

Senate Bill 969

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND ECONOMIC DEVELOPMENT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes captive insurers in this state. Sets standards for captive insurers regarding formation, licensing, classes of insurance transacted and reporting. Exempts captive insurers from provisions of Insurance Code unless specified in Act. Exempts certain captive insurer documents from disclosure as public records.

A BILL FOR AN ACT

1
2 Relating to captive insurance.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 to 24 of this 2011 Act are added to and made a part of the In-**
5 **urance Code.**

6 **SECTION 2. As used in sections 2 to 24 of this 2011 Act:**

7 (1)(a) **“Affiliated company” means a business entity that, because of common ownership**
8 **and control or common operation or management, is in the same corporate system as:**

9 (A) **A parent;**

10 (B) **An industrial insured; or**

11 (C) **A member organization.**

12 (b) **For purposes of this subsection, “common ownership and control” means that two**
13 **or more captive insurers are owned or controlled by the same person or group of persons**
14 **with:**

15 (A) **Direct or indirect ownership of 80 percent or more of the outstanding voting stock**
16 **of the stock corporation for a captive insurer that is a stock corporation;**

17 (B) **Direct or indirect ownership of 80 percent or more of the surplus and the voting**
18 **power of the mutual corporation for a captive insurer that is a mutual corporation; or**

19 (C) **Direct or indirect ownership by the same member or members of 80 percent or more**
20 **of the membership interests in the limited liability company for a captive insurer that is a**
21 **limited liability company.**

22 (2) **“Alien captive insurer” means an insurer:**

23 (a) **Formed to transact insurance for a parent or affiliate of the insurer; and**

24 (b) **Licensed pursuant to the laws of another jurisdiction that imposes statutory or reg-**
25 **ulatory standards:**

26 (A) **On a business entity transacting insurance in the other jurisdiction; and**

27 (B) **In a form acceptable to the Director of the Department of Consumer and Business**
28 **Services.**

29 (3) **“Association” means a legal association of two or more persons that has been in**
30 **continuous existence for at least one year if:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 **(a) The association or its member organizations:**
- 2 **(A) Own, control, or hold with power to vote, all of the outstanding voting securities of**
- 3 **an association captive insurer incorporated as a stock insurer; or**
- 4 **(B) Have complete voting control over an association captive insurer incorporated as a**
- 5 **mutual insurer;**
- 6 **(b) The association’s member organizations collectively constitute all of the subscribers**
- 7 **of an association captive insurer organized as a reciprocal insurer; or**
- 8 **(c) The association or its member organizations have complete voting control over an**
- 9 **association captive insurer formed as a limited liability company.**
- 10 **(4) “Association captive insurer” means a business entity that insures risks of:**
- 11 **(a) A member organization of the association;**
- 12 **(b) An affiliate of a member organization of the association; and**
- 13 **(c) The association.**
- 14 **(5) “Branch captive insurer” means an alien captive insurer that holds a certificate of**
- 15 **authority issued under section 11 of this 2011 Act to transact insurance in this state through**
- 16 **a business unit with a principal place of business in this state.**
- 17 **(6) “Branch operation” means a business operation of a branch captive insurer in this**
- 18 **state.**
- 19 **(7) “Captive insurer” means any of the following that is formed or holds a certificate of**
- 20 **authority issued under sections 2 to 24 of this 2011 Act:**
- 21 **(a) A branch captive insurer;**
- 22 **(b) A pure captive insurer;**
- 23 **(c) An association captive insurer;**
- 24 **(d) An industrial insured captive insurer; or**
- 25 **(e) A captive reinsurer;**
- 26 **(8) “Captive reinsurer” means a reinsurer that is:**
- 27 **(a) Formed or holds a certificate of authority under sections 2 to 24 of this 2011 Act;**
- 28 **(b) Wholly owned by a qualifying reinsurer parent company; and**
- 29 **(c) A stock corporation.**
- 30 **(9) “Controlled unaffiliated business” means a business entity:**
- 31 **(a)(A) For a pure captive insurer, that is not in the same corporate system as a parent**
- 32 **or the parent’s affiliate but has a contractual relationship with a parent or affiliate; or**
- 33 **(B) For an industrial insured captive insurer, that is not in the same corporate system**
- 34 **as an industrial insured or an affiliated company of the industrial insured, but has a con-**
- 35 **tractual relationship with an industrial insured or an affiliated company of the industrial**
- 36 **insured; and**
- 37 **(b) Whose risks are managed by:**
- 38 **(A) A pure captive insurer; or**
- 39 **(B) An industrial insured captive insurer.**
- 40 **(10) “Industrial insured” means an insured:**
- 41 **(a) That produces insurance by using the services of a full-time employee acting as a risk**
- 42 **manager or insurance manager or by using the services of a regularly and continuously**
- 43 **qualified insurance consultant licensed under ORS 744.002;**
- 44 **(b) Whose aggregate annual premiums for insurance on all risks total at least \$25,000;**
- 45 **and**

1 (c) That has at least 25 full-time employees.

2 (11) "Industrial insured captive insurer" means a business entity that:

3 (a) Insures risks of the industrial insureds that are part of the industrial insured group;
4 and

5 (b) May insure the risks of:

6 (A) An affiliated company of an industrial insured; or

7 (B) A controlled unaffiliated business of an industrial insured or a controlled unaffiliated
8 business of an affiliated company of an industrial insured.

9 (12) "Industrial insured group" means:

10 (a) A group of industrial insureds that collectively:

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

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

15 (b) A group of industrial insureds that is formed as a corporation or limited liability
16 company under the Product Liability Risk Retention Act of 1981, 15 U.S.C. 3901 to 3906, as
17 amended, and is a stock insurer or mutual insurer; or

18 (c) A group of industrial insureds that has complete voting control over an industrial
19 insured captive insurer formed as a limited liability company.

20 (13) "Member organization" means a person that belongs to an association.

21 (14) "Parent" means a person that directly or indirectly owns, controls, or holds with
22 power to vote, more than 50 percent of:

23 (a) The outstanding voting securities of a pure captive insurer; or

24 (b) The pure captive insurer, if the pure captive insurer is formed as a limited liability
25 company.

26 (15) "Pure captive insurer" means a business entity that insures risks of a parent or af-
27 filiate of the business entity or a controlled unaffiliated business.

28 (16)(a) "Qualifying reinsurer parent company" means a reinsurer that holds a certificate
29 of authority to transact reinsurance in this state and that has:

30 (A) A consolidated GAAP net worth of not less than \$500 million; and

31 (B) A consolidated debt to total capital ratio not greater than 0.5.

32 (b) For purposes of this subsection:

33 (A) "Consolidated debt to total capital ratio" means the ratio of:

34 (i) An amount equal to the sum of all debts and hybrid capital instruments including:

35 (I) All borrowings from depository institutions;

36 (II) All senior debts;

37 (III) All subordinated debts;

38 (IV) All trust preferred shares; and

39 (V) All other hybrid capital instruments that are not included in the determination of
40 consolidated GAAP net worth issued and outstanding; and

41 (ii) An amount equal to the sum of:

42 (I) The amount described in sub-subparagraph (i) of this subparagraph; and

43 (II) Shareholders' equity determined in accordance with generally accepted accounting
44 principles for reporting to the United States Securities and Exchange Commission.

45 (B) "Consolidated GAAP net worth" means the consolidated shareholders' equity deter-

1 mined in accordance with generally accepted accounting principles for reporting to the
 2 United States Securities and Exchange Commission.

3 (C) “Depository institution” means a financial institution as defined in ORS 706.008.

4 **SECTION 3.** Except as otherwise provided in sections 2 to 24 of this 2011 Act, a captive
 5 insurer is subject only to the provisions of sections 2 to 24 of this 2011 Act that are within
 6 the Insurance Code.

7 **SECTION 4.** Except as otherwise provided in sections 2 to 24 of this 2011 Act, a branch
 8 captive insurer must be a pure captive insurer with respect to business operations in this
 9 state, unless otherwise permitted by rule of the Director of the Department of Consumer and
 10 Business Services.

11 **SECTION 5.** The Director of the Department of Consumer and Business Services may
 12 adopt rules to implement sections 2 to 24 of this 2011 Act.

13 **SECTION 6.** All documents, material or other information in the possession of the De-
 14 partment of Consumer and Business Services under sections 2 to 24 of this 2011 Act are
 15 subject to public disclosure only as provided in ORS 705.137.

16 **SECTION 7.** (1)(a) When permitted by its articles of incorporation or its charter and by-
 17 laws, a captive insurer may apply to the Director of the Department of Consumer and Busi-
 18 ness Services for a certificate of authority to transact any class of insurance.

19 (b) Notwithstanding paragraph (a) of this subsection:

20 (A) A pure captive insurer may not insure a risk other than a risk of its parent or af-
 21 filiate or a controlled unaffiliated business;

22 (B) An association captive insurer may not insure a risk other than a risk of:

23 (i) An affiliate;

24 (ii) A member organization of its association; and

25 (iii) An affiliate of a member organization of its association;

26 (C) An industrial insured captive insurer may not insure a risk other than a risk of:

27 (i) An industrial insured that is part of the industrial insured group;

28 (ii) An affiliate of an industrial insured that is part of the industrial insured group; and

29 (iii) A controlled unaffiliated business of an industrial insured or an affiliate of an in-
 30 dustrial insured that is part of the industrial insured group;

31 (D) A captive insurer may not provide workers’ compensation insurance coverage, per-
 32 sonal motor vehicle insurance coverage or homeowner’s insurance coverage or any compo-
 33 nent of such coverage; and

34 (E) A captive insurer may not accept or cede reinsurance except as provided in section
 35 13 of this 2011 Act.

36 (2) To transact insurance in this state, a captive insurer must:

37 (a) Obtain from the director a certificate of authority that authorizes the captive insurer
 38 to transact insurance in this state;

39 (b) Hold at least once each year in this state:

40 (A) A board of directors meeting; or

41 (B) In the case of a reciprocal insurer, a subscriber’s advisory committee meeting;

42 (c) Maintain in this state:

43 (A) The principal place of business of the captive insurer; or

44 (B) In the case of a branch captive insurer, the principal place of business for the branch
 45 operations of the branch captive insurer; and

1 (d) Except as provided in subsection (3) of this section, appoint a resident registered
2 agent to accept service of process, notice or demand and to otherwise act on behalf of the
3 captive insurer in this state.

4 (3) In the case of a captive insurer formed as a corporation or organized as a reciprocal
5 insurer, if the registered agent cannot be found with reasonable diligence at the registered
6 office of the captive insurer, the director is the agent of the captive insurer upon whom
7 process, notice, or demand may be served.

8 (4)(a) An applicant captive insurer formed as a corporation shall file with the director:

9 (A) Certified copies of the articles of incorporation or the charter and bylaws of the
10 corporation;

11 (B) A statement under oath of the president and secretary of the corporation showing
12 the financial condition of the corporation; and

13 (C) Any other statement or document required by the director as adopted by rule.

14 (b) An applicant captive insurer organized as a reciprocal insurer shall file with the di-
15 rector:

16 (A) A certified copy of the power of attorney of the attorney-in-fact of the reciprocal
17 insurer;

18 (B) A certified copy of the subscribers' reciprocal agreement;

19 (C) A statement under oath of the attorney-in-fact of the reciprocal insurer showing the
20 financial condition of the reciprocal insurer; and

21 (D) Any other statement or document required by the director by rule.

22 (c) An applicant captive insurer shall submit to the director for approval a description
23 of the coverages, deductibles, coverage limits, rates and any other information required by
24 the director by rule.

25 (d)(A) If there is a subsequent material change in an item in the description required
26 under paragraph (c) of this subsection for an applicant captive insurer organized as a recip-
27 rocal insurer, the reciprocal insurer shall submit to the director for approval an appropriate
28 revision to the description.

29 (B) A reciprocal insurer that is required to submit a revision to the description under
30 subparagraph (A) of this paragraph may not offer any additional classes of insurance until
31 the director approves the revision.

32 (C) A reciprocal insurer shall inform the director of a material change in a rate within
33 30 days of the adoption of the change.

34 (e) In addition to the other information required by this subsection, an applicant captive
35 insurer shall file with the director evidence of:

36 (A) The amount and liquidity of the assets of the applicant captive insurer relative to the
37 risks to be assumed by the applicant captive insurer;

38 (B) The adequacy of the expertise, experience and character of the individual who will
39 manage the applicant captive insurer;

40 (C) The overall soundness of the plan of operation of the applicant captive insurer;

41 (D) The adequacy of the loss prevention programs for any parent, member organization
42 or industrial insured of the applicant captive insurer; and

43 (E) Any other factor the director adopts by rule and considers relevant in ascertaining
44 whether the applicant captive insurer is able to meet the policy obligations of the applicant
45 captive insurer.

1 (5)(a) A captive insurer shall pay to the Department of Consumer and Business Services
2 nonrefundable fees established by the department by rule for:

3 (A) Examining, investigating and processing of the captive insurer's application for issu-
4 ance of a certificate of authority;

5 (B) Obtaining a certificate of authority for the year the director issues a certificate of
6 authority to the captive insurer, which shall not be less than \$5,000; and

7 (C) Renewing a certificate of authority, which shall not be less than \$5,000.

8 (b) The fees a captive insurer pays to the department for obtaining or renewing a cer-
9 tificate of authority are in lieu of any payment of premium tax on receipt of premium by the
10 captive insurer. Fees for obtaining or renewing a certificate of authority may be increased
11 by the department by rule and may be scaled on the basis of premiums the captive insurer
12 collects in any given year.

13 (c) The director may retain legal, financial and examination services from outside the
14 department to perform any functions described in sections 2 to 24 of this 2011 Act and may
15 charge the applicant captive insurer the reasonable cost of services performed.

16 (6) If the director is satisfied that the documents and statements filed by the applicant
17 captive insurer meet the requirements of sections 2 to 24 of this 2011 Act, the director may
18 issue a certificate of authority that authorizes the captive insurer to transact insurance in
19 this state.

20 (7) A certificate of authority issued under this section expires annually and must be re-
21 newed by December 31 of each year beginning with the year following the year that the ori-
22 ginal certificate was issued and by December 31 of each year thereafter.

23 **SECTION 8.** A captive insurer may not assume a business name that is:

24 (1) The same as any other existing assumed business name registered under ORS chapter
25 648;

26 (2) Deceptively similar to any other existing assumed business name registered under
27 ORS chapter 648; or

28 (3) Likely to be confused with or mistaken for any other existing assumed business name
29 registered under ORS chapter 648.

30 **SECTION 9.** (1)(a) The Director of the Department of Consumer and Business Services
31 may not issue a certificate of authority to a captive insurer described in paragraph (c) of this
32 subsection unless the captive insurer possesses and thereafter maintains unimpaired paid-in
33 capital of:

34 (A) In the case of a pure captive insurer, not less than \$100,000;

35 (B) In the case of an association captive insurer incorporated as a stock insurer, not less
36 than \$400,000; or

37 (C) In the case of an industrial insured captive insurer incorporated as a stock insurer,
38 not less than \$200,000; or

39 (b) The paid-in capital required under paragraph (a) of this subsection may be in the form
40 of:

41 (A) Cash or cash equivalent; or

42 (B) An irrevocable letter of credit issued by an insured institution, as defined in ORS
43 706.008, and approved by the director.

44 (c) This subsection applies to:

45 (A) A pure captive insurer;

1 (B) An association captive insurer incorporated as a stock insurer; or

2 (C) An industrial insured captive insurer incorporated as a stock insurer.

3 (2)(a) The director by rule may prescribe additional capital based on the class, volume
4 and nature of insurance transacted.

5 (b) The capital prescribed by the director under this subsection may be in the form of
6 cash or an irrevocable letter of credit issued by an insured institution, as defined in ORS
7 706.008.

8 (3)(a) Except as provided in paragraph (d) of this subsection, a branch captive insurer,
9 as security for the payment of liabilities attributable to branch operations, must establish
10 and maintain, through its branch operations, a trust fund funded by an irrevocable letter of
11 credit or other acceptable asset in the United States.

12 (b) The trust fund established under this subsection shall be for the benefit of United
13 States policyholders and United States ceding insurers under insurance policies issued or
14 reinsurance contracts issued or assumed.

15 (c) The amount of the security required under this subsection must be equal to or
16 greater than:

17 (A) The capital and surplus required by ORS 731.554; and

18 (B) The reserves on the insurance policies or reinsurance contracts, including:

19 (i) Loss reserves;

20 (ii) Allocated loss adjustment expenses;

21 (iii) Losses incurred but not reported; and

22 (iv) Unearned premiums with regard to insurance transacted by branch operations.

23 (d) The director may permit a branch captive insurer that is required to post security
24 for loss reserves on insurance transacted by its reinsurer to reduce the funds in the trust
25 account established under this section by the same amount as the security posted if the se-
26 curity remains posted with the reinsurer.

27 (4)(a) Without the prior approval of the director, a captive insurer may not pay:

28 (A) A dividend out of capital or surplus in excess of the reserve limits and limits imposed
29 by the director; or

30 (B) A distribution with respect to capital or surplus in excess of the reserve limits and
31 limits imposed by the director.

32 (b) The director shall condition approval of an ongoing plan for the payment of dividends
33 or other distributions on the retention, at the time of each payment, of capital or surplus in
34 amounts determined in accordance with formulas adopted by the director by rule.

35 **SECTION 10.** (1)(a) Except as provided in subsection (2) of this section, the Director of
36 the Department of Consumer and Business Services may not issue a certificate of authority
37 to a captive insurer unless the captive insurer possesses and maintains a surplus in excess
38 of required capital of:

39 (A) In the case of a pure captive insurer, not less than \$150,000;

40 (B) In the case of an association captive insurer incorporated as a stock insurer, not less
41 than \$350,000;

42 (C) In the case of an industrial insured captive insurer incorporated as a stock insurer,
43 not less than \$300,000;

44 (D) In the case of an association captive insurer incorporated as a mutual insurer, not
45 less \$750,000; or

1 (E) In the case of an industrial insured captive insurer incorporated as a mutual insurer,
 2 not less than \$500,000.

3 (b) The surplus in excess of required capital under paragraph (a) of this subsection may
 4 be in the form of cash or an irrevocable letter of credit issued by an insured institution, as
 5 defined in ORS 706.008, and approved by the director.

6 (2) A captive insurer organized as a reciprocal insurer under section 11 of this 2011 Act
 7 may not be issued a certificate of authority unless the captive insurer possesses and main-
 8 tains a surplus in excess of required capital of \$1 million.

9 (3)(a) The director may prescribe an additional surplus in excess of required capital based
 10 upon the class, volume and nature of insurance transacted.

11 (b) The additional surplus in excess of required capital prescribed under paragraph (a)
 12 of this subsection may be in the form of an irrevocable letter of credit issued by an insured
 13 institution, as defined in ORS 706.008.

14 (4)(a) Without the prior approval of the director, a captive insurer may not pay:

15 (A) A dividend out of capital or surplus in excess of the reserve limits; or

16 (B) A distribution with respect to capital or surplus in excess of the reserve limits.

17 (b) The director shall condition approval of an ongoing plan for the payment of dividends
 18 or other distribution on the retention, at the time of each payment, of capital or surplus in
 19 excess of amounts determined by the director, or determined in accordance with formulas
 20 adopted by the director, by rule.

21 **SECTION 11.** (1) A pure captive insurer must be incorporated as a stock insurer with the
 22 capital of the pure captive insurer divided into shares and held by the shareholders of the
 23 pure captive insurer.

24 (2) An association captive insurer or an industrial insured captive insurer may be:

25 (a) Incorporated as a stock insurer with the capital of the association captive insurer or
 26 industrial insured captive insurer divided into shares and held by the shareholders of the
 27 association captive insurer or industrial insured captive insurer;

28 (b) Incorporated as a mutual insurer without capital stock, with a governing body elected
 29 by the member organizations of the association captive insurer or industrial insured captive
 30 insurer; or

31 (c) Organized as a reciprocal insurer.

32 (3) A captive insurer may not have fewer than three incorporators, and at least two of
 33 the incorporators or organizers shall be residents of this state.

34 (4)(a) Before a captive insurer formed as a corporation files the corporation's articles of
 35 incorporation with the Secretary of State, the incorporators shall obtain from the Director
 36 of the Department of Consumer and Business Services a certificate finding that the estab-
 37 lishment and maintenance of the proposed corporation will promote the general good of this
 38 state.

39 (b) In considering a request for a certificate under paragraph (a) of this subsection, the
 40 director shall consider:

41 (A) The character, reputation, financial standing and purposes of the incorporators;

42 (B) The character, reputation, financial responsibility, insurance experience and business
 43 qualifications of the officers and directors;

44 (C) Any information provided to the Department of Consumer and Business Services in
 45 the application for a certificate of authority or maintained in the department's files; and

1 (D) Other aspects the director considers advisable.

2 (5)(a) A captive insurer formed as a corporation shall file with the Secretary of State:

3 (A) The captive insurer's articles of incorporation; and

4 (B) The certificate issued pursuant to subsection (4) of this section.

5 (b) The Secretary of State shall accept both the articles of incorporation and the certifi-
6 cate described in subsection (4) of this section for a captive insurer that complies with this
7 section.

8 (6)(a) The organizers of a captive insurer formed as a reciprocal insurer shall obtain from
9 the director a certificate finding that the establishment and maintenance of the proposed
10 association will promote the general good of this state.

11 (b) In considering a request for a certificate under paragraph (a) of this subsection, the
12 director shall consider:

13 (A) The character, reputation, financial standing and purposes of the organizers;

14 (B) The character, reputation, financial responsibility, insurance experience and business
15 qualifications of the officers and directors;

16 (C) Any information provided to the department in the application for a certificate of
17 authority or maintained in the department's files; and

18 (D) Other aspects the director considers advisable.

19 (7)(a) An alien captive insurer applying to the director for a certificate of authority to
20 act as a branch captive insurer shall obtain from the director a certificate finding that:

21 (A) The home jurisdiction of the alien captive insurer imposes statutory or regulatory
22 standards in a form acceptable to the director on captive insurers transacting insurance in
23 that jurisdiction; and

24 (B) After considering the character, reputation, financial responsibility, insurance expe-
25 rience and business qualifications of the officers and directors of the alien captive insurer,
26 and other relevant information, the establishment and maintenance of the branch operations
27 will promote the general good of this state.

28 (b) After the director issues a certificate under paragraph (a) of this subsection to an
29 alien captive insurer, the alien captive insurer may obtain a certificate of authority to act
30 as a branch captive insurer.

31 (8) The capital stock of a captive insurer incorporated as a stock insurer may not be is-
32 sued at less than par value.

33 (9) At least one of the members of the board of directors of a captive insurer formed as
34 a corporation shall be a resident of this state.

35 (10) At least one of the members of the subscribers' advisory committee of a captive
36 insurer organized as a reciprocal insurer shall be a resident of this state.

37 (11)(a) A captive insurer formed as a corporation under sections 2 to 24 of this 2011 Act
38 has the privileges of and is subject to ORS chapter 60 and sections 2 to 24 of this 2011 Act.

39 (b) If a conflict exists between a provision of ORS chapter 60 and a provision of sections
40 2 to 24 of this 2011 Act, sections 2 to 24 of this 2011 Act shall control.

41 (c) Except as provided in paragraph (d) of this subsection, the provisions of sections 2 to
42 24 of this 2011 Act pertaining to a merger, consolidation, conversion, mutualization and
43 redomestication apply in determining the procedures to be followed by a captive insurer in
44 carrying out any of the transactions described in those provisions.

45 (d) The director may by rule waive or modify the requirements for public notice and

1 hearing.

2 (12) The articles of incorporation or bylaws of a captive insurer may not authorize a
3 quorum of a board of directors to consist of fewer than one-third of the fixed or prescribed
4 number of directors as provided in rules adopted by the director.

5 **SECTION 12.** (1)(a) An association captive insurer and an industrial insured group must
6 comply with the investment requirements of ORS 733.510 to 733.780.

7 (b) The Director of the Department of Consumer and Business Services may by rule ap-
8 prove the use of alternative reliable methods of valuation and rating for an association cap-
9 tive insurer or an industrial insured group.

10 (2)(a) A pure captive insurer or industrial insured captive insurer is not subject to any
11 restrictions on allowable investments under ORS 733.510 to 733.780.

12 (b) The director may by rule prohibit or limit an investment that threatens the solvency
13 or liquidity of a pure captive insurer or an industrial insured captive insurer.

14 (3)(a)(A) A captive insurer may not make loans to the parent of the captive insurer or
15 an affiliate of the captive insurer.

16 (B) Notwithstanding subparagraph (A) of this paragraph, a pure captive insurer may
17 make loans to the parent of the pure captive insurer or an affiliate of the pure captive
18 insurer.

19 (b) A loan under paragraph (a) of this subsection may be made only on the prior written
20 approval of the director and must be documented in a form approved by the director.

21 (c) A pure captive insurer may not make a loan from the paid-in capital required under
22 section 9 of this 2011 Act or the surplus in excess of required capital required under section
23 10 of this 2011 Act.

24 **SECTION 13.** (1) A captive insurer may provide reinsurance on risks ceded by any other
25 insurer.

26 (2)(a) A captive insurer may take credit for reserves on risks or portions of risks ceded
27 to reinsurers if the captive insurer complies with subsections (3) and (4) of this section.

28 (b) A captive insurer may not take credit for reserves on risks or portions of risks ceded
29 to a reinsurer if the reinsurer does not comply with subsection (3) of this section.

30 (3)(a) A captive reinsurer may discount its loss and loss adjustment expense reserves at
31 treasury rates applied to the applicable payments projected through the use of the expected
32 payment pattern associated with the reserves.

33 (b) As used in this subsection, "treasury rates" means the asked yield on United States
34 Treasury strip as published in the Wall Street Journal on the balance sheet date.

35 (4)(a) A captive reinsurer must annually file with the Department of Consumer and
36 Business Services an actuarial opinion provided by an independent actuary on loss and loss
37 adjustment expense reserves.

38 (b) The independent actuary described in paragraph (a) of this subsection may not be an
39 employee of the captive reinsurer or an affiliate of the captive reinsurer that files the
40 actuarial opinion.

41 (5) The Director of the Department of Consumer and Business Services may disallow the
42 discounting of loss and loss adjustment reserves of a captive reinsurer if the captive re-
43 insurer violates any provision of sections 2 to 24 of this 2011 Act.

44 **SECTION 14.** A captive insurer is not required to join a rating organization.

45 **SECTION 15.** (1) A captive insurer, including a captive insurer organized as a reciprocal

1 insurer authorized under section 11 of this 2011 Act, may not join or contribute financially
2 to the Oregon Insurance Guaranty Association created by ORS 734.550, or any other guar-
3 anty or insolvency fund.

4 (2) A captive insurer, the insured of a captive insurer, the parent of a captive insurer,
5 an affiliate of a captive insurer, a member organization of an association captive insurer or,
6 in the case of a captive insurer organized as a reciprocal insurer, a subscriber of the captive
7 insurer, may not receive a benefit from the Oregon Insurance Guaranty Association or any
8 other guaranty or insolvency fund for claims arising out of the operations of the captive
9 insurer in this state.

10 **SECTION 16.** (1)(a) An association captive insurer or industrial insured group incorpo-
11 rated as a stock insurer or mutual insurer may be converted to a reciprocal insurer, or
12 merged with and into a reciprocal insurer, in accordance with a plan and the provisions of
13 this section.

14 (b) The conversion must be accomplished under a reasonable plan and procedures that
15 are approved by the Director of the Department of Consumer and Business Services.

16 (2) A plan for a conversion or merger under this section:

17 (a) Must be fair and equitable to the shareholders of a stock insurer or the policyholders
18 of a mutual insurer; and

19 (b) Must provide for the purchase of:

20 (A) The shares of any nonconsenting shareholder of a stock insurer in substantially the
21 same manner and subject to the same rights and conditions as are provided a dissenting
22 shareholder; or

23 (B) The policyholder interest of any nonconsenting policyholder of a mutual insurer in
24 substantially the same manner and subject to the same rights and conditions as are provided
25 a dissenting policyholder.

26 (3)(a) The director may not approve the plan for a conversion under this section unless
27 the plan:

28 (A) Provides for the conversion of existing shareholder or policyholder interests into
29 subscriber interests in the resulting reciprocal insurer, proportionate to shareholder or
30 policyholder interests in the stock or mutual insurer; and

31 (B) Is approved:

32 (i) In the case of a stock insurer, by a majority of the shares entitled to vote represented
33 in person or by proxy at a duly called regular or special meeting at which a quorum is
34 present; or

35 (ii) In the case of a mutual insurer, by a majority of the voting interests of policyholders
36 represented in person or by proxy at a duly called regular or special meeting at which a
37 quorum is present.

38 (b) If the director approves a plan for a conversion, the director shall amend the con-
39 verting insurer's certificate of authority to reflect conversion to a reciprocal insurer and
40 issue the amended certificate of authority to the converting insurer's attorney-in-fact.

41 (c) The conversion takes effect and the corporate existence of the converting insurer
42 ceases when the director issues an amended certificate of authority to a reciprocal insurer.
43 The resulting reciprocal insurer shall notify the Secretary of State of the conversion.

44 (4)(a) A merger authorized under subsection (1) of this section must be accomplished in
45 accordance with ORS 732.517 to 732.546, except that, solely for purposes of the merger:

1 (A) The plan for a merger must satisfy the requirements of subsection (2) of this section;

2 (B) The subscribers' advisory committee of a reciprocal insurer is equivalent to the board
3 of directors of a stock or mutual insurer;

4 (C) The subscribers of a reciprocal insurer are the equivalent of the policyholders of a
5 mutual insurer; and

6 (D) If a subscribers' advisory committee does not have a president or secretary, the
7 committee's officers who have substantially equivalent duties are the president and secretary
8 of the committee.

9 (b) The director shall approve the articles of merger if the director finds that the merger
10 will promote the general good of this state in conformance with the standards under section
11 11 (4) of this 2011 Act.

12 (c) Notwithstanding sections 9 and 10 of this 2011 Act, the director may permit the for-
13 mation, without capital and surplus, of a captive insurer organized as a reciprocal insurer,
14 into which an existing captive insurer may be merged to facilitate a transaction under this
15 subsection, if only one authorized insurer survives the merger.

16 (d) An alien captive insurer may be a party to a merger authorized under subsection (1)
17 of this section if:

18 (A) The requirements for the merger between a domestic and a foreign insurer as de-
19 termined by the director are applied to the merger; and

20 (B) The alien captive insurer is an insurer with a certificate of authority by a jurisdiction
21 other than this state.

22 (e) If the director approves the articles of merger under this subsection, the director
23 shall endorse the director's approval on the articles and the surviving insurer shall register
24 the business name with the Secretary of State.

25 (5)(a) Except as provided in paragraph (b) of this subsection, a conversion authorized
26 under subsection (1) of this section must provide for a hearing. Notice of the hearing must
27 be given to the insurer, its directors and officers and the shareholders of a stock insurer or
28 the policyholders of a mutual insurer. All such persons have the right to appear at the
29 hearing.

30 (b) The director may waive or modify the requirements for the hearing.

31 (c) If a notice of hearing is required and has been given under paragraph (a) of this
32 subsection but no hearing is requested, the director may cancel the hearing.

33 **SECTION 17.** (1)(a) Before March 1 of each year, a captive insurer must submit to the
34 Director of the Department of Consumer and Business Services a report of the financial
35 condition of the captive insurer, verified by oath of two of the executive officers of the cap-
36 tive insurer.

37 (b) Except as provided in sections 9 and 10 of this 2011 Act, a captive insurer must report:

38 (A) The use of generally accepted accounting principles, except to the extent that the
39 director requires, approves, or accepts the use of a statutory accounting principle;

40 (B) The use of a useful or necessary modification or adaptation to an accounting principle
41 that is required, approved, or accepted by the director for the class of insurance and type
42 of insurer to be reported upon; and

43 (C) Any supplemental or additional information required by the director.

44 (c)(A) An association captive insurer and an industrial insured group shall file the report
45 determined and required by the director; and

1 (B) An industrial insured group shall comply with rules adopted and identified by the di-
2 rector.

3 (2)(a) A pure captive insurer may make written application to the director for approval
4 to file the required report on an alternative reporting date that is consistent with the end
5 of the fiscal year of the parent of the pure captive insurer.

6 (b) If the director approves an alternative reporting date for a pure captive insurer under
7 paragraph (a) of this subsection, the annual report is due 60 days after the end of the fiscal
8 year of the parent of the pure captive insurer.

9 (3)(a) Sixty days after the end of its fiscal year, an alien captive insurer acting as a
10 branch captive insurer in this state must file with the director a copy of all reports and
11 statements required to be filed under the laws of the jurisdiction in which the alien captive
12 insurer is formed, verified by oath by two of the alien captive insurer's executive officers.

13 (b) If the director is satisfied that the annual report filed by the alien captive insurer in
14 the jurisdiction in which the alien captive insurer is formed provides adequate information
15 concerning the financial condition of the alien captive insurer, the director may waive the
16 requirement for an annual report of financial condition for a captive insurer under this sec-
17 tion with respect to insurance transacted in the alien jurisdiction.

18 (c) A waiver by the director under paragraph (b) of this subsection must be in writing
19 and is subject to public inspection.

20 **SECTION 18.** (1)(a) The Director of the Department of Consumer and Business Services,
21 or the director's designee, shall examine the affairs of each captive insurer once in each
22 three-year period.

23 (b) The three-year period described in paragraph (a) of this subsection is determined on
24 the basis of three full annual accounting periods of operation.

25 (c) The examination is to be made as of December 31 of the full three-year period.

26 (d) In addition to an examination required under this subsection, the director, or the
27 director's designee, may examine a captive insurer whenever the director determines it to
28 be prudent.

29 (2) During an examination under this section, the director, or the director's designee,
30 shall thoroughly examine the affairs of the captive insurer to ascertain:

31 (a) The financial condition of the captive insurer;

32 (b) The ability of the captive insurer to fulfill the obligations of the captive insurer; and

33 (c) Whether the captive insurer meets the requirements of sections 2 to 24 of this 2011
34 Act.

35 (3) The director upon application may expand the three-year period described in sub-
36 section (1) of this section to five years if during that period a captive insurer is subject to
37 a comprehensive annual audit:

38 (a) Of a scope satisfactory to the director; and

39 (b) Performed by independent auditors approved by the director.

40 (4) A captive insurer that is examined under this section shall pay the expenses and
41 charges of the examination.

42 **SECTION 19.** (1) The Director of the Department of Consumer and Business Services, or
43 the director's designee, shall examine only the branch operations of, and the insurance
44 transacted by, a branch captive insurer in this state if the branch captive insurer:

45 (a) Provides annually to the director a certificate of compliance, or an equivalent, issued

1 by or filed with the licensing authority of the jurisdiction in which the branch captive insurer
2 is formed; and

3 (b) Demonstrates to the satisfaction of the director that the branch captive insurer is
4 operating in sound financial condition in accordance with all applicable laws and regulations
5 of the jurisdiction in which the branch captive insurer is formed.

6 (2) As a condition of obtaining a certificate of authority, a branch captive insurer shall
7 authorize the director to examine the affairs of the branch captive insurer in the jurisdiction
8 in which the branch captive insurer is formed.

9 (3) A branch captive insurer that is examined under this section shall pay the expenses
10 and charges of the examination.

11 **SECTION 20.** (1) The Director of the Department of Consumer and Business Services
12 may suspend or revoke the certificate of authority issued to a captive insurer to transact
13 insurance in this state for:

14 (a) Insolvency or impairment of capital or surplus;

15 (b) Failure to meet the requirements of sections 2 to 24 of this 2011 Act;

16 (c) Refusal or failure to submit an annual report required by section 17 of this 2011 Act
17 or any other report or statement required by law or by lawful order of the director;

18 (d) Failure to comply with the charter, bylaws or other organizational document of the
19 captive insurer;

20 (e) Failure to submit to an examination under section 18 or 19 of this 2011 Act or any
21 legal obligation relative to an examination under section 18 or 19 of this 2011 Act;

22 (f) Refusal or failure to pay the cost of examination under section 18 or 19 of this 2011
23 Act;

24 (g) Use of methods that, although not otherwise specifically prohibited by law, render:

25 (A) The operation of the captive insurer detrimental to the public or the policyholders
26 of the captive insurer; or

27 (B) The condition of the captive insurer unsound with respect to the public or to the
28 policyholders of the captive insurer; or

29 (h) Failure otherwise to comply with laws of this state.

30 (2) If the director finds, upon examination, hearing, or other evidence, that a captive
31 insurer has committed any of the acts specified in subsection (1) of this section, the director
32 may suspend or revoke the certificate of authority issued to the captive insurer if the di-
33 rector considers it in the best interest of the public and the policyholders of the captive
34 insurer to revoke the certificate of authority.

35 **SECTION 21.** (1) A captive reinsurer must be incorporated as a stock insurer with its
36 capital divided into shares and held by the captive reinsurer's shareholders.

37 (2) A captive reinsurer may not have fewer than three incorporators, and at least two
38 of the incorporators of a captive reinsurer shall be residents of this state.

39 (3)(a) Before the articles of incorporation are filed with the Secretary of State, the
40 incorporators shall obtain from the Director of the Department of Consumer and Business
41 Services a certificate finding that the establishment and maintenance of the proposed cor-
42 poration promotes the general good of this state.

43 (b) In considering a request for a certificate under paragraph (a) of this subsection, the
44 director shall consider:

45 (A) The character, reputation, financial standing and purposes of the incorporators;

1 (B) The character, reputation, financial responsibility, insurance experience and business
 2 qualifications of the officers and directors; and

3 (C) Other factors the director considers advisable.

4 (4) The capital stock of a captive reinsurer must be issued at par value or greater.

5 (5) At least one of the members of the board of directors of a captive reinsurer incorpo-
 6 rated in this state must be a resident of this state.

7 **SECTION 22.** (1)(a) If permitted by its articles of incorporation or charter, a captive re-
 8 insurer may apply to the Director of the Department of Consumer and Business Services for
 9 a certificate of authority to transact reinsurance covering property and casualty insurance
 10 or reinsurance contracts.

11 (b) A captive reinsurer that is issued a certificate of authority may transact reinsurance
 12 contracts covering risks in any state.

13 (2) To transact reinsurance in this state, a captive reinsurer must:

14 (a) Obtain from the director a certificate of authority that authorizes the captive re-
 15 insurer to transact reinsurance in this state;

16 (b) Hold at least one board of directors' meeting each year in this state or by telephone
 17 conference;

18 (c) Maintain its principal place of business in this state; and

19 (d) Appoint a registered agent to accept service of process, notice and demand and to
 20 otherwise act on behalf of the captive reinsurer in this state.

21 (3) An applicant captive reinsurer shall file with the director:

22 (a) A certified copy of its articles of incorporation or its charter, and bylaws;

23 (b) A statement under oath of its president and secretary showing the financial condition
 24 of the applicant captive reinsurer; and

25 (c) Any other document required by the director by rule.

26 (4) In addition to the information required by subsection (3) of this section, the applicant
 27 captive reinsurer shall file with the director evidence of:

28 (a) The amount and liquidity of the applicant captive reinsurer's assets relative to the
 29 risks to be assumed;

30 (b) The adequacy of the expertise, experience and character of the individual who man-
 31 ages the applicant captive reinsurer;

32 (c) The overall soundness of the applicant captive reinsurer's plan of operation; and

33 (d) Other overall factors considered relevant by the director in ascertaining if the appli-
 34 cant captive reinsurer is able to meet its policy obligations.

35 (5)(a) Information submitted pursuant to this section is confidential and may not be dis-
 36 closed to the public by the director, or the director's designee, without the written consent
 37 of the applicant captive insurer, except that:

38 (A) Information may be discoverable by a party in a civil action or contested case to
 39 which the applicant captive reinsurer is a party, upon a showing by the party seeking to
 40 discover the information that:

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

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

44 (iii) A subpoena issued by a judicial or administrative law officer of competent jurisdic-
 45 tion has been submitted to the director; or

1 **(B) The director may disclose the information to the public officer having jurisdiction**
2 **over the regulation of insurance in another state if:**

3 **(i) The public official agrees in writing to maintain the confidentiality of the information;**
4 **and**

5 **(ii) The laws of the state in which the public official serves require the information to**
6 **be confidential.**

7 **(b) This subsection does not apply to an industrial insured captive reinsurer insuring the**
8 **risks of an industrial insured group.**

9 **SECTION 23.** **(1)(a) The Director of the Department of Consumer and Business Services**
10 **may not issue a certificate of authority to a captive reinsurer unless the captive reinsurer**
11 **possesses and maintains capital or surplus in excess of required capital of not less than the**
12 **greater of:**

13 **(A) \$300 million; or**

14 **(B) 10 percent of the reserves of the captive reinsurer.**

15 **(b) The surplus required by this subsection may be in the form of cash or securities.**

16 **(2) The director may prescribe additional capital or surplus based upon the class, volume**
17 **and nature of the insurance transacted in this state.**

18 **(3)(a) A captive reinsurer may not pay a dividend out of, or other distribution with re-**
19 **spect to, capital or surplus without the prior approval of the director.**

20 **(b) Approval of an ongoing plan for the payment of dividends or other distributions must**
21 **be conditioned upon the retention at the time of each payment of capital or surplus in excess**
22 **of amounts determined by, or determined in accordance with formulas adopted by, rule of**
23 **the director.**

24 **SECTION 24.** **At least 35 percent of the assets of a captive reinsurer must be managed**
25 **by an asset manager domiciled in this state.**

26 **SECTION 25.** **A captive insurer, as defined in section 2 of this 2011 Act, making an**
27 **election under section 831(b) of the Internal Revenue Code, as amended, shall be afforded the**
28 **same tax treatment on receipt of premiums and tax on investment earnings for state income**
29 **tax purposes as exists for federal income tax purposes except that the income tax rates on**
30 **taxable income of the captive insurer shall be those identified under state law rather than**
31 **federal law.**

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