

CHAPTER 85

INSURANCE

HOUSE BILL 94-1169

BY REPRESENTATIVES Owen, Schauer, and Tucker;
also SENATOR Norton.

AN ACT

CONCERNING CAPTIVE INSURANCE COMPANIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-6-102, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-102. Legislative declaration. It is the policy of the general assembly and the intent and purpose of this article to simplify the procedures for organizing and regulating the operations of captive insurance companies within the state of Colorado, TO ENCOURAGE THE FORMATION OF SUCH COMPANIES WHILE RETAINING THE INTEGRITY, FINANCIAL SOLVENCY, AND STABILITY OF INSURANCE OPERATIONS, AND thereby promoting ~~the~~ economic development and the general welfare of the people of the state of Colorado.

SECTION 2. 10-6-103, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10-6-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AFFILIATED COMPANY" MEANS ANY COMPANY THAT DIRECTLY OR INDIRECTLY OWNS OR CONTROLS A PURE CAPTIVE INSURANCE COMPANY AND ANY COMPANY OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A PARENT OR SUBSIDIARY.

(2) "CAPTIVE INSURANCE COMPANY" MEANS A PURE CAPTIVE INSURANCE COMPANY OR A GROUP CAPTIVE INSURANCE COMPANY.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(3) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE.

(4) "GROUP" MEANS ANY ASSOCIATION OF INDIVIDUAL PROFESSIONAL PRACTITIONERS, CORPORATIONS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES, OR ASSOCIATIONS WITH SUBSTANTIALLY SIMILAR OR RELATED RISKS, THE MEMBERS OF WHICH COLLECTIVELY OWN, CONTROL, OR HOLD WITH POWER TO VOTE ALL OF THE OUTSTANDING VOTING SECURITIES OR OTHER OWNERSHIP INTEREST OF A GROUP CAPTIVE INSURANCE COMPANY.

(5) "GROUP CAPTIVE INSURANCE COMPANY" MEANS ANY DOMESTIC INSURANCE COMPANY LICENSED UNDER THE PROVISIONS OF THIS ARTICLE FOR THE PURPOSE OF MAKING INSURANCE AND REINSURANCE, INCLUDING ANY COMPANY ORGANIZED UNDER THE FEDERAL "LIABILITY RISK RETENTION ACT OF 1986", AS AMENDED, 15 U.S.C. SECS. 3901 TO 3905. SUCH INSURANCE AND REINSURANCE SHALL BE LIMITED TO THE RISKS, HAZARDS, AND LIABILITIES OF ITS GROUP MEMBERS AND EMPLOYEE BENEFITS COVERAGES.

(6) "IMPAIRMENT" MEANS THAT A CAPTIVE INSURANCE COMPANY'S PERMISSIBLE ASSETS ARE LESS THAN ITS LIABILITIES, INCLUDING AS A LIABILITY THE AGGREGATE AMOUNT OF ANY OUTSTANDING CAPITAL STOCK, OR THAT ITS CAPITAL AND SURPLUS ARE LESS THAN THE CAPITAL AND SURPLUS ESTABLISHED PURSUANT TO SECTION 10-6-116.

(7) "INSOLVENCY" MEANS THAT A CAPTIVE INSURANCE COMPANY'S PERMISSIBLE ASSETS ARE LESS THAN ALL OF ITS LIABILITIES, EXCLUDING FROM SUCH LIABILITIES THE AGGREGATE AMOUNT OF ANY OUTSTANDING CAPITAL STOCK.

(8) "PARENT" MEANS A CORPORATION, PARTNERSHIP, OR INDIVIDUAL WHO DIRECTLY OR INDIRECTLY OWNS, CONTROLS, OR HOLDS WITH POWER TO VOTE MORE THAN FIFTY PERCENT OF THE OUTSTANDING VOTING SECURITIES OR OTHER OWNERSHIP INTEREST OF A PURE CAPTIVE INSURANCE COMPANY.

(9) "PURE CAPTIVE INSURANCE COMPANY" MEANS ANY DOMESTIC INSURANCE COMPANY LICENSED UNDER THE PROVISIONS OF THIS ARTICLE FOR THE PURPOSE OF MAKING INSURANCE AND REINSURANCE. SUCH INSURANCE AND REINSURANCE SHALL BE LIMITED TO THE RISKS, HAZARDS, AND LIABILITIES OF ITS PARENT AND AFFILIATED ENTITIES ALONG WITH EMPLOYEE BENEFITS COVERAGES.

SECTION 3. 10-6-105, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-105. Employee benefits - minimum coverages. (1) ~~Any captive insurance company when permitted by its articles of incorporation, other documents of organization, or charter may apply to the commissioner for a certificate of authority to engage in insurance business in the state of Colorado to make insurance and reinsurance as provided in section 10-3-102 (1) (a) and (1) (c) (III) to (1) (c) (IX); including insurance against professional liability, errors and omissions, and commercial general liability, except as limited by section 10-6-104.~~ ANY CAPTIVE INSURANCE COMPANY ISSUING EMPLOYEE BENEFITS COVERAGES, AS APPROVED BY THE COMMISSIONER, IN ITS PLAN OF OPERATION SHALL PROVIDE THE MINIMUM

MANDATED INSURANCE COVERAGES REQUIRED OF INSURANCE COMPANIES IN THE STATE.

(2) (a) (Deleted by amendment, L. 91, p. 1224, 4, effective May 24, 1991.)

(b) ~~Any association captive insurance company or industrial insured captive insurance company applying for a certificate of authority to engage in the insurance business in the state of Colorado must demonstrate to the satisfaction of the commissioner that the total insurance coverage necessary to insure all risks, hazards, and liabilities of the association or industrial insured group and its member organizations would develop, in the aggregate, gross annual premiums of at least one million dollars.~~

SECTION 4. 10-6-106, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

10-6-106. Names of companies. No captive insurance company shall adopt the name of any existing company ~~transacting a similar business;~~ nor any name ~~so similar as to be calculated to mislead~~ WHICH MAY BE MISLEADING TO the public.

SECTION 5. 10-6-107, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-107. Formation and operation of captive insurance companies.

(1) ~~Whenever any number of persons associate to form a captive insurance company, they~~ NO PERSON SHALL ENGAGE IN THE BUSINESS OF INSURANCE AS A CAPTIVE INSURANCE COMPANY WITHOUT FIRST APPLYING FOR AND OBTAINING A CERTIFICATE OF AUTHORITY FROM THE COMMISSIONER STATING THAT SUCH PERSON COMPLIES WITH THE LAWS OF THIS STATE. APPLICANTS shall submit articles of incorporation or other documents of organization ~~which shall be issued in triplicate, to the commissioner and attorney general for examination. After being~~ IF ACCEPTED AND approved by ~~them,~~ the COMMISSIONER AND THE ATTORNEY GENERAL, said articles or other documents of organization shall be filed ~~and recorded whenever required by law~~ in the office of the secretary of state. A copy of said articles or other documents of organization, certified by the secretary of state, shall be filed with the commissioner. AMENDMENTS TO ORGANIZATIONAL DOCUMENTS SHALL BE FILED WITH THE COMMISSIONER AND IN THE OFFICE OF THE SECRETARY OF STATE.

(2) ~~When not less than the amount required by section 10-6-116 has been paid in by the incorporators or the organizers of the proposed entity and deposited with the commissioner, or when an irrevocable letter of credit in such amount has been filed with and accepted by the commissioner, the commissioner shall cause an examination to be made either by himself, an employee of the division of insurance, or some disinterested person specially appointed by him for the purpose, and, if the provisions of this article have been complied with by said company, as far as applicable thereto, the person making the examination shall so certify. Such certificate shall be filed in the office of the commissioner, who shall thereupon deliver to such company a certified copy thereof which, together with a copy of the articles of incorporation or other documents of organization, shall be filed in the office of the clerk and recorder of the county wherein the company is to be located before the authority to commence business is granted. All the reasonable expenses and charges of examination by a~~

~~specially appointed disinterested person shall be paid directly by the applicant.~~

~~(3) Whenever any such captive insurance company thereafter desires to amend its articles of incorporation or other documents of organization, it shall submit its proposal in triplicate and, if the commissioner, with the advice of the attorney general, finds the same to have been legally adopted and to be in due legal form and not in conflict with the provisions of law governing such companies, then, and not otherwise, he shall approve any such amendment, and such certificate of amendment shall be filed with the secretary of state. After being approved by them, the said amendments to such articles or other documents of organization shall be filed and recorded whenever required by law in the office of the secretary of state. A copy of said amendments to such articles or other documents of organization, certified by the secretary of state, shall be filed with the commissioner.~~ APPLICANTS FOR A CAPTIVE INSURANCE COMPANY CERTIFICATE OF AUTHORITY SHALL FILE A DETAILED PLAN OF OPERATION, WHICH SHALL INCLUDE A FEASIBILITY STUDY AND ANY OTHER INFORMATION DEEMED RELEVANT BY THE COMMISSIONER IN ASCERTAINING WHETHER THE PROPOSED CAPTIVE INSURANCE COMPANY WILL BE ABLE TO MEET ITS POLICY OBLIGATIONS. THE COMMISSIONER IS AUTHORIZED TO REFUSE TO ISSUE A CERTIFICATE OF AUTHORITY UNTIL THE COMMISSIONER IS REASONABLY SATISFIED THAT THE PLAN OF OPERATION CONTAINS SUFFICIENT INDICATION OF A SUCCESSFUL INSURANCE OPERATION.

~~(4) The principal and home office of every captive insurance company incorporated under this article shall be in the state of Colorado.~~ EACH CAPTIVE INSURANCE COMPANY SHALL PAY TO THE DIVISION OF INSURANCE A NONREFUNDABLE APPLICATION FEE OF FIVE HUNDRED DOLLARS IN ADDITION TO ANY REASONABLE EXPENSES TO BE PAID PURSUANT TO SECTION 10-6-120. EACH CAPTIVE INSURANCE COMPANY SHALL PAY AN ANNUAL LICENSE FEE OF FIVE HUNDRED DOLLARS.

(5) THE PRINCIPAL AND HOME OFFICE OF EVERY CAPTIVE INSURANCE COMPANY INCORPORATED UNDER THIS ARTICLE SHALL BE IN THE STATE OF COLORADO. EVERY CAPTIVE INSURANCE COMPANY SHALL MAINTAIN SUCH BOOKS AND RECORDS IN THIS STATE AS WILL ENABLE THE FINANCIAL EXAMINATION OF THE COMPANY BY THE COMMISSIONER.

(6) GROUP CAPTIVE INSURANCE COMPANIES SHALL LIMIT THEIR EXPOSURE TO LOSS ON ANY ONE RISK OR HAZARD TO AN AMOUNT NOT TO EXCEED TEN PERCENT OF CAPITAL AND SURPLUS, UNLESS SUCH RISK OR HAZARD IS REINSURED THROUGH AN INSURANCE COMPANY WHICH IS LICENSED OR ACCREDITED IN THIS STATE, OR UNLESS OTHER SAFEGUARDS TO ITS FINANCIAL SOLVENCY AND STABILITY ARE IN PLACE AND ARE ACCEPTABLE TO THE COMMISSIONER.

SECTION 6. 10-6-108, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10-6-108. Control of operations. THE BUSINESS OF EACH CAPTIVE INSURANCE COMPANY SHALL BE MANAGED BY A BOARD OF DIRECTORS OR OTHER GOVERNING BODY CONSISTING OF NOT LESS THAN THREE PERSONS. THE ORGANIZATIONAL DOCUMENTS OR BYLAWS SHALL PROVIDE FOR THE TERMS, MEETINGS, AND ELECTIONS OF THE DIRECTORS AND OFFICERS OF THE GOVERNING BODY. NO INDIVIDUAL MAY SERVE AS A DIRECTOR OR OFFICER WHO HAS BEEN CONVICTED OF FRAUD INVOLVING

ANY FINANCIAL INSTITUTION OR OF A FELONY INVOLVING MISUSE OF FUNDS.

SECTION 7. 10-6-113, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-113. Authority to do business. (1) ~~No captive insurance company shall transact any insurance business in this state unless it first procures from the commissioner a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business.~~ The certificate of authority ISSUED TO A CAPTIVE INSURANCE COMPANY shall expire on June 30 each year and shall be renewed annually, UPON PAYMENT OF ALL REQUIRED FEES AND FILING OF ALL LAWFULLY REQUIRED REPORTS, if the company has continued to comply with the laws of this state.

(2) ~~Each captive insurance company shall pay to the division of insurance the fees set forth in section 10-3-207 for examining, investigating, and processing its application for license. Within sixty THIRTY BUSINESS days from the day the division OF INSURANCE receives both the application and the applicable fee A COMPLETE FILING, the division shall approve or deny such application. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each year thereafter in the amount set forth in section 10-3-207 RENDER A DECISION ON THE APPLICATION.~~

SECTION 8. 10-6-114, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-114. Reports and statements. (1) Every captive insurance company doing business in this state ~~on or before the first day of March in each year,~~ shall render to the commissioner a report, signed and sworn to by its chief officers, of its condition as of ~~the preceding thirty-first day of December~~ THE END OF EACH FISCAL YEAR, which shall ~~include a detailed statement of assets and liabilities, the amount and character of its business transacted, moneys received and expended during the year, any further details of expenditures, and~~ BE IN A FORM PRESCRIBED BY THE COMMISSIONER AND CONTAIN such ~~other~~ information ~~which~~ AS the commissioner deems necessary. ~~Upon submission of a request by the company, the commissioner may approve an extension of the filing date up to but not later than July 1. SUCH REPORT SHALL BE FILED WITHIN SIXTY DAYS FOLLOWING THE COMPANY'S FISCAL YEAR END. THE FISCAL YEAR SHALL BE THE CALENDAR YEAR FOR ALL GROUP CAPTIVE INSURANCE COMPANIES. THE COMMISSIONER MAY REQUIRE THAT THE ANNUAL REPORT INCLUDE THE INFORMATION SET FORTH IN THE THEN-CURRENT CONVENTION BLANK OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, INCLUDING ANY INSTRUCTIONS, PROCEDURES, AND GUIDELINES CONSISTENT WITH THIS ARTICLE.~~

(2) The commissioner may prescribe the format and frequency of other reports TO BE FILED, which may include, but shall not be limited to, summary loss reports, quarterly financial statements, ~~and audited ANNUAL financial statements, as permitted by law~~ AND OTHER PROFESSIONAL REPORTS.

(3) ~~The commissioner shall revoke and refuse to reissue the certificate of authority of any captive insurance company failing or refusing to furnish the reports or other information requested by the commissioner as provided in this section.~~

SECTION 9. 10-6-115, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-115. Grounds and procedure for suspension or revocation of certificate - review by commissioner. (1) The certificate of authority of a captive insurance company to do business in this state may be revoked or suspended by the commissioner for any ~~reason specified in~~ VIOLATION OF this article, INCLUDING WITHOUT LIMITATION ~~Specifically, the certificate may be suspended or revoked by the commissioner for any of the following reasons:~~

- (a) ~~Insolvency or impairment; as defined in section 10-3-212;~~
- (b) Failure to meet the requirements of section 10-6-116;
- (c) Refusal or failure to submit an annual report, as required by section 10-6-114, or any other report required by law or by lawful order of the commissioner;
- (d) Failure to comply with the provisions of its own charter, other organizational documents, ~~or~~ bylaws, OR APPROVED PLAN OF OPERATION, if such failure renders its operation hazardous to the public or to its policyholders;
- (e) Failure to submit to examination; ~~or any legal obligation relative thereto;~~
- (f) Refusal OR FAILURE to pay the cost of examination, REQUIRED PREMIUM TAXES, OR OTHER PENALTY OR FEE ASSESSED as authorized by law;
- (g) Use of methods which, although not otherwise specifically proscribed by law, ~~nevertheless~~ render its operation hazardous or its condition unsound; ~~with respect to its policyholders;~~
- (h) REFUSAL OR failure otherwise to comply with ~~the~~ THIS ARTICLE OR ANY OTHER laws of this state. ~~if such failure renders its operation hazardous to its policyholders.~~

(2) If the commissioner finds upon examination, hearing, or other evidence that any captive insurance company has committed any of the acts specified in subsection (1) of this section, the commissioner may, AFTER NOTICE AND HEARING IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., suspend or revoke such certificate of authority. ~~if he deems it in the best interest of the public and the policyholders of the company; notwithstanding any other provision of this title. Notice of any revocation or suspension shall be published in one or more daily newspapers in Denver having a general state circulation. Before suspending or revoking any certificate of authority of an insurance company, the commissioner shall grant the company fifteen days in which to show cause why such action should not be taken. Any final action of the commissioner pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106(11), C.R.S.~~ THE COMMISSIONER MAY ISSUE AN ORDER APPOINTING A SUPERVISOR TO MONITOR THE OPERATIONS OF THE COMPANY IF THE COMMISSIONER DEEMS IT IN THE BEST INTEREST OF THE PUBLIC OR OF THE POLICYHOLDERS OF THE COMPANY. THE COMMISSIONER MAY COMMENCE A DELINQUENCY ACTION PURSUANT TO PART 4 OF ARTICLE 3 OF THIS TITLE OR A LIQUIDATION OR REHABILITATION ACTION PURSUANT TO PART 5 OF ARTICLE 3 OF THIS TITLE.

(3) ANY FINAL DECISION OF THE COMMISSIONER ON ANY MATTER PURSUANT TO THIS SECTION SHALL BE SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S.

SECTION 10. 10-6-116, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-116. Capital and surplus requirements. (1) No captive insurance company issued a certificate of authority shall be permitted to do any business in this state unless it is ~~possessed of an actual~~ MAINTAINS TOTAL capital and ~~an accumulated~~ surplus of not less than ~~the following:~~ FIVE HUNDRED THOUSAND DOLLARS.

(a) ~~Pure captive insurance company:~~

<u>Capital</u>	<u>Surplus</u>
\$300,000	\$200,000

(b) ~~Association captive insurance company:~~

<u>Capital or Guaranty Fund</u>	<u>Surplus</u>
\$400,000	\$350,000

(c) ~~Industrial insured captive insurance company:~~

<u>Capital or Guaranty Fund</u>	<u>Surplus</u>
\$300,000	\$200,000

(1.5) UPON A WRITTEN FINDING BY THE COMMISSIONER THAT THE APPROVED PLAN OF OPERATION OR THE OPERATIONAL RESULTS OF THE CAPTIVE INSURANCE COMPANY REQUIRE EITHER ADDITIONAL CAPITAL OR A LARGER SURPLUS THAN REQUIRED BY THIS SECTION, THE COMMISSIONER MAY REQUIRE THAT ADDITIONAL CAPITAL OR SURPLUS, OR BOTH, BE OBTAINED. ADDITIONAL CAPITAL OR SURPLUS MAY BE TENDERED IN THE FORM OF AN IRREVOCABLE LETTER OF CREDIT AS SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(2) ~~The cash or securities representing the minimum capital required by this section shall be deposited with the commissioner in the manner provided by law. The commissioner shall accept an irrevocable letter of credit, in the form prescribed by regulation issued by the commissioner, on behalf of a captive insurance company in lieu of requiring the deposit of cash or securities representing the capital required by this section. The letter of credit shall be issued by a qualified United States financial institution as defined in section 10-1-102 (9.5).~~ SECURITIES ACCEPTABLE TO THE COMMISSIONER IN THE AMOUNT OF THREE HUNDRED THOUSAND DOLLARS, OR SUCH GREATER AMOUNT AS DETERMINED BY THE COMMISSIONER, SHALL BE HELD BY THE COMMISSIONER OR UNDER THE JOINT CONTROL OF THE COMMISSIONER AND THE CAPTIVE INSURANCE COMPANY. THE COMMISSIONER SHALL ACCEPT AN IRREVOCABLE LETTER OF CREDIT, IN A FORM ACCEPTABLE TO THE COMMISSIONER, ISSUED OR CONFIRMED BY A QUALIFIED UNITED STATES FINANCIAL INSTITUTION AS DEFINED IN SECTION 10-1-102 (9.5) ON BEHALF OF A CAPTIVE INSURANCE COMPANY IN LIEU OF SECURITIES. ALL SECURITIES OR LETTERS OF CREDIT JOINTLY HELD SHALL BE THE SOLE PROPERTY OF SUCH CAPTIVE INSURANCE COMPANY AND SHALL BE FREE AND CLEAR OF ANY CLAIM OR ENCUMBRANCE.

(3) ~~The deposit or letter of credit shall be held by the commissioner for the benefit of all policyholders wherever located.~~ JOINTLY HELD SECURITIES OR LETTERS OF CREDIT, WHEREVER LOCATED, SHALL BE DEEMED TO BE HELD FOR THE BENEFIT OF ALL CAPTIVE INSURANCE COMPANY POLICYHOLDERS.

(4) THE COMMISSIONER SHALL RELEASE FUNDS HELD UNDER JOINT CONTROL UPON A SHOWING SATISFACTORY TO THE COMMISSIONER THAT ALL DEBTS, OBLIGATIONS, AND LIABILITIES OF THE CAPTIVE INSURANCE COMPANY HAVE BEEN PAID AND DISCHARGED, OR ADEQUATE PROVISIONS FOR PAYMENT AND DISCHARGE HAVE BEEN MADE THEREFOR, AND THE CAPTIVE INSURANCE COMPANY'S ORIGINAL CERTIFICATE OF AUTHORITY HAS BEEN RETURNED TO THE COMMISSIONER.

SECTION 11. 10-6-120, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10-6-120. Examinations and investigations. (1) THE COMMISSIONER OR ANY PERSON SO AUTHORIZED HAS THE AUTHORITY TO EXAMINE THE FINANCIAL CONDITION, AFFAIRS, AND MANAGEMENT OF ANY APPLICANT OR CAPTIVE INSURANCE COMPANY OPERATING UNDER THE LAWS OF THIS STATE. FOR SUCH PURPOSE THE COMMISSIONER SHALL HAVE FREE ACCESS TO ALL THE BOOKS, PAPERS, AND DOCUMENTS RELATING TO THE BUSINESS OF THE COMPANY, AND THE COMMISSIONER MAY SUMMON WITNESSES AND ADMINISTER OATHS AND AFFIRMATIONS IN THE EXAMINATION OF THE DIRECTORS, TRUSTEES, OFFICERS, AGENTS, OR EMPLOYEES OF SUCH COMPANY AND ANY OTHER PERSON IN RELATION TO ITS AFFAIRS, TRANSACTIONS, AND CONDITIONS. THE REASONABLE COST OF EXAMINATIONS OF CAPTIVE INSURANCE COMPANIES SHALL BE PAID BY THE COMPANY EXAMINED AND SHALL INCLUDE THE EXPENSES OF THE COMMISSIONER AND THE COMMISSIONER'S ASSISTANTS.

(2) THE COMMISSIONER MAY USE OTHER INDEPENDENT PROFESSIONALS, SUCH AS QUALIFIED ACTUARIES, RISK MANAGERS, CERTIFIED PUBLIC ACCOUNTANTS, OR EXAMINERS OF INSURANCE COMPANIES. THE COMMISSIONER MAY ALSO ACCEPT, AS A PART OF THE EXAMINATION, REPORTS OR PORTIONS THEREOF MADE BY THE PERSONS SPECIFIED IN THIS SUBSECTION (2). ALL REASONABLE EXPENSES AND CHARGES OF SUCH PERSONS SO RETAINED SHALL BE PAID DIRECTLY BY THE CAPTIVE INSURANCE COMPANY BEING EXAMINED.

SECTION 12. 10-6-121, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10-6-121. Legal investments. (1) GROUP CAPTIVE INSURANCE COMPANIES SHALL COMPLY WITH THE INVESTMENT REQUIREMENTS AND LIMITATIONS APPLICABLE TO OTHER INSURANCE COMPANIES UNDER THE LAWS OF THIS STATE AS DESCRIBED IN SECTIONS 10-1-102 (1.5), 10-1-102 (9), 10-3-213 TO 10-3-242, AND 10-3-802.

(2) (a) PURE CAPTIVE INSURANCE COMPANIES SHALL NOT BE SUBJECT TO ANY RESTRICTIONS ON INVESTMENTS WHATSOEVER; EXCEPT THAT THE COMMISSIONER MAY PROHIBIT OR LIMIT ANY INVESTMENT THAT THREATENS THE SOLVENCY OR LIQUIDITY OF ANY SUCH COMPANY OR IF SUCH INVESTMENTS ARE NOT MADE IN ACCORDANCE WITH THE APPROVED PLAN OF OPERATION.

(b) A PURE CAPTIVE INSURANCE COMPANY MAY MAKE LOANS TO ITS PARENT

COMPANY IF APPROVED WITHIN ITS PLAN OF OPERATIONS.

(3) IN LIEU OF A FIDELITY BOND, THE OFFICERS, DIRECTORS, OR MANAGERS OF A CAPTIVE INSURANCE COMPANY SHALL DEMONSTRATE SUFFICIENT SAFEGUARDS TO PROTECT THE FUNDS OF THE CAPTIVE INSURANCE COMPANY.

SECTION 13. 10-6-122, Colorado Revised Statutes, 1987 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10-6-122. Reinsurance. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, ANY CAPTIVE INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE MAY TAKE CREDIT FOR RESERVES ON RISKS CEDED TO A REINSURER PURSUANT TO THE PROVISIONS OF SECTION 10-3-118 AND ANY APPLICABLE REGULATIONS.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, ANY CAPTIVE INSURANCE COMPANY MAY CEDE RISKS TO A REINSURER NOT MEETING THE STANDARDS OF SAID SUBSECTION (1) AND MAY TAKE RESERVE CREDITS IF THE CAPTIVE INSURANCE COMPANY RECEIVES PRIOR WRITTEN APPROVAL FROM THE COMMISSIONER.

SECTION 14. 10-6-125, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-125. Filing of rates. (1) ~~All captive insurance companies shall file rating data as provided in section 10-4-403 with the commissioner concurrent with the effective date of new rates.~~ A GROUP CAPTIVE INSURANCE COMPANY'S RATES, RATE CLASSIFICATION SYSTEMS, OR FUNDING LEVELS SHALL BE SUFFICIENT TO FUND EXPECTED OPERATIONS AND EXPENSES. THE COMMISSIONER MAY REQUIRE THAT A PURE CAPTIVE INSURANCE COMPANY FILE RATING OR FUNDING DATA IF SUCH PURE CAPTIVE INSURANCE COMPANY PROVIDES OR PLANS TO PROVIDE EMPLOYEE BENEFITS.

(2) ~~All such filings shall be approved by the commissioner unless found to be excessive, inadequate, or unfairly discriminatory.~~ RATING STRUCTURES FOR INSURANCE APPLIED TO AND PAID BY EMPLOYEES OF A CAPTIVE INSURANCE COMPANY SHALL NOT BE EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY.

~~(3) All such filings shall be subject to the provisions of part 4 of article 4 of this title, as applicable.~~

~~(4) No pure captive insurance company shall be required to file rating data with the commissioner.~~

SECTION 15. 10-6-127, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

10-6-127. Guaranty fund coverage - not required. (1) Any provision of the law to the contrary notwithstanding, no captive insurance company shall be compelled to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state; nor shall any captive insurance company or its insured receive any benefit from such plan, pool, association, or guaranty or insolvency fund for claims arising out of operations of such captive insurance company.

(2) ALL POLICY FORMS OR OTHER EVIDENCE OF COVERAGE SHALL CLEARLY DISCLOSE THAT GUARANTY FUND COVERAGE IS NOT AVAILABLE.

SECTION 16. 10-6-128, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-128. Tax on premiums collected - exemptions - penalties. (1) All captive insurance companies doing business in this state shall pay to the division of insurance ~~a~~ AN ANNUAL tax on the gross amount of all premiums collected, ~~or contracted for~~ LESS PREMIUMS OR PREMIUM CREDITS RETURNED TO POLICYHOLDERS, on policies or contracts of insurance covering property or risks in this state and on risks and property situated in any other state in which the insurer ~~is not licensed and upon which no~~ HAS NOT PAID premium tax. ~~is otherwise paid or payable during the year ending December 31 next preceding, after deducting from the gross amount of premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.~~

(2) The tax imposed by subsection (1) of this section shall be the greater of:

(a) Five thousand dollars; or

~~(b) For premiums collected or contracted for, and as to which premium tax has not been paid for a prior year, the sum of:~~

~~(b) (I) One-half of one percent of the first twenty-five million dollars, plus one-quarter of one percent of the next fifty million dollars, plus one-tenth of one percent of each dollar thereafter of the direct premiums COLLECTED, of the captive insurance company, and PLUS:~~

~~(II) One-quarter of one percent of the first twenty million dollars, plus one-tenth of one percent of each dollar thereafter of assumed reinsurance premiums. or~~

~~(c) For the 1992 tax year only, for premiums collected or contracted for, and as to which premium tax has not been paid for a prior year, the sum of:~~

~~(I) Seven-tenths of one percent of the first twenty-five million dollars, plus one-quarter of one percent of the next fifty million dollars, plus one-tenth of one percent of each dollar thereafter of the direct premiums of the captive insurance company; and~~

~~(II) One-tenth of one percent of assumed reinsurance premiums; or~~

~~(d) For the 1993 tax year only, for premiums collected or contracted for, as to which premium tax has not been paid for a prior year, the sum of:~~

~~(I) Six-tenths of one percent of the first twenty-five million dollars, plus one-quarter of one percent of the next fifty million dollars, plus one-tenth of one percent of each dollar thereafter of the direct premiums of the captive insurance company; and~~

~~(H) Two-tenths of one percent of the first twenty million dollars, plus one-tenth of one percent of each dollar thereafter of assumed reinsurance premiums.~~

~~(e) No reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis. No reinsurance Premium tax shall NOT be payable in connection with the receipt of assets in exchange for the assumption of EXISTING loss reserves and other liabilities. of another insurer under common ownership and control if 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.~~

(2.5) THE MINIMUM TAX PROVIDED FOR IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION SHALL BE DUE AND PAYABLE ON THE FIRST DAY OF MARCH OF EACH FISCAL YEAR, ACCOMPANIED BY SUCH FORMS AS MAY BE PRESCRIBED BY THE COMMISSIONER. THE BALANCE OF THE TAX WHEN PAYABLE FOR EACH FISCAL YEAR SHALL BE PAID ON FORMS PRESCRIBED BY THE COMMISSIONER TOGETHER WITH THE REPORT REQUIRED UNDER SECTION 10-6-114 (1). THE COMMISSIONER MAY BY RULE REQUIRE PARTIAL PAYMENTS, TO BE MADE IN QUARTERLY INSTALLMENTS, OF THE BALANCE OF THE TAX PAYABLE.

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

~~(4) The taxes provided for in this section shall be due and payable on the first day of March in each year. Any company failing or refusing to render a statement and information or to pay taxes as specified in this section for more than thirty days after the time specified shall be liable to a penalty of up to one hundred dollars for each additional day of delinquency, to be assessed by the commissioner. If the tax paid is less than the full amount prescribed by this section, interest at the rate of one percent per month or fraction thereof on the unpaid amount shall be charged from the date payment was due to the date full payment is made, and a penalty of up to twenty-five percent of the unpaid amount may be assessed by the commissioner. The amount of taxes and the penalties collected shall be transmitted to the department of the treasury and credited to the general fund. The commissioner may suspend the certificate of authority of any such delinquent company until such taxes and penalty, should any penalty be imposed, are fully paid.~~

~~(5) Anything in subsections (1) to (4) of this section to the contrary notwithstanding, any captive insurance company doing business in this state which was liable for payment of more than five thousand dollars in taxes, as provided in this section, during the preceding calendar year shall pay quarterly estimates of such taxes as provided in subsections (6) to (8) of this section.~~

~~(6) Such estimated taxes shall become due and payable on the last day of the month following the close of any calendar quarter of the year; except that estimated taxes for the fourth quarter shall be due March 1 and shall include adjustments for the preceding calendar year. Any company failing or refusing to pay such estimated taxes for more than thirty days after the time specified shall be liable to a penalty of~~

~~up to one hundred dollars for each additional day of delinquency, to be assessed by the commissioner. The amount of estimated taxes and the penalties collected shall be transmitted to the department of the treasury and credited to the general fund. The commissioner may suspend the certificate of authority of such delinquent company until such estimated taxes and penalty, should any penalty be imposed, are fully paid.~~

~~(7) Estimated taxes paid pursuant to subsection (6) of this section shall be based on the estimated amount of taxable premiums during the preceding calendar quarter. Except for the first calendar quarter of any year, calendar quarter estimates of taxes may include adjustments for any previous calendar quarter estimates of taxes, and estimated taxes shall be paid on the basis of such adjusted estimates.~~

~~(8) Adjustments in payments of estimated taxes for any calendar year shall be made at the time of the filing of the annual statement required under section 10-6-114 and the payment of taxes required by this section. If a company claims a refund, it shall file for such refund at the time of filing such annual statement, and, if the commissioner claims a deficiency, he shall notify the deficient company thereof.~~

SECTION 17. Article 6 of title 10, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-6-128.5. Penalties. (1) THE COMMISSIONER MAY CHARGE A LATE FEE OF UP TO ONE HUNDRED DOLLARS PER DAY FOR ANY REQUIRED OR REASONABLY REQUESTED REPORT WHICH IS RECEIVED AFTER THE FILING DEADLINE.

(2) ANY COMPANY FAILING TO PAY TAXES AS SPECIFIED IN THIS ARTICLE SHALL BE LIABLE TO PAY A PENALTY OF UP TO ONE HUNDRED DOLLARS FOR EACH DAY OF DELINQUENCY. IF THE TAX PAID IS LESS THAN THE FULL AMOUNT PRESCRIBED BY THIS ARTICLE, INTEREST AT THE RATE OF ONE PERCENT PER MONTH OR FRACTION THEREOF ON THE UNPAID AMOUNT SHALL BE CHARGED FROM THE DATE PAYMENT WAS DUE UNTIL THE DATE FULL PAYMENT IS RECEIVED, AND A PENALTY OF UP TO TWENTY-FIVE PERCENT OF THE UNPAID AMOUNT MAY BE ASSESSED. THE AMOUNT OF TAXES AND THE PENALTIES COLLECTED SHALL BE TRANSMITTED TO THE STATE TREASURER AND CREDITED TO THE GENERAL FUND.

(3) THE ASSESSMENT OF ANY FEE OR PENALTY AGAINST A CAPTIVE INSURANCE COMPANY SHALL BE SUBJECT TO THE COMPANY'S RIGHT TO REQUEST A HEARING AND TO JUDICIAL REVIEW BY THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106(11), C.R.S.

(4) ANY DIRECTOR, TRUSTEE, OFFICER, AGENT, OR EMPLOYEE OF A CAPTIVE INSURANCE COMPANY OR ANY OTHER PERSON WHO KNOWINGLY OR WILLFULLY MAKES ANY MATERIALLY FALSE CERTIFICATE, ENTRY, OR MEMORANDUM UPON ANY OF THE BOOKS OR PAPERS OF ANY CAPTIVE INSURANCE COMPANY OR UPON ANY STATEMENT FILED OR OFFERED TO BE FILED IN THE DIVISION OF INSURANCE OR USED IN THE COURSE OF ANY EXAMINATION, INQUIRY, OR INVESTIGATION WITH THE INTENT TO DECEIVE THE COMMISSIONER OR ANY PERSON APPOINTED BY THE COMMISSIONER TO MAKE SUCH EXAMINATION COMMITS A CLASS 2 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-106, C.R.S.

SECTION 18. 10-6-129, Colorado Revised Statutes, 1987 Repl. Vol., as

amended, is amended to read:

10-6-129. Rules of commissioner. The commissioner may establish and from time to time amend such reasonable rules ~~and regulations~~ as are necessary to enable the commissioner to carry out the commissioner's duties under this article, including ~~regulations~~ RULES concerning the establishment and nature of loss reserves.

SECTION 19. 10-6-130, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-6-130. Laws applicable. (1) ~~The provisions of section 10-3-102 (3) shall not apply to any pure captive insurance company.~~ THE PROVISIONS OF LAW GENERALLY APPLICABLE TO INSURANCE COMPANIES SHALL NOT APPLY TO CAPTIVE INSURANCE COMPANIES EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE AND EXCEPT THAT CAPTIVE INSURANCE COMPANIES ARE SUBJECT TO PARTS 3 AND 4 OF ARTICLE 2 OF THIS TITLE AND PARTS 7, 11, AND 12 OF ARTICLE 3 OF THIS TITLE.

(2) ~~In addition to the provisions of this article, the laws governing insurance companies, except as they are inconsistent with the provisions or purposes of this article and except as provided in subsection (1) of this section, shall apply to captive insurance companies.~~ GROUP CAPTIVE INSURANCE COMPANIES ARE SUBJECT TO THE PROVISIONS OF SECTION 10-3-208 (3), PART 2 OF ARTICLE 1 OF THIS TITLE, ARTICLE 2 OF THIS TITLE, AND PARTS 8 AND 14 OF ARTICLE 3 OF THIS TITLE.

(3) THE MALPRACTICE REPORTING REQUIREMENTS OF SECTIONS 10-1-124 TO 10-1-124.9 SHALL APPLY TO CAPTIVE INSURANCE COMPANIES.

SECTION 20. Repeal. 10-6-104, 10-6-109, 10-6-110, 10-6-111, 10-6-112, 10-6-117, 10-6-118, 10-6-119, 10-6-123, 10-6-124, and 10-6-126, Colorado Revised Statutes, 1987 Repl. Vol., as amended, are repealed.

SECTION 21. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 6, 1994