cell captive insurance company, or special purpose financial captive insurance company formed or licensed under this chapter;

(6) “Commissioner” means the commissioner of the department, or the commissioner's designee;

(7) “Controlled unaffiliated business” means any person:

(A) That is not in the corporate system of a parent and its affiliated companies in the case of a pure captive insurance company, or that is not in the corporate system of an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company;

(B) That has an existing contractual relationship with a parent or one (1) of its affiliated companies in the case of a pure captive insurance company, or with an industrial insured or one (1) of its affiliated companies in the case of an industrial insured captive insurance company; and

(C) Whose risks are managed by a pure captive insurance company or an industrial insured captive insurance company, as applicable, in accordance with [§ 56-13-117](#);

(8) “Department” means the department of commerce and insurance;

(9) “Excess workers' compensation insurance” or “excess accident and health insurance” means, in the case of an employer that has insured or self-insured its workers' compensation or accident and health insurance risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the commissioner;

(10) “Incorporated cell” means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company;

(11) “Incorporated cell captive insurance company” means a protected cell captive insurance company that is established as a corporation or other legal entity separate from its incorporated cells that are also organized as separate legal entities;

(12) “Industrial insured” means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time

employee acting as an insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and

(C) Who has at least twenty-five (25) full-time employees;

(13) “Industrial insured captive insurance company” means any company that insures risks of the industrial insureds that comprise the industrial insured group, and that may insure the risks of the affiliated companies of the industrial insureds and the risks of the controlled unaffiliated business of an industrial insured or its affiliated companies;

(14) “Industrial insured group” means any group of industrial insureds that collectively:

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

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

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

(D) Have complete voting control over an industrial insured captive insurance company formed as a limited liability company;

(15) “Member organization” means any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association;

(16) “Mutual corporation” means a corporation organized without stockholders and includes a nonprofit corporation with members;

(17) “Mutual insurer” means a company owned by its policyholders where no stock is

available for purchase on the stock exchanges;

(18) “Organizational documents” means the documents that must be submitted pursuant to title 48 and title 61 in order to legally form a business in this state or to obtain a certificate of authority to transact business in this state;

(19) “Parent” means an individual, corporation, limited liability company, partnership, association, or other entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting:

(A) Securities of a pure captive insurance company organized as a stock corporation;

(B) Membership interests of a pure captive insurance company organized as a nonprofit corporation; or

(C) Membership interests of a pure captive insurance company organized as a limited liability company;

(20) “Pure captive insurance company” means any company that insures risks of its parent and affiliated companies or a controlled unaffiliated business or businesses; and

(21) “Risk retention group” means a captive insurance company organized under the laws of this state pursuant to the Liability Risk Retention Act of 1986, as amended, compiled in [15 U.S.C. § 3901 et seq.](#), as a stock or mutual corporation, a reciprocal or other limited liability entity. Risk retention groups formed under this chapter are subject to all applicable insurance laws including, but not limited to any applicable provisions in chapters 1, 2, 5, 6, 11, and 45 of this title.

### **[§ 56-13-103. License limitations; requirements to do business](#)**

(a) Any captive insurance company, when permitted by its organizational documents, may apply to the commissioner for a license to do any and all insurance comprised in [§§ 56-2-201\(2\) and \(4\)-\(7\), 56-2-202, 56-2-203, and 56-2-204](#); provided, however, that:

- (1) No pure captive insurance company shall insure any risks other than those of its parent and affiliated companies or a controlled unaffiliated business or businesses;
- (2) No association captive insurance company shall insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies;
- (3) No industrial insured captive insurance company shall insure any risks other than those of the industrial insureds that comprise the industrial insured group, those of their affiliated companies, and those of the controlled unaffiliated business of an industrial insured or its affiliated companies;
- (4) No risk retention group shall insure any risks other than those of its members and owners;
- (5) No captive insurance company shall provide personal motor vehicle or homeowner's insurance coverage or any component thereof;
- (6) No captive insurance company shall accept or cede reinsurance except as provided in §§ [56-13-112](#) and [56-13-412](#);
- (7) Any captive insurance company may provide excess or stop-loss accident and health insurance, unless prohibited by federal law or the laws of the state having jurisdiction over the transaction;
- (8) Except as provided in subdivision (a)(9), a captive insurance company may only issue policies of workers' compensation insurance to an insured or an affiliate who otherwise qualifies and maintains its qualifications as a self-insured under this title; provided, that, a captive insurance company may provide excess or stop-loss workers' compensation coverage for those insureds not qualifying as self-insureds. The commissioner shall have the discretion to waive the requirements of this subdivision (a)(8) according to guidelines established through the promulgation of rules or regulations; and

(9) Any association captive insurance company of an association that is described in § 56-13-102(3)(B) or mutual captive insurance company whose member organizations or insureds are the type member organizations described in § 56-13-102(3)(B) may issue policies of workers' compensation, directors' and officers' liability, and public officials' liability insurance and reinsurance in addition to the insurance and reinsurance otherwise permitted to be made under this section.

(b) Except as provided in subsection (f), no captive insurance company shall transact any insurance business in this state unless:

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

(2) Its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one (1) meeting each year in this state;

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

(4) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state; provided, that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c)(1) In order to receive a license to issue policies of insurance as a captive insurance company in this state, an applicant business entity shall meet the requirements of this subdivision (c)(1).

(A) The applicant business entity shall submit its organizational documents to the commissioner. If the commissioner approves the organizational documents, then the commissioner shall issue a letter to the applicant certifying the commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the approval letter issued by the commissioner, and the required filing fees for organizational documents

prescribed in title 48 and title 61 to the secretary of state for filing. Upon filing the organizational documents, the secretary of state shall issue an acknowledgment letter to the applicant. The applicant business entity shall submit a copy of the acknowledgment letter relative to the applicant's organizational documents issued by the secretary of state to the commissioner.

(B) The applicant business entity shall also file with the commissioner evidence of the following:

- (i) The amount and liquidity of its assets relative to the risks to be assumed;
- (ii) The adequacy of the expertise, experience, and character of the person or persons who will manage it;
- (iii) The overall soundness of its plan of operation;
- (iv) The adequacy of the loss prevention programs of its insureds; and
- (v) Such other factors deemed relevant by the commissioner in ascertaining whether the applicant business entity will be able to meet its policy obligations.

(C) No less than the amount required by [§ 56-13-105](#) shall be paid in by the applicant business entity and deposited with the commissioner. In the alternative, an irrevocable letter of credit in that amount and acceptable to the commissioner shall be filed with the commissioner.

(D) Upon compliance with subdivision (c)(1)(C), the applicant business entity shall be certified as compliant with this chapter through examination by the commissioner. The department shall be reimbursed for the cost of the examination in accordance with [§ 56-1-413](#).

(E) The applicant business entity shall submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the commissioner may reasonably require.

(2)(A) Whenever a captive insurance company desires to amend the organizational documents



submitted pursuant to subdivision (c)(1)(A), the company shall submit the amended organizational documents to the commissioner. If the commissioner approves the amendment, then the commissioner shall issue a letter to the applicant certifying the commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the approval letter issued by the commissioner, and the required filing fees for organizational documents prescribed in title 48 and title 61 to the secretary of state for filing. Upon filing the organizational documents, the secretary of state shall issue an acknowledgment letter to the applicant. The applicant shall submit a copy of the acknowledgment letter relative to the applicant's organizational documents issued by the secretary of state to the commissioner.

(B) If a captive insurance company makes any subsequent material change to any item in the description submitted pursuant to subdivision (c)(1)(E), then the company shall submit an appropriate revision to the commissioner for approval and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of such change.

(3) Information submitted pursuant to this subsection (c) shall be and remain confidential, and shall not be made public by the commissioner without the written consent of the captive insurance company, except that:

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

(i) The information sought is relevant to and necessary for the furtherance of such action or case;

(ii) The information sought is unavailable from other non-confidential sources; and

(iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner; provided, however, that this subdivision (c)(3) shall not apply to any risk retention group; and

(B) The commissioner shall have the discretion to disclose such information to a public officer having jurisdiction over the regulation of insurance in another state; provided, that:

(i) Such public official shall agree in writing to maintain the confidentiality of such information; and

(ii) The laws of the state in which such public official serves require such information to be and to remain confidential.

(d) Each captive insurance company shall make payments to the commissioner in accordance with the fee schedule established in chapter 4, part 1 of this title. The commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable costs of which may be charged against the applicant. [Sections 56-1-401 -- 56-1-420](#) shall apply to examinations, investigations, and processing conducted under the authority of this section.

(e) If the commissioner is satisfied that the documents and statements filed by an applicant captive insurance company comply with this chapter, then the commissioner may grant a license authorizing it to do insurance business in this state.

(f) Any captive insurance company licensed and in good standing on September 1, 2011, which was licensed under the former “Tennessee Captive Insurance Act of 1978”, shall not be required to obtain a new license as required in this section; provided, that any such captive insurance company is subject to the remainder of this chapter.

#### **§ 56-13-104. Original names**

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this state, nor any name likely to mislead the public. Any name adopted by a captive insurance company shall comply with the requirements of titles 48 and 61.

### **§ 56-13-105. Capital and surplus requirements**

(a) No captive insurance company shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars (\$250,000);

(2) In the case of an association captive insurance company, not less than five hundred thousand dollars (\$500,000);

(3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars (\$500,000);

(4) In the case of a risk retention group, not less than one million dollars (\$1,000,000); and

(5) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars (\$250,000).

(b) The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(c) Capital and surplus shall be in the form of cash or an irrevocable letter of credit issued by a bank approved by the commissioner.

(d) Except as otherwise provided in this chapter, chapter 9 of this title shall apply to captive insurance companies formed under this chapter.

### **§ 56-13-106. Dividends; payment out of capital or surplus**

No captive insurance company shall pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at

the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by the commissioner. A captive insurance company may otherwise make such distributions as are in conformity with its purposes and approved by the commissioner.

**§ 56-13-107. Formation; modifications**

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

(b) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be:

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

(2) Incorporated as a mutual corporation;

(3) Organized as a reciprocal insurer in accordance with chapter 16 of this title; or

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

(c) A captive insurance company incorporated or organized in this state shall have not less than three (3) incorporators or three (3) organizers of whom not less than one (1) shall be a resident of this state.

(d) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(e) In the case of a captive insurance company formed as a:

(1) Corporation, at least one (1) of the members of the board of directors shall be a resident of

this state;

(2) Reciprocal insurer, at least one (1) of the members of the subscribers' advisory committee shall be a resident of this state; and

(3) Limited liability company, at least one (1) of the managers shall be a resident of this state.

(f) Captive insurance companies formed as corporations, limited liability companies or as nonprofit corporations under this chapter shall have the privileges provided in and be subject to title 48 and this chapter, as applicable; provided, that this chapter shall control in the event of a conflict. Captive insurance companies formed as partnerships under this chapter shall have the privileges provided in and be subject to title 61 and this chapter, as applicable; provided, that this chapter shall control in the event of a conflict.

(g) Mergers, consolidations, conversions, mutualizations, acquisitions, redomestications, or other similar transactions of captive insurance companies shall be subject to the same provisions of this title applicable to traditional insurance companies, except that:

(1) The commissioner may, upon request of an insurer party to a merger authorized under this subsection (g), waive such applicable requirements;

(2) The commissioner may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing ten (10) days before the day set for the hearing, then the commissioner may cancel the hearing; and

(3) An alien insurer may be a party to a merger authorized under this subsection (g); provided, that the requirements for a merger between a captive insurance company and a foreign insurer under this title shall apply to a merger between a captive insurance company and an alien insurer under this subsection (g). For the purposes of this subdivision (g)(3), an alien insurer shall be treated as a foreign insurer under this title and the jurisdiction of the alien shall be the equivalent of a state.

(h) Captive insurance companies formed as reciprocal insurers under this chapter shall have the privileges provided in and be subject to chapter 16 of this title in addition to this chapter; provided, that this chapter shall control in the event of a conflict. To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to chapter 16, such provisions shall not be applicable to a reciprocal insurer formed under this chapter unless such provisions are expressly made applicable to captive insurance companies under this chapter.

(i) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third (  $1/3$  ) of the fixed or prescribed number of directors.

(j) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one-third (  $1/3$  ) of the number of its members.

(k) With the commissioner's approval, a captive insurance company organized as a stock insurer may convert to a nonprofit corporation with one (1) or more members by filing with the secretary of state an election for such conversion; provided, that:

(1) The election shall certify that, at the time of the company's original organization and at all times thereafter, the company has conducted its business in a manner not inconsistent with a nonprofit purpose as permitted by title 48, chapter 53; and

(2) At the time of the filing of its election, the company shall file with both the commissioner and the secretary of state amended and restated articles of incorporation consistent with this chapter and with title 48, duly authorized by the corporation.

(l) Title 48, chapter 61 shall not apply to a captive insurance company that is a nonprofit corporation in the case of any merger in which a captive insurance company merges with and into a captive insurance company organized as a nonprofit corporation under title 48 where the latter is the surviving corporation.

(m) In the case of a captive insurance company formed as a limited liability company, a

reciprocal insurance company or mutual insurance company, any proxy executed by the members, subscribers, and policyholders of each shall be valid if executed and transmitted in compliance with title 48.

#### **§ 56-13-108. Report of financial condition**

(a) No captive insurance companies shall be required to make any annual report except as provided in this chapter and as required by title 48 and title 61.

(b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure captive insurance companies or industrial insured captive insurance companies, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires, approves, or accepts the use of statutory accounting principles or other comprehensive basis of accounting. The commissioner may require, approve, or accept any appropriate or necessary modifications of the statutory accounting principles or other comprehensive basis of accounting for the type of insurance and kinds of insurers to be reported upon. The commissioner may require additional information to supplement such report. Except as otherwise provided, each risk retention group shall file its report in the form required by this title, and each risk retention group shall comply with the requirements set forth in this title. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. [Section 56-13-103\(c\)\(3\)](#) shall apply to each report filed pursuant to this section; provided, that [§ 56-13-103\(c\)\(3\)](#) shall not apply to reports filed by risk retention groups.

(c) A pure captive insurance company or an industrial insured captive insurance company may make written application to the commissioner for filing the required report on a fiscal year-end. If an alternative reporting date is granted by the commissioner, then:

(1) The annual report is due one hundred and eighty (180) days after the fiscal year-end; and

(2) In order to provide sufficient detail to support the premium tax return, the pure captive

insurance company or industrial insured captive insurance company shall file, prior to March 15 of each year for each calendar year-end, pages 1, 2, 3, and 5 of the “Captive Annual Statement; Pure or Industrial Insured,” verified by oath of two (2) of its executive officers.

**§ 56-13-109. Visits by commissioner; audits**

(a) At least once every three (3) years, and whenever the commissioner determines it to be prudent, the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with this chapter. The commissioner may extend such three-year period to five (5) years; provided, that the captive insurance company is subject to a comprehensive annual audit by independent auditors approved by the commissioner during such five-year period. The comprehensive audit shall be of a scope satisfactory to the commissioner. The expenses and charges of the examination shall be paid by the captive insurance company.

(b) Any other law or regulation to the contrary notwithstanding, an association captive insurance company, all of whose insureds operate municipal or cooperative electric systems, shall not be required to have performed an audit of its annual statutory financial statements by an independent certified public accountant, unless, within ninety (90) days before the close of the fiscal year of the association captive insurance company, a majority of the association members who are insured, directly or indirectly by it, request an audit.

(c) [Sections 56-1-401](#) -- [56-1-420](#) shall apply to examinations conducted under this section.

(d) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the captive insurance company, except to the extent provided in this subsection (d). Nothing in this subsection (d), shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. The commissioner shall have the discretion to grant access to such information to public officers having jurisdiction over the



regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, only if the officers receiving the information agree in writing to maintain the confidentiality of the information in a manner consistent with this subsection (d).

#### **§ 56-13-110. License suspension or revocation**

(a) The license of a captive insurance company may be suspended or revoked by the commissioner for any of the following reasons:

(1) Insolvency or impairment of capital or surplus;

(2) Failure to meet the requirements of § 56-13-105;

(3) Refusal or failure to submit an annual report, as required by this chapter, or any other report or statement required by law or by lawful order of the commissioner;

(4) Failure to comply with its own charter, bylaws or other organizational document;

(5) Failure to submit to or pay the cost of examination or any legal obligation relative to an examination, as required by this chapter;

(6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

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

(b) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has violated subsection (a), then the commissioner may suspend or revoke such company's license if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

## **§ 56-13-111. Investments requirements**

(a) Except as may be otherwise authorized by the commissioner, association captive insurance companies and risk retention groups shall comply with the investment requirements contained in §§ 56-3-401 -- 56-3-409, as applicable. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company, industrial insured captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company or special purpose financial captive insurance company as defined in part 4 of this chapter shall be subject to any restrictions on allowable investments; provided, that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(c) No pure captive insurance company shall make a loan to or an investment in its parent company or affiliates without prior written approval of the commissioner, and any such loan or investment shall be evidenced by documentation approved by the commissioner. Loans of minimum capital and surplus funds required by § 56-13-105 are prohibited.

(d)(1) Notwithstanding this section or chapter 3, part 4 of this title, an association captive insurance company of an association described in § 56-13-102(3)(B) may hold any interest in qualified headquarters property as defined in subdivision (d)(2), and the qualified headquarters property shall be admitted assets and authorized investments of the association captive insurance company. The net book value of the qualified headquarters property deemed admitted and authorized under this subsection (d) may not exceed two million five hundred thousand dollars (\$2,500,000), and an association captive insurance company holding qualified headquarters property pursuant to this subsection (d) shall at all times maintain total surplus, without regard to the qualified headquarters property, of at least the sum of:

(A) Fifty percent (50%) of the net book value of the qualified headquarters property; and

(B) The minimum capital and surplus requirements.

(2) For purposes of this subsection (d), “qualified headquarters property” includes the real property and the building in which the principal office of the association captive insurance company is located and also includes any improved and unimproved real property of the association captive insurance company that is located within one thousand five hundred feet (1,500') of the company's principal office.

### **§ 56-13-112. Reinsurance**

(a) Any captive insurance company may provide reinsurance as authorized by this title on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with this title. If the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer. The commissioner shall have the discretion to allow a captive insurance company to take credit for the reinsurance of risks or portions of risks ceded to an unauthorized reinsurer, after review, on a case by case basis. The commissioner may require any documents, financial information or other evidence that such an unauthorized reinsurer will be able to demonstrate adequate security for its financial obligations.

(c) In addition to reinsurers authorized by this title, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association to the extent authorized by the commissioner. The commissioner may require any documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(d) Except where specifically provided otherwise, insurance by a captive insurance company of any workers' compensation or accident and health qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

### **§ 56-13-113. Rating organizations; insolvency fund**

(a) No captive insurance company shall be required to join a rating organization.

(b) No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

### **§ 56-13-114. Taxes**

(a) Each captive insurance company shall pay to the department, on or prior to March 1 of each year, a tax at the rate of four tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three tenths of one percent (0.3%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums. Return premiums shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders. No tax shall be due or payable under this title as to considerations received for annuity contracts.

(b) Each captive insurance company shall pay to the department, on or prior to March 1 of each year, a tax at the rate of 225-thousandths of one percent (0.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premium, and 150-thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and 50-thousandths of one percent (0.050%) on the next twenty million dollars (\$20,000,000), and 25-thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (a). No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control; provided, that the commissioner verifies that such transaction is part of

a plan to discontinue the operations of such other insurer, and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

(c)(1) Except with regard to a protected cell captive insurance company, as defined in § 56-13-202, with more than ten (10) cells, the annual minimum aggregate tax to be paid by a captive insurance company calculated under subsections (a) and (b) shall be five thousand dollars (\$5,000), and the annual maximum aggregate tax shall be one hundred thousand dollars (\$100,000).

(2) For a protected cell captive insurance company with more than ten (10) cells, the annual minimum aggregate tax to be paid under subsections (a) and (b) shall be ten thousand dollars (\$10,000), and the annual maximum aggregate tax shall be the lesser of:

(A) One hundred thousand dollars (\$100,000) plus five thousand dollars (\$5,000) multiplied by the number of cells over ten (10); or

(B) Two hundred thousand dollars (\$200,000).

(3) If a captive insurance company is a special purpose financial captive organized and licensed under part 4 of this chapter and if such captive insurance company is subject to subsection (e) as a captive insurance company under common ownership and control with one (1) or more other captive insurance companies (collectively, the “consolidated group”), the premium tax calculated with respect to the consolidated group under subsections (a) and (b) shall be allocated to each member of the consolidated group in the same proportion that the premium allocable to such member bears to the total premium of all members. The consolidated group shall pay an aggregate premium tax equal to the greater of the sum of the premium tax allocated to the members and five thousand dollars (\$5,000); provided, that:

(A) If the total of premium tax allocated to all members of a consolidated group that are special purpose financial captives, as defined in § 56-13-402, exceeds one hundred thousand dollars (\$100,000), then the total premium tax allocated to such members shall be one hundred thousand dollars (\$100,000); and

(B) If the total of premium tax allocated to all members of the consolidated group that are not special purpose financial captive insurance companies exceeds one hundred thousand dollars (\$100,000), then the total of premium tax allocated to such members shall be one hundred thousand dollars (\$100,000).

(d) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company and from any insured on its payments to a captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by this state or any county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

(e) Subject to subsection (c), two (2) or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurance company.

(f) All premium taxes paid into the department under this chapter shall be held by the commissioner as expendable receipts for the purpose of administering this chapter.

(g) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

(h) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by title 67, chapter 6.

#### **§ 56-13-115. Rules adoption to carry out chapter provisions**

The commissioner may adopt and, from time to time, amend such rules relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this chapter.

#### **§ 56-13-116. Application of title provisions generally; application of chapter 45**

No provisions of this title, other than those contained in this chapter or expressly provided in this chapter, shall apply to captive insurance companies. Risk retention groups shall have the privileges and be subject to chapter 45 of this title in addition to the applicable provisions of this chapter.

#### **§ 56-13-117. Rules; risk management function**

The commissioner may adopt rules establishing standards to ensure that a parent or its affiliated company, or an industrial insured or its affiliated company, is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company or an industrial insured captive insurance company, respectively; provided, however, that, until such time as rules under this section are adopted, the commissioner may approve the coverage of such risks by a pure captive insurance company or an industrial insured captive insurance company.

#### **§ 56-13-118. Application of chapter 24 of title**

Except as otherwise provided in this chapter, the terms and conditions set forth in chapter 24 of this title shall apply in full to captive insurance companies formed or licensed under this chapter.

#### **§ 56-13-119. Purchase of stock by governmental entities**

Any municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity, whether organized by private act or public act of the general assembly, or otherwise, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity, may expend public funds other than local tax revenues for the purchase of capital stock in a captive insurance company or to provide guaranty capital in a mutual captive insurance company; provided, that at the time of authorization of expenditure of public funds adequate insurance markets in the United States are not available to cover the risks, hazards and liabilities of the

public body or that the needed coverage is only available at excessive rates or with unreasonable deductibles.

### **§ 56-13-120. Violations; authority of commissioner**

If, after providing notice consistent with the process established by § 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized to transact the business of insurance under this chapter has violated any provision of this chapter or any rule or regulation authorized by this chapter, the commissioner may order:

- (1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation;
- (2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars (\$25,000) for each violation, not to exceed an aggregate penalty of two hundred fifty thousand dollars (\$250,000). This subdivision (2) shall not apply where a statute or rule specifically provides for other civil penalties for the violation. For purposes of this subdivision (2), each day of continued violation shall constitute a separate violation; and
- (3) The suspension or revocation of the insurer's, person's, or entity's license.

### **§ 56-13-121. Rules**

The commissioner is authorized to promulgate rules and regulations necessary to effectuate the purposes of this chapter; provided, that, no rule promulgated pursuant to this chapter shall affect a special purpose financial captive (SPFC) insurance securitization, as defined and authorized by part 4 of this chapter, in effect at the time of the promulgation. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures



Act, compiled in title 4, chapter 5.

**§ 56-13-122. Captive insurance companies; audit; report**

(a) The regulation of captive insurance companies as authorized by this chapter is subject to audit by the comptroller of the treasury as otherwise provided by state law. Information submitted to the department by captive insurance companies subject to this chapter shall, without written request, be open to inspection by, or disclosure to, the comptroller of the treasury or the comptroller's designated representative for purposes of audit.

(b) The commissioner shall annually report to the commerce and labor committee of the senate, and the insurance and banking committee of the house of representatives regarding the captive insurance company program. Such report shall include, but not be limited to, the number and types of captive insurance companies authorized by the commissioner to conduct business in this state, the amount of premium tax and fee revenues generated pursuant to the program, and any recommendations for legislative action to improve the captive insurance company program.

**§ 56-13-123. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-124. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-125. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-126. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-127. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-128. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-129. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-130. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-131. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-132. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

**§ 56-13-133. Repealed by 2011 Pub.Acts, c. 468, § 1, eff. Sept. 1, 2011**

## **Part 2. Protected Cell Captive Insurance Companies**

### **§ 56-13-201. Formation of company; incorporation**

(a) One (1) or more sponsors may form a protected cell captive insurance company under this chapter. In addition to part 1 of this chapter, this part shall apply to protected cell captive insurance companies.

(b) A protected cell captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one (1) or more members, or as a manager-managed limited liability company.

### **§ 56-13-202. Definitions**

As used in this part, unless the context requires otherwise:

(1) “General account” means all assets and liabilities of a protected cell captive insurance company not attributable to a protected cell;

(2) “Participant” means a person or an entity, authorized to be a participant by [§ 56-13-205](#), and any affiliate of a participant, that is insured by a protected cell captive insurance company, if the losses of the participant are limited through a participant contract;

(3) “Participant contract” means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such participant to its

pro rata share of the assets of one (1) or more protected cells identified in such participant contract;

(4) “Protected cell” means a separate account established by a protected cell captive insurance company formed or licensed under this chapter, in which an identified pool of assets and liabilities are segregated and insulated by means of this chapter from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one (1) or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts;

(5) “Protected cell assets” means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company;

(6) “Protected cell captive insurance company” means any captive insurance company:

(A) In which the minimum capital and surplus required by this chapter are provided by one (1) or more sponsors;

(B) That is formed or licensed under this chapter;

(C) That insures the risks of separate participants through participant contracts; and

(D) That funds its liability to each participant through one (1) or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account;

(7) “Protected cell liabilities” means all liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company; and

(8) “Sponsor” means any person or entity that is approved by the commissioner to provide all or part of the capital and surplus required by this chapter and to organize and operate a protected cell captive insurance company.

### **§ 56-13-203. Company information filing requirements**

In addition to the information required by § 56-13-103(c)(1), each applicant-protected cell captive insurance company shall file with the commissioner the following:

- (1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how it will report such experience to the commissioner;
- (2) A statement acknowledging that all financial records of the applicant, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner or the commissioner's designated agent;
- (3) All contracts or sample contracts between the applicant and any participants; and
- (4) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

### **§ 56-13-204. Protected cells; establishment and maintenance; conditions**

A protected cell captive insurance company formed or licensed under this chapter may establish and maintain one (1) or more incorporated or unincorporated protected cells, to insure risks of one (1) or more participants, subject to the following conditions:

- (1)(A) A protected cell captive insurance company may establish one (1) or more protected cells if the commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell; provided, that the commissioner may require additional information in the plan of operation;
- (B) Upon the commissioner's written approval of the plan of operation, the protected cell captive insurance company, in accordance with the approved plan of operation, may attribute

insurance obligations with respect to its insurance business to the protected cell;

(C) A protected cell shall have its own distinct name or designation that shall include the words “protected cell” or “incorporated cell”;

(D) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell;

(E) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this chapter. Unless otherwise permitted by the organizational documents of a protected cell captive insurer, each incorporated protected cell of the protected cell captive insurer must have the same directors, secretary, and registered office as the protected cell captive insurer;

(F) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell shall be in cash or in readily marketable securities with established market values;

(2) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subdivision (2), the protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell

and otherwise allowed under applicable law;

(3) This chapter shall not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account;

(4)(A) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(i) Separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(ii) Attributable to one (1) protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells;

(B) If subdivision (4)(A) is violated, then the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing shall not be construed as an exclusive remedy;

(5) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell;

(6) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to

participants, and such other factors as may be provided in the participant contract or required by the commissioner;

(7) No asset of a protected cell shall be chargeable with liabilities arising out of any other insurance business the protected cell captive insurance company may conduct;

(8) No sale, exchange, or other transfer of assets shall be made by such protected cell captive insurance company between or among any of its protected cells without the consent of such protected cells;

(9) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a protected cell captive insurance company or participant without the commissioner's approval. In no event shall the commissioner's approval be given if the sale, exchange, transfer, dividend or distribution would result in the insolvency or impairment of a protected cell;

(10) All attributions of assets and liabilities to the protected cells and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between its general account and any protected cell or between any protected cells. The protected cell captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell captive insurance company is a party, including any payments made by or due to be made to the protected cell captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell;

(11) In connection with the conservation, rehabilitation, or liquidation of a protected cell captive insurance company, the assets and liabilities of a protected cell shall, to the extent the commissioner determines they are separable, at all times be kept separate from, and shall not be commingled with, those of other protected cells and the protected cell captive insurance

company;

(12) Each protected cell captive insurance company shall annually file with the commissioner such financial reports as required by the commissioner. Any such financial report shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

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

(14) No participant contract shall take effect without the commissioner's prior written approval. The addition of each new protected cell, the withdrawal of any participant, or the termination of any existing protected cell shall constitute a change in the plan of operation requiring the commissioner's prior written approval;

(15) The business written by a protected cell captive insurance company, with respect to each protected cell, shall be:

(A) Fronted by an insurance company licensed under the laws of any state;

(B) Reinsured by a reinsurer authorized or approved by this state; or

(C) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The commissioner may require the protected cell captive insurance company to increase the funding of any security arrangement established under this subdivision (15). If the form of security is a letter of credit, the letter of credit shall be issued or confirmed by a bank approved by the commissioner. A trust maintained pursuant to this subdivision (15) shall be established in a form and upon such terms



approved by the commissioner; and

(16) Notwithstanding this title or other laws of this state, and in addition to § 56-13-207, in the event of an insolvency of a protected cell captive insurance company where the commissioner determines that one (1) or more protected cells remain solvent, the commissioner may separate such cells from the protected cell captive insurance company and may allow, on application of the protected cell captive insurance company, for the conversion of such protected cells into one (1) or more new or existing protected cell captive insurance companies, or one (1) or more other captive insurance companies, pursuant to such plan of operation as the commissioner deems acceptable.

#### **§ 56-13-205. Participants in protected cell captive insurance companies**

(a) Associations, corporations, limited liability companies, partnerships, trusts, and other business entities may be participants in any protected cell captive insurance company formed or licensed under this chapter.

(b) A sponsor may be a participant in a protected cell captive insurance company.

(c) A participant need not be a shareholder of the protected cell captive insurance company or any affiliate thereof.

(d) A participant shall insure only its own risks through a protected cell captive insurance company, unless otherwise approved by the commissioner.

#### **§ 56-13-206. Investments**

Notwithstanding § 56-13-204, the assets of two (2) or more protected cells may be combined for purposes of investment, and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes. Protected cell captive insurance companies shall comply with the investment requirements contained in §§ 56-3-401 -- 56-3-409, as applicable; provided, that compliance with such investment requirements shall be waived for protected cell captive insurance companies to the extent that credit for reinsurance

ceded to reinsurers is allowed pursuant to § 56-13-112 or to the extent otherwise deemed reasonable and appropriate by the commissioner. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

**§ 56-13-207. Application of chapter 9 of title; management of assets and liabilities by receiver**

(a) Except as otherwise provided in this section, chapter 9 of this title shall apply to a protected cell captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a protected cell captive insurance company, the receiver shall manage the assets and liabilities of the protected cell captive insurance company pursuant to this part.

(c) Notwithstanding chapter 9 of this title:

(1) No assets of a protected cell shall be used to pay any expenses or claims other than those attributable to such protected cell; and

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

**Part 3. Branch Captive Insurance Companies**

**§ 56-13-301. Establishment of branch captive insurance company**

(a) A branch captive insurance company may be established in this state, in accordance with this chapter, to write in this state any insurance or reinsurance of the employee benefit business of its parent and affiliated companies that is subject to the Employee Retirement Income Security Act of 1974, as amended, or any insurance or reinsurance permitted to be written by captive insurance companies pursuant to this chapter. In addition to any applicable provisions

of this chapter, this part shall apply to branch captive insurance companies.

(b) No branch captive insurance company shall do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state.

### **§ 56-13-302. Definitions**

As used in this part, unless the context requires otherwise:

(1) “Alien captive insurance company” means any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in such jurisdiction;

(2) “Branch business” means any insurance business transacted by a branch captive insurance company in this state;

(3) “Branch captive insurance company” means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state. A branch captive insurance company is a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner; and

(4) “Branch operations” means any business operations of a branch captive insurance company in this state.

### **§ 56-13-303. License; security for payment of liabilities; form**

(a) No branch captive insurance company shall be issued a license by the commissioner unless it possesses and maintains, as security for the payment of liabilities attributable to the branch operations:

(1) An amount equal to the amount set forth in § 56-13-105 as the minimum capital require-

ment for a pure captive insurance company; and

(2) Reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, that, the commissioner may permit a branch captive insurance company to credit against any such reserve requirement any security for loss reserves that the branch captive insurance company may post with a ceding insurer or that may be posted by a reinsurer with the branch captive insurance company, and in either case if such security remains posted.

(b) Subject to the prior approval of the commissioner, the amounts required in subsection (a) may be held in the form of:

(1) A trust formed under a trust agreement and funded by assets acceptable to the commissioner;

(2) An irrevocable letter of credit issued or confirmed by a bank approved by the commissioner;

(3) With respect to the amounts required in subdivision (a)(1) only, cash on deposit with the commissioner; or

(4) Any combination of subdivisions (b)(1)-(3).

**§ 56-13-304. Captive insurance company seeking licensure as branch captive insurance company; petition by alien captive insurance company**

In the case of a captive insurance company seeking to become licensed as a branch captive insurance company, the alien captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of

the branch operations will promote the general good of this state. The alien captive insurance company in this state after the commissioner's certificate of authority is issued shall also comply with titles 48 and 61.

#### **§ 56-13-305. Reports and statements; filing**

Prior to March 1 of each year, or with the approval of the commissioner within sixty (60) days after its fiscal year-end, a branch captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two (2) of its executive officers. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

#### **§ 56-13-306. Examination of branch business; certificate of compliance**

(a) The examination of a branch captive insurance company pursuant to § 56-13-109 shall be of branch business and branch operations only, if the branch captive insurance company provides annually to the commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) As a condition of licensure, an alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

#### **§ 56-13-307. Tax application to branch business**

In the case of a branch captive insurance company, the tax provided for in § 56-13-114 shall

apply only to the branch business of such company.

#### **Part 4. Special Purpose Financial Captives**

##### **§ 56-13-401. Creation of special purpose financial captives**

This part provides for the creation of “special purpose financial captives” (SPFCs) exclusively to facilitate the securitization of one (1) or more risks, as a means of accessing alternative sources of capital and achieving the benefits of securitization. SPFCs are created for the limited purpose of entering into SPFC contracts and insurance securitization transactions and into related agreements to facilitate the accomplishment and execution of those transactions. The creation of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden sources of capital for insurers, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development and expand the interest of this state through its captive insurance program.

##### **§ 56-13-402. Definitions**

For purposes of this part:

- (1) “Affiliated company” means a company in the same corporate system as a parent, by virtue of common ownership, control, operation, or management;
- (2) “Control”, “controlling”, “controlled by”, and “under common control with” mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise; provided, that such power is not the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. Notwithstanding this subdivision (2), for purposes of this part, the fact that an SPFC

exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control;

(3) “Counterparty” means an SPFC's parent or affiliated company, a ceding insurer to the SPFC contract, or subject to the prior approval of the commissioner, a non-affiliated company;

(4) “Fair value” means:

(A) As to cash, the amount of the cash; and

(B) As to an asset other than cash:

(i) The quoted mid-market price for the asset in active markets shall be used if available; or

(ii) If the quoted mid-market price is not available:

(a) A value determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset; or

(b) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties;

(5) “Insolvency” or “insolvent” means that the SPFC or one (1) or more of its protected cells is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute, or the commissioner previously has established by order other criteria for determining the solvency of the SPFC or one (1) or more of its protected cells, in which case the SPFC is insolvent if it fails to meet that criteria;

(6) “Insurance securitization” and “securitization” mean a transaction or a group of related transactions, which:

(A) Include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements where all or part of the result of such transactions is used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer and by which:

(i) Proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of securities by the SPFC or any other person; or

(ii) A person provides one (1) or more letters of credit or other assets for the benefit of the SPFC; that the commissioner authorizes the SPFC to treat such letters of credit or other assets as admitted assets for purposes of the SPFC's annual report; and all or any part of such proceeds, letters of credit, or assets, as applicable, are used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer; and

(B) Do not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the SPFC's capital and surplus requirements under [§ 56-13-406](#);

(7) "Management" means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC;

(8) "Organizational document" means the SPFC's articles of incorporation, articles of charter, articles of organization, bylaws, operating agreement, or other formation documents as required by the secretary of state that establish the SPFC as a legal entity or prescribes its existence;

(9) "Parent" means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of an SPFC;

(10) "Protected cell" means a separate account established and maintained by an SPFC for one

(1) SPFC contract and the accompanying insurance securitization with a counterparty;



(11) “Securities” means those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(12) “SPFC” or “special purpose financial captive” means a captive insurance company that has received a certificate of authority from the commissioner for the limited purposes provided for in this part;

(13) “SPFC contract” means a contract between the SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business;

(14) “SPFC securities” means the securities issued by a SPFC; and

(15) “Surplus note” means an unsecured subordinated debt obligation deemed to be a surplus certificate under this title and otherwise possessing characteristics consistent with paragraph 3 of the Statement of Statutory Accounting Principals No. 41, as amended, National Association of Insurance Commissioners (NAIC).

#### **§ 56-13-403. Application of title provisions; exemption from chapter**

(a) No provisions of this title, other than those expressly provided in this part, shall apply to an SPFC, and those provisions apply only as modified by this part. If a conflict occurs between this title and this part, this part shall control.

(b) The commissioner, by rule, regulation, or order, may exempt an SPFC or its protected cells, on a case-by-case basis, from this chapter if the commissioner determines regulation under this chapter to be inappropriate given the nature of the risks to be insured.

#### **§ 56-13-404. Application for authority to transact insurance or reinsurance business; filings; examinations; rules; fees; taxes; grant of authority**

(a) An SPFC, when permitted by its organizational documents, may apply to the commissioner

for a certificate of authority to transact insurance or reinsurance business as authorized by this part. An SPFC shall only insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this part, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the commissioner.

(b) To transact business in this state, an SPFC shall:

(1) Comply with the procedure established in [§ 56-13-103\(c\)\(1\)](#);

(2) Obtain from the commissioner a certificate of authority authorizing it to conduct insurance or reinsurance business, or both, in this state;

(3) Hold at least one (1) management meeting each year in this state;

(4) Maintain its principal place of business in this state;

(5) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the commissioner shall be an agent of the SPFC upon whom any process, notice, or demand may be served;

(6) Provide such documentation of the insurance securitization as requested by the commissioner immediately upon closing of the transaction, including:

(A) An opinion of legal counsel with respect to compliance with this part and any other applicable laws as of the effective date of the transaction; and

(B) A statement under oath of its president and secretary demonstrating its financial condition; and

(7) Provide a complete set of the documentation of the insurance securitization to the commissioner immediately following closing of the transaction.

(c) A complete SPFC application shall include the following:

(1) A certified copy of the SPFC's organizational documents; and

(2) Evidence of:

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

(B) The adequacy of the expertise, experience, and character of the person or persons who manage the SPFC;

(C) The overall soundness of the SPFC's plan of operation;

(D) Other factors considered relevant by the commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations; and

(E) The applicant SPFC's financial condition, including the source and form of the minimum capitalization to be contributed to the SPFC;

(3) A plan of operation, consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which shall include:

(A) Draft documentation or, at the discretion of the commissioner, a written summary of all material agreements that are entered into to effectuate the SPFC contract and, before the effectuation of the SPFC contract, the insurance securitization, to include the names of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;

(B) The source and form of additional capitalization to be contributed to the SPFC;

(C) The proposed investment strategy of the SPFC;

(D) A description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled; and

(E) A pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract;

(4) Biographical affidavits in NAIC format of all of the prospective SPFC's officers and directors, providing the officers' and directors' legal names, any names under which they have or are conducting their affairs, and any other biographical information as the commissioner may request;

(5) An affidavit from the applicant SPFC verifying:

(A) The applicant SPFC complies with this part;

(B) The applicant SPFC operates only pursuant to this part;

(C) The applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the risks associated with the SPFC contract and the insurance securitization transaction;

(D) The securities proposed to be issued, if any, are valid legal obligations that are either properly registered with the commissioner or constitute an exempt security or form part of an exempt transaction; and

(6) Any other statements or documents required by the commissioner to evaluate and complete the licensing of the SPFC.

(d) In addition to the information required by subsection (c) and [§ 56-13-408](#), if a protected cell is used, then an applicant SPFC shall file with the commissioner:

(1) A business plan demonstrating how the applicant SPFC accounts for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how the applicant will report the experience to the commissioner;

(2) A statement acknowledging that all financial records of the SPFC, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner;

(3) All contracts or sample contracts between the SPFC and any counterparty, related to each protected cell; and

(4) A description of the expenses allocated to each protected cell.

(e) Information submitted pursuant to this section shall be and remain confidential, and shall not be made public by the commissioner without the written consent of the company, except that:

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

(A) The information sought is relevant to and necessary for the furtherance of such action or case;

(B) The information sought is unavailable from other non-confidential sources; and

(C) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner; and

(2) The commissioner shall have the discretion to disclose such information to a public officer having jurisdiction over the regulation of insurance in another state; provided, that:

(A) Such public official shall agree in writing to maintain the confidentiality of such informa-

tion; and

(B) The laws of the state in which such public official serves require such information to be and to remain confidential.

(f) [Section 56-13-109](#) applies to examinations, investigations, and processing conducted pursuant this part.

(g) SPFCs are subject to any rules or regulations promulgated pursuant to [§ 56-13-121](#), unless specifically exempted from such rule.

(h) An SPFC shall make payments to the commissioner in accordance with the fee schedule established in chapter 4, part 1 of this title. The commissioner may retain legal, financial, and examination services from outside the department to examine and investigate the application, the reasonable cost of which may be charged against the applicant. The commissioner also may use internal resources to examine and investigate the application based upon an hourly rate for the services performed or the usual and customary fee charged by the financial services industry for similar work subject to a minimum fee of twelve thousand dollars (\$12,000), six thousand dollars (\$6,000) of which is payable upon filing of the application, and the remainder upon licensure.

(i) An SPFC shall be subject to payment of premium taxes as required by [§ 56-13-114](#).

(j) The commissioner may grant a certificate of authority authorizing the SPFC to transact insurance or reinsurance business as an SPFC in this state, upon a finding by the commissioner that:

(1) The SPFC's proposed plan of operation provides a reasonable and expected successful operation;

(2) The terms of the SPFC contract and related transactions comply with this part;

(3) The proposed plan of operation is not hazardous to any counterparty;

(4) To the extent required by law or regulation, the commissioner or an equivalent regulatory authority of the state of domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or not disapproved the transaction; and

(5) The certificate of authority authorizing the SPFC to transact business is limited only to the insurance or reinsurance activities that the SPFC is authorized to conduct pursuant to this part.

(k) In evaluating the expectation of a successful operation, the commissioner shall consider, among other factors, whether the proposed SPFC and its management are of known good character and reasonably believed not to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with a person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(l) To ensure the proposed plan of operation is not hazardous to any counterparty, the commissioner may require reasonable safeguards in the SPFC's plan of operation where applicable and appropriate in the circumstance, including, without limitation, that certain assets of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an SPFC contract.

(m) A foreign or alien corporation or limited liability company, upon approval of the commissioner, may become a domestic SPFC after complying with [§ 56-13-103\(c\)\(1\)\(A\)](#). After such documents are successfully filed, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to transact business as an SPFC in this state and is subject to the authority and jurisdiction of this state. In connection with this redomestication, the commissioner may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

**[§ 56-13-405. Form of organization; documents; name; residency](#)**

(a) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the commissioner.

(b) The SPFC's organizational documents shall limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this part.

(c) The SPFC shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this state. Any name adopted by an SPFC shall comply with titles 48 and 61.

(d) An SPFC shall have at least three (3) incorporators or organizers, of whom at least two (2) shall be residents of this state.

(e) At least one (1) of the members of the management of the SPFC shall be a resident of this state.

(f) An SPFC formed pursuant to this part has the privileges of and is subject to all other requirements of this state's law applicable to its formation, as well as the applicable provisions contained in this part; provided, that this part controls if a conflict exists in this state's law.

#### **§ 56-13-406. Capitalization**

(a) An SPFC shall initially possess and maintain, minimum capitalization of not less than two hundred and fifty thousand dollars (\$250,000). All of the minimum initial capitalization shall be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be in the form of cash, cash equivalent, or securities invested as approved by the commissioner.

(b) Additional capitalization for the SPFC shall be determined, if so required, by the commissioner after giving due consideration to the SPFC's plan of operation, feasibility study, pro-formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the commissioner.



**§ 56-13-407. Allowed insurance, contacts, and other activities; reserves**

(a) An SPFC shall only insure the risks of a counterparty.

(b) No SPFC shall issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the commissioner.

(c) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this part. Those activities may include, but are not limited to:

(1) Entering into SPFC contracts;

(2) Issuing SPFC securities in accordance with applicable securities law;

(3) Complying with the terms of such contracts or securities;

(4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions; and

(5) Complying with trust indenture, reinsurance, or retrocession; and agreements necessary or incidental to effectuate an insurance securitization in compliance with this part or the plan of operation approved by the commissioner.

(d)(1) An SPFC shall discount its reserves at discount rates as approved by the commissioner.

(2) An SPFC shall maintain reserves that are actuarially sufficient to support the liabilities incurred by SPFC in reinsuring life insurance policies.

(3) An SPFC shall file annually with the commissioner an actuarial opinion on reserves

provided by an approved independent actuary.

#### **§ 56-13-408. Protected cells; establishment and maintenance**

(a) This section and § 56-13-409 provide a basis for the creation and use of protected cells by an SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient. If a conflict exists between this chapter and either this section or § 56-13-409, either this section or § 56-13-409 shall control, as applicable.

(b) An SPFC may establish and maintain one (1) or more protected cells with prior written approval of the commissioner and subject to compliance with the applicable provisions of this part and the following conditions:

(1) A protected cell shall be established only for the purpose of insuring or reinsuring risks of one (1) or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization;

(2) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the commissioner;

(3) Amounts attributed to a protected cell under this part, including assets transferred to a protected cell account, are owned by the SPFC, and no SPFC shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account;

(4) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities shall be made by an SPFC between the SPFC's general account and its protected cell or cells. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and the related insurance securitization

transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell and the performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, or any of them, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement, shall reflect the insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell;

(5) No assets of a protected cell shall be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, one (1) or more SPFC contracts may be attributed to a protected cell only if the SPFC contracts are intended to be, and ultimately are, part of a single securitization transaction;

(6) No sale, exchange, or other transfer of assets shall be made by the SPFC between, or among, any of the SPFC's protected cells without the consent of the commissioner, counterparty, and each protected cell;

(7) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both no sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a counterparty or parent without the commissioner's approval and the sale, exchange, transfer, dividend, or distribution shall not be approved if the sale, exchange, transfer, dividend, or distribution would result in a protected cell's insolvency or impairment; and

(8) An SPFC may pay interest or repay principal, or both, and make distributions or repayments with respect to any securities attributed to a particular protected cell from assets or cash flows relating to, or emerging from, the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with this part or as otherwise approved by the commissioner.

(c) No SPFC contract with, or attributable to, a protected cell shall take effect without the commissioner's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the commissioner's prior written approval. The commissioner may retain legal, financial, and examination services from outside the department to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or both.

(d) An SPFC utilizing protected cells shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the commissioner after giving due consideration of the SPFC's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured or reinsured. For purposes of determining the capitalization of each protected cell, an SPFC shall initially capitalize and maintain capitalization in each protected cell in the amount and manner required for an SPFC in [§ 56-13-406](#).

(e) The establishment of one (1) or more protected cells alone shall not constitute, and shall not be deemed to be, a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose.

#### **§ 56-13-409. Protected cells; business operations and procedures**

(a)(1) The creation of a protected cell shall not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding subdivision (a)(1), a protected cell shall have its own distinct name or designation that includes the words "protected cell". The SPFC shall transfer all assets attributable to the protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(3) Although a protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of a court by name as the property would have been if the

protected cell were a separate legal person.

(4) The property of an SPFC in a protected cell shall be served in its own name with process in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC.

(5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan approved by the commissioner, the SPFC shall close out the protected cell account.

(b) Nothing in this section shall be construed to prohibit an SPFC from contracting with, or arranging for, an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account, unless approved by the commissioner.

(c) Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor, with respect to that obligation, and the creditor is entitled to have recourse only to the assets of the SPFC's general account.

(d) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC contract counterparty and other creditors of the SPFC that are creditors only with respect to that protected cell and, accordingly, are entitled, in conformity with this part, to have recourse to the protected cell assets attributable to that protected cell. The assets of the protected cell are protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction, or is otherwise incurred,

with respect to a protected cell, then the obligation shall:

(1) Extend only to the protected cell assets attributable to that protected cell, and the person or counterparty, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell; and

(2) Not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and the person or counterparty, with respect to that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization held separate and apart from the capitalization of its protected cell or cells must be available at all times to pay expenses of or claims against the SPFC and may not be used to pay expenses or claims attributable to any protected cell.

(e) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate an insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the commissioner.

(f) An SPFC shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the SPFC and the protected cell assets and protected cell liabilities to each protected cell. An SPFC shall keep protected cell assets and protected cell liabilities:

(1) Separate and separately identifiable from the assets and liabilities of the SPFC's general account; and

(2) Attributable to one (1) protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(g) All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected

cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection (g), and subject to this part and other applicable law or regulations, the failure to include this language in the contracts or other documentation shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or reinsurers, or other claimants to circumvent the provisions of this section.

(h) An SPFC with protected cells shall annually file with the department accounting statements and financial reports required by this part, which, at least, shall:

(1) Detail the financial experience of each protected cell and the SPFC separately; and

(2) Provide the combined financial experience of the SPFC and all protected cells.

(i) An SPFC with protected cells shall notify the commissioner in writing within ten (10) business days of a protected cell becoming insolvent.

#### **§ 56-13-410. Securities; issuance**

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved plan of operation, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) Subject to the approval of the commissioner, an SPFC may lawfully:

(1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting; and

(2) Submit for prior approval of the commissioner periodic written requests for payments of interest on and repayments of principal of surplus notes. In lieu of approval of periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the SPFC, the commissioner may approve a formula or plan, which shall be included in the SPFC's plan of operation as amended from time to time, for payment of interest, principal, or both with respect to such surplus notes and debt obligations.

(d) The commissioner, without otherwise prejudicing the commissioner's authority, may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with the commissioner's ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(e) The obligation to repay principal or interest, or both, on the securities issued by the SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract.

#### **§ 56-13-411. Asset management agreements; investments**

An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of the SPFC under the SPFC contract.

#### **§ 56-13-412. Reinsurance contracts**

(a) An SPFC may reinsure only the risks of a ceding insurer, pursuant to a reinsurance contract. No SPFC shall issue a contract of insurance or a contract for assumption of risk or indemnification of loss other than such reinsurance contract.



(b) Unless otherwise approved in advance by the commissioner, no SPFC shall assume or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

(1) Proceeds from an insurance securitization or letters of credit or other assets described in [§ 56-13-402](#);

(2) Premium and other amounts payable by the ceding insurer to the SPFC pursuant to the reinsurance contract; and

(3) Any return on investment of the items described in subdivisions (b)(1) and (2).

(c) The reinsurance contract shall contain all provisions reasonably required or approved by the commissioner, which requirements shall take into account the laws applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance provided under such reinsurance contract.

(d) An SPFC may cede risks assumed through a reinsurance contract to one (1) or more reinsurers through the purchase of reinsurance, subject to the prior approval of the commissioner.

(e) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance securitization, and this part, provided such contracts and activities are included in the SPFC's plan of operation or are otherwise approved in advance by the commissioner. Such contracts and activities may include but are not limited to:

(1) Entering into SPFC contracts;

(2) Issuing SPFC securities in accordance with applicable securities law;

(3) Complying with the terms of such contracts or securities;

(4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions; and

(5) Complying with trust indenture, reinsurance, or retrocession; and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this part or the plan of operation approved by the commissioner.

(f) Unless otherwise approved in advance by the commissioner, a reinsurance contract shall not contain any provision for payment by the SPFC in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

(g) An SPFC shall notify the commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the SPFC to secure any obligation of the SPFC.

(h) In the SPFC insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPFC.

(i) Unless otherwise approved by the commissioner, no SPFC shall enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile.

(j) No SPFC shall:

(1) Have any direct obligation to the policyholders or reinsureds of the counterparty; or

(2) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

### **§ 56-13-413. Insurance securitization; insurance business**

No securities issued by an SPFC pursuant to an insurance securitization shall be considered to be insurance or reinsurance contracts. No investor in these securities or a holder of these securities, by sole means of this investment or holding, shall be considered to be transacting the business of insurance in this state. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with an insurance securitization.

### **§ 56-13-414. Asset administration; investments**

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the reinsurance contract, the insurance securitization, and other related agreements.

(b) In the insurance securitization, the security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the SPFC's obligations to the ceding insurer.

(c) No SPFC shall be subject to any restriction on investments other than the following:

(1) The commissioner may limit investments by an SPFC to those categories and amounts of authorized investments delineated in chapter 3, parts 3 or 4 of this title, as applicable and as amended from time to time;

(2) No SPFC shall make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the commissioner; and

(3) The commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the SPFC unless the investment is otherwise approved in its plan of operation or in an order issued to the SPFC pursuant to § 56-13-404, as either is amended from time to time.

#### **§ 56-13-415. Dividends**

(a) No SPFC shall declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent shall the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars (\$250,000). After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the commissioner that the SPFC can meet its obligations. Approval by the commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC by the commissioner.

(b) The dividends may be declared by the management of the SPFC if the dividends do not violate this part or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this part.

#### **§ 56-13-416. Plan of operation; material change; audit; records**

(a) Any material change of the SPFC's plan of operation, whether or not through an SPFC protected cell, shall require prior approval of the commissioner. The following transactions do not constitute material change for purposes of this section:

(1) If initially approved in the plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of all of these, of part or all of the securities issued pursuant to initial insurance securitization transactions; and

(2) A change and substitution in a counterparty to a swap transaction for an existing insurance

securitization as allowed pursuant to this part if the replacement swap counterparty carries a similar or higher rating to its predecessor with two (2) or more nationally recognized rating agencies.

(b) No later than six (6) months after the fiscal year-end of the SPFC, the SPFC shall file with the commissioner an audit by a certified public accounting firm of the financial statements of the SPFC and the trust accounts.

(c) An SPFC shall report using statutory accounting principles, unless the commissioner requires, approves, or accepts the use of generally accepted accounting principles or other comprehensive basis of accounting, in each case the commissioner may require, approve, or accept any appropriate or necessary modifications or adaptations. The commissioner may require the report to be supplemented by additional information.

(d) Each SPFC shall file by March 1, a statement of operations, using either generally accepted accounting principles or, if approved, accepted or required by the commissioner, statutory accounting principles with useful or necessary modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of operations shall include a statement of income, a balance sheet, and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract. The SPFC also may include with the filing risk based capital calculations and other adjusted capital calculations to assist the commissioner with evaluating the levels of the surplus of the SPFC for the year ending on December 31st of the previous year. The statements shall be prepared on forms required by the commissioner. In addition, the commissioner may require the filing of performance assessments of the SPFC contract.

(e) An SPFC shall maintain the SPFC's records in this state unless otherwise approved by the commissioner and shall make its records available for examination by the commissioner at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this part.

(f) All original books, records, documents, accounts, and vouchers shall be preserved and kept available in this state for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the commissioner. The original records, however, may be kept and maintained outside this state if, according to a plan adopted by the management of the SPFC and approved by the commissioner, it maintains suitable copies instead of the originals. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

#### **§ 56-13-417. Expiration or modification of authority to conduct activities**

At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with the SPFC contract, the authority granted by the commissioner expires or, in the case of retiring and surviving protected cells, is modified, and the SPFC is no longer authorized to conduct activities unless and until a new or modified certificate of authority is issued pursuant to a new filing under this part or as agreed by the commissioner.

#### **§ 56-13-418. Application of chapter 9 of title; management of assets and liabilities by receiver**

(a) Except as otherwise provided in this section, chapter 9 of this title shall apply in full to an SPFC.

(b) Upon any order of supervision, rehabilitation, or liquidation of an SPFC, the receiver shall manage the assets and liabilities of the SPFC pursuant to this part.

(c) Notwithstanding chapter 9 of this title:

(1) No asset of a protected cell shall be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) An SPFC's capital and surplus shall, at all times, be available to pay any expenses of or claims against the SPFC.

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