

FIRST REGULAR SESSION

HOUSE BILL NO. 238

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE YATES.

Read 1st time January 4, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0057L.01I

AN ACT

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

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

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

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

- 2 (1) "Affiliated company", any company in the same corporate system as a parent,
3 an industrial insured, or a member organization by virtue of common ownership, control,
4 operation, or management;
5 (2) "Alien captive insurance company", any insurance company formed to write
6 insurance business for its parents and affiliates and licensed under the laws of an alien
7 jurisdiction that imposes statutory or regulatory standards in a form acceptable to the
8 director on companies transacting the business of insurance in such jurisdiction;
9 (3) "Annuity", a contract issued for a valuable consideration under which the
10 obligations are assumed with respect to periodic payments for a specified term or terms or
11 where the making or continuance of all or of some of such payments, or the amount of any
12 such payments, is dependent upon the continuance of human life;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 13 (4) "Association", any legal association of individuals, corporations, limited liability
14 companies, partnerships, associations, or other entities that has been in continuous
15 existence for at least one year, the member organizations of which or which does itself,
16 whether or not in conjunction with some or all of the member organizations:
- 17 (a) Own, control, or hold with power to vote all of the outstanding voting securities
18 of an association captive insurance company incorporated as a stock insurer; or
19 (b) Have complete voting control over an association captive insurance company
20 incorporated as a mutual insurer;
- 21 (5) "Association captive insurance company", any company that insures risks of
22 the member organizations of the association and their affiliated companies;
- 23 (6) "Branch business", any insurance business transacted by a branch captive
24 insurance company in this state;
- 25 (7) "Branch captive insurance company", any alien captive insurance company
26 licensed by the director to transact the business of insurance in this state through a
27 business unit with a principal place of business in this state;
- 28 (8) "Branch operations", any business operations of a branch captive insurance
29 company in this state;
- 30 (9) "Captive insurance company", any pure captive insurance company,
31 association captive insurance company, or industrial insured captive insurance company
32 formed or licensed under sections 379.1300 to 379.1350. For purposes of sections 379.1300
33 to 379.1350, a branch captive insurance company shall be a pure captive insurance
34 company with respect to operations in this state, unless otherwise permitted by the
35 director;
- 36 (10) "Controlled unaffiliated business", any company:
- 37 (a) That is not in the corporate system of a parent and affiliated companies;
38 (b) That has an existing contractual relationship with a parent or affiliated
39 company; and
- 40 (c) Whose risks are managed by a pure captive insurance company in accordance
41 with section 379.1338;
- 42 (11) "Director", the director of the department of insurance;
- 43 (12) "Excess workers' compensation insurance", in the case of an employer that has
44 insured or self-insured its workers' compensation risks in accordance with applicable state
45 or federal law, insurance in excess of a specified per-incident or aggregate limit established
46 by the director;
- 47 (13) "Industrial insured", an insured:

- 48 (a) Who procures the insurance of any risk or risks by use of the services of a full-
49 time employee acting as an insurance manager or buyer;
- 50 (b) Whose aggregate annual premiums for insurance on all risks total at least
51 twenty-five thousand dollars; and
- 52 (c) Who has at least twenty-five full-time employees;
- 53 (14) "Industrial insured captive insurance company", any company that insures
54 risks of the industrial insureds that comprise the industrial insured group and their
55 affiliated companies;
- 56 (15) "Industrial insured group", any group of industrial insureds that collectively:
- 57 (a) Own, control, or hold with power to vote all of the outstanding voting securities
58 of an industrial insured captive insurance company incorporated as a stock insurer; or
- 59 (b) Have complete voting control over an industrial insured captive insurance
60 company incorporated as a mutual insurer;
- 61 (16) "Member organization", any individual, corporation, limited liability
62 company, partnership, association, or other entity that belongs to an association;
- 63 (17) "Mutual corporation", a corporation organized without stockholders and
64 includes a nonprofit corporation with members;
- 65 (18) "Parent", a corporation, limited liability company, partnership, other entity,
66 or individual, that directly or indirectly owns, controls, or holds with power to vote more
67 than fifty percent of the outstanding voting:
- 68 (a) Securities of a pure captive insurance company organized as a stock
69 corporation; or
- 70 (b) Membership interests of a pure captive insurance company organized as a
71 nonprofit corporation;
- 72 (19) "Pure captive insurance company", any company that insures risks of its
73 parent and affiliated companies or controlled unaffiliated business.

379.1302. 1. Any captive insurance company, when permitted by its articles of
2 association, charter, or other organizational document, may apply to the director for a
3 license to do any and all insurance and annuity contracts comprised in section 376.010,
4 RSMo, and subsection 1 of section 379.010, other than workers' compensation and
5 employers' liability; provided, however, that:

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

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

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

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

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

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

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

25 (8) No captive insurance company shall transact business as a risk retention group
26 under sections 375.1080 to 357.1105, RSMo.

27 2. No captive insurance company shall do any insurance business in this state
28 unless:

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

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

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

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

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

41 3. (1) Before receiving a license, a captive insurance company shall:

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

45 (b) Submit to the director for approval a description of the coverages, deductibles,
46 coverage limits, and rates, together with such additional information as the director may
47 reasonably require. In the event of any subsequent material change in any item in such
48 description, the captive insurance company shall submit to the director for approval an
49 appropriate revision and shall not offer any additional kinds of insurance until a revision
50 of such description is approved by the director. The captive insurance company shall
51 inform the director of any material change in rates within thirty days of the adoption of
52 such change.

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

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

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

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

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

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

62 (3) Information submitted under this subsection shall be and remain confidential,
63 and shall not be made public by the director or an employee or agent of the director
64 without the written consent of the company; except that:

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

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

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

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

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

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

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

80 (4) Each captive insurance company shall pay to the director a nonrefundable fee
81 of two hundred dollars for examining, investigating, and processing its application for
82 license, and the director is authorized to retain legal, financial, and examination services
83 from outside the department, the reasonable cost of which may be charged against the
84 applicant. The provisions of sections 374.160 to 374.162 and sections 375.202 to 375.207,
85 RSMo, shall apply to examinations, investigations, and processing conducted under the
86 authority of this section. In addition, each captive insurance company shall pay a license
87 fee for the year of registration and a renewal fee for each year thereafter of three hundred
88 dollars.

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

 379.1304. No captive insurance company shall adopt a name that is the same,
2 deceptively similar, or likely to be confused with or mistaken for any other existing
3 business name registered in the state of Missouri.

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

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

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

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

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

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

 379.1308. No captive insurance company shall pay a dividend out of, or other
2 distribution with respect to, capital or surplus without the prior approval of the director.
3 Approval of an ongoing plan for the payment of dividends or other distributions shall be
4 conditioned upon the retention, at the time of each payment, of capital or surplus in excess
5 of amounts specified by or determined in accordance with formulas approved by the
6 director. Notwithstanding the provisions of section 355.661, RSMo, a captive insurance

7 company organized under chapter 355, RSMo, may make such distributions as are in
8 conformity with its purposes and approved by the director.

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

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

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

9 (2) Incorporated as a mutual insurer without capital stock, the governing body of
10 which is elected by its insureds; or

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

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

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

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

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

22 (b) The character, reputation, financial responsibility, insurance experience, and
23 business qualifications of the officers and directors; and

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

25

26 The articles of incorporation, such certificate, and the organization fee shall be transmitted
27 to the secretary of state, who shall thereupon record both the articles of incorporation and
28 the certificate;

29 (2) Formed as a limited liability company, before the articles of organization are
30 transmitted to the secretary of state, the organizers shall petition the director to issue a
31 certificate setting forth the director's finding that the establishment and maintenance of
32 the proposed company will promote the general good of the state. In arriving at such a
33 finding, the director shall consider the items set forth in paragraphs (a) to (c) of subdivision
34 (1) of this subsection.

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

37 **6. In the case of a captive insurance company:**

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

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

42 **7. Other than captive insurance companies formed as limited liability companies**
43 **under chapter 347, RSMo, or as nonprofit corporations under chapter 355, RSMo, captive**
44 **insurance companies formed as corporations under sections 379.1300 to 379.1350 shall**
45 **have the privileges and be subject to chapter 351, RSMo, as well as the applicable**
46 **provisions contained in sections 379.1300 to 379.1308. In the event of conflict between the**
47 **provisions of such general corporation law and sections 379.1300 to 379.1350, sections**
48 **379.1300 to 379.1350 shall control.**

49 **8. Captive insurance companies formed under sections 379.1300 to 379.1350:**

50 **(1) As limited liability companies shall have the privileges and be subject to the**
51 **provisions of chapter 347, RSMo, as well as the applicable provisions contained in sections**
52 **379.1300 to 379.1350. In the event of a conflict between chapter 347, RSMo, and sections**
53 **379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control; or**

54 **(2) As nonprofit corporations shall have the privileges and be subject to the**
55 **provisions of chapter 355, RSMo, as well as the applicable provisions contained in sections**
56 **379.1300 to 379.1350. In the event of conflict between chapter 355, RSMo, and sections**
57 **379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control.**

58 **9. The provisions of section 375.355, sections 379.980 to 379.988, and chapter 382,**
59 **RSMo, pertaining to mergers, consolidations, conversions, mutualizations,**
60 **redomestications, and mutual holding companies shall apply in determining the procedures**
61 **to be followed by captive insurance companies in carrying out any of the transactions**
62 **described therein; except that:**

63 **(1) The director may waive or modify the requirements for public notice and**
64 **hearing in accordance with rules which the director may adopt addressing categories of**
65 **transactions. If a notice of public hearing is required, but no one requests a hearing, then**
66 **the director may cancel the hearing;**

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

69 **10. The articles of incorporation or bylaws of a captive insurance company formed**
70 **as a corporation may authorize a quorum of its board of directors to consist of no fewer**

71 than one-third of the full board of directors determined, provided that a quorum shall not
72 consist of fewer than two directors.

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

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

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

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

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

379.1314. 1. At least once every three years and whenever the director determines
2 it to be prudent, the director shall personally, or by some competent person appointed by
3 the director, visit each captive insurance company and thoroughly inspect and examine its
4 affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether
5 it has complied with the provisions of sections 379.1300 to 379.1350. The director may
6 enlarge such three-year period to five years, provided the captive insurance company is
7 subject to a comprehensive annual audit during such period of a scope satisfactory to the
8 director by independent auditors approved by the director. The expenses and charges of
9 the examination shall be paid to the state by the company or companies examined and the
10 director shall issue his or her warrants for the proper charges incurred in all examinations,
11 as provided in sections 374.160 and 374.162, RSMo.

12 **2. The provisions of sections 374.202 to 374.207, RSMo, shall apply to examinations**
13 **conducted under this section.**

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

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

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

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

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

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

3. 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 director, and any such loan or investment shall be evidenced by documentation approved by the director.

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

2. Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of section 375.346, RSMo. Prior approval of the director shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers or under reinsurance agreements not complying with section 375.246, RSMo, except for business written by an alien captive insurance company outside of the United States.

3. In addition to reinsurers authorized under the provisions of section 375.246, RSMo, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has been authorized by the director. The director may require any other 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 director may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the director'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.

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

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

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

379.1326. 1. Each captive insurance company shall pay to the director of revenue,
2 **on or before May first of each year, a tax at the rate of thirty-eight-hundredths of one**
3 **percent on the first twenty million dollars and two hundred eighty-five-thousandths of one**
4 **percent on the next twenty million dollars and nineteen-hundredths of one percent on the**
5 **next twenty million dollars and seventy-two-thousandths of one percent on each dollar**
6 **thereafter on the direct premiums collected or contracted for on policies or contracts of**
7 **insurance written by the captive insurance company during the year ending December**
8 **thirty-first next preceding, after deducting from the direct premiums subject to the tax the**
9 **amounts paid to policyholders as return premiums which shall include dividends on**
10 **unabsorbed premiums or premium deposits returned or credited to policyholders;**
11 **provided, however, that no tax shall be due or payable as to considerations received for**
12 **annuity contracts.**

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

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

29 **4. Every captive insurance company shall, on or before February first each year,**
30 **make a return on a form provided by the director, verified by the affidavit of the**
31 **company's president and secretary or other authorized officers, to the director stating the**
32 **amount of all direct premiums received and assumed reinsurance premiums received,**
33 **whether in cash or in notes, during the year ending on December thirty-first next**
34 **preceding. Upon receipt of such returns, the director of the department of insurance shall**
35 **verify the same and certify the amount of tax due from the various companies on the basis**
36 **and at the rate provided in subsections 1 to 3 of this section, and shall certify the same to**
37 **the director of revenue, on or before March thirty-first of each year. The director of**
38 **revenue shall immediately thereafter notify and assess each company the amount of tax**
39 **due.**

40 **5. A captive insurance company failing to make returns as required by subsection**
41 **4 of this section or failing to pay within the time required all taxes assessed by this section,**
42 **shall be subject to the provisions of sections 148.375 and 148.410, RSMo.**

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

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

46 **(1) In the case of stock corporations, the direct or indirect ownership of eighty**
47 **percent or more of the outstanding voting stock of two or more corporations by the same**
48 **shareholder or shareholders; and**

49 **(2) In the case of mutual or nonprofit corporations, the direct or indirect ownership**
50 **of eighty percent or more of the surplus and the voting power of two or more corporations**
51 **by the same member or members.**

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

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

59 **10. The tax provided for in this section shall be calculated on an annual basis,**
60 **notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a**

61 multiyear basis. In the case of multiyear policies or contracts, the premium shall be
62 prorated for purposes of determining the tax under this section.

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

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

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

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

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

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

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

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

2. 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.

379.1342. In the case of a branch captive insurance company, as security for the payment of liabilities attributable to the branch operations, the director shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The amount of such security shall be no less than the amount set forth in subdivision (1) of subsection 1 of section 379.1306 and the reserves on such insurance policies or such reinsurance contracts, 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, the director may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit shall be established by or issued or confirmed by a bank chartered in this state or a member bank of the Federal Reserve System.

379.1344. In the case of a captive insurance company licensed as a branch captive, the alien captive insurance company shall petition the director to issue a certificate setting forth the director's finding that, after considering the character, reputation, financial

4 responsibility, insurance experience, and business qualifications of the officers and
5 directors of the alien captive insurance company, the licensing and maintenance of the
6 branch operations will promote the general good of the state. The alien captive insurance
7 company may register to do business in this state after the director's certificate is issued.

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

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

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

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

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