

B-Engrossed
Senate Bill 1547

Ordered by the Senate February 23
Including Senate Amendments dated February 6 and February 23

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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.

Allows Director of Department of Consumer and Business Services to authorize captive insurers in this state. Sets standards for captive insurers regarding formation, licensing, classes of insurance transacted and reporting. Exempts certain captive insurer documents from disclosure as public records. Sets tax treatment for captive insurers.

Becomes operative on July 1, 2012.

Increases biennial limitation on expenditures from fees, moneys or other revenues, including Miscellaneous Receipts and specified federal funds, but excluding lottery funds and other federal funds, for Department of Consumer and Business Services.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to captive insurance; limiting expenditures; and declaring an emergency.

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

GENERAL REQUIREMENTS FOR CAPTIVE INSURERS

SECTION 1. Sections 2 to 22 of this 2012 Act are added to and made a part of the Insurance Code.

SECTION 2. As used in sections 2 to 22 of this 2012 Act:

(1)(a) "Affiliate" means a business entity that, because of common ownership, common control, common operation or common management, is in the same corporate system as a parent or a member organization.

(b) For purposes of this subsection, "common ownership, common control, common operation or common management" means that two or more business entities are owned, controlled, operated or managed by the same person or group of persons with:

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

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

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

(2) "Alien captive insurer" means an insurer:

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) Formed to transact insurance for a parent or affiliate of the insurer; and
2 (b) Licensed under the laws of a nation other than the United States that imposes stat-
3 utory or regulatory standards:
- 4 (A) On a business entity transacting insurance in the other nation; and
5 (B) In a form acceptable to the Director of the Department of Consumer and Business
6 Services.
- 7 (3) "Association" means a legal association of two or more persons that has been in
8 continuous existence for at least one year if the association or its member organizations:
- 9 (a) Own, control, or hold with power to vote, all of the outstanding voting securities of
10 an association captive insurer incorporated as a stock insurer;
- 11 (b) Have complete voting control over an association captive insurer incorporated as a
12 mutual insurer; or
- 13 (c) Have complete voting control over an association captive insurer formed as a limited
14 liability company.
- 15 (4) "Association captive insurer" means a business entity that insures the risks of:
- 16 (a) A member organization of the association;
- 17 (b) An affiliate of a member organization of the association; or
- 18 (c) The association.
- 19 (5) "Branch captive insurer" means an alien captive insurer that holds a certificate of
20 authority from the Director of the Department of Consumer and Business Services to
21 transact insurance in this state through a business division with a principal place of business
22 in this state.
- 23 (6) "Branch operation" means a business operation of a branch captive insurer in this
24 state.
- 25 (7) "Captive insurer" means any of the following that is formed or holds a certificate of
26 authority issued under sections 2 to 22 of this 2012 Act:
- 27 (a) A pure captive insurer;
- 28 (b) A branch captive insurer;
- 29 (c) An association captive insurer; or
- 30 (d) A captive reinsurer.
- 31 (8) "Captive reinsurer" means a reinsurer that is:
- 32 (a) Formed or holds a certificate of authority under sections 2 to 22 of this 2012 Act;
- 33 (b) Wholly owned by a qualifying reinsurer parent company; and
- 34 (c) A stock corporation.
- 35 (9) "Controlled unaffiliated business" means a business entity:
- 36 (a) That is not in the same corporate system as a parent or the parent's affiliate but has
37 a contractual relationship with a parent or affiliate; and
- 38 (b) Whose risks are managed by a pure captive insurer in accordance with rules adopted
39 by the Director of the Department of Consumer and Business Services under section 4 of this
40 2012 Act.
- 41 (10) "Foreign captive insurer" means an insurer:
- 42 (a) Formed to transact insurance for a parent or affiliate of the insurer; and
- 43 (b) Licensed under the laws of another state that imposes statutory or regulatory stan-
44 dards:
- 45 (A) On a business entity transacting insurance in the other state or jurisdiction; and

1 (B) In a form acceptable to the Director of the Department of Consumer and Business
2 Services.

3 (11) "Member organization" means a person that belongs to an association.

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

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

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

9 (13) "Pure captive insurer" means a business entity that insures risks of a parent or af-
10 filiate of the business entity.

11 (14)(a) "Qualifying reinsurer parent company" means an accredited reinsurer in this
12 state that has:

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

14 (B) Complies with the consolidated debt to total capital ratio established by rule by the
15 Director of the Department of Consumer and Business Services.

16 (b) For purposes of this subsection "consolidated GAAP net worth" means the consol-
17 idated shareholders' equity determined in accordance with generally accepted accounting
18 principles for reporting to the United States Securities and Exchange Commission.

19 **SECTION 3.** (1) The provisions of the Insurance Code cited in sections 2 to 22 of this 2012
20 Act apply to captive insurers. In addition, the provisions of the Insurance Code set forth in
21 ORS chapter 731 relating to administration of the insurance laws apply to captive insurers
22 to the extent not inconsistent with the express provisions of sections 2 to 22 of this 2012 Act.

23 (2) In addition to the provisions of the Insurance Code set forth in subsection (1) of this
24 section, ORS 705.137 and 705.139 apply to captive insurers.

25 **SECTION 4.** The Director of the Department of Consumer and Business Services may
26 adopt rules for the administration of sections 2 to 22 of this 2012 Act.

27 **SECTION 5.** All documents, materials and other information in the possession of the
28 Department of Consumer and Business Services under sections 2 to 22 of this 2012 Act are
29 confidential and subject to public disclosure only as provided in ORS 705.137.

30 **SECTION 6.** (1)(a) When permitted by its articles of incorporation or its charter and by-
31 laws, a captive insurer may apply to the Director of the Department of Consumer and Busi-
32 ness Services for a certificate of authority to transact any class of insurance.

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

34 (A) A pure captive insurer may not insure a risk other than a risk of its parent or af-
35 filiate or a controlled unaffiliated business.

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

37 (i) An affiliate;

38 (ii) A member organization of its association; or

39 (iii) An affiliate of a member organization of its association.

40 (C) A captive insurer may not provide workers' compensation insurance, life insurance,
41 health insurance or any personal property or personal casualty line of insurance, including
42 but not limited to personal motor vehicle insurance coverage and homeowner's insurance,
43 and any component of such coverage.

44 (D) A captive insurer may not accept or cede reinsurance except as provided in section
45 11 of this 2012 Act.

- 1 **(2) To transact insurance in this state, a captive insurer must:**
- 2 **(a) Obtain from the director a certificate of authority that authorizes the captive insurer**
- 3 **to transact insurance in this state;**
- 4 **(b) Appoint a resident registered agent to accept service of process and to otherwise act**
- 5 **on behalf of the captive insurer in this state; and**
- 6 **(c)(A) Hold at least once each year in this state a board of directors meeting; and**
- 7 **(B) Maintain in this state:**
- 8 **(i) The principal place of business of the captive insurer; or**
- 9 **(ii) In the case of a branch captive insurer, the principal place of business for the branch**
- 10 **operations of the branch captive insurer.**
- 11 **(3) In the case of a captive insurer formed as a corporation, if the registered agent can-**
- 12 **not be found with reasonable diligence at the registered office of the captive insurer, the**
- 13 **director is the agent of the captive insurer upon whom process, notice or demand may be**
- 14 **served.**
- 15 **(4)(a) An applicant captive insurer formed as a corporation shall file with the director:**
- 16 **(A) Certified copies of the articles of incorporation or the charter and bylaws of the**
- 17 **corporation;**
- 18 **(B) A statement under oath of the president and secretary of the corporation showing**
- 19 **the financial condition of the corporation; and**
- 20 **(C) Any other statement or document required by the director as adopted by rule.**
- 21 **(b) In addition to the other information required by this subsection, an applicant captive**
- 22 **insurer shall file with the director evidence of:**
- 23 **(A) The amount and liquidity of the assets of the applicant captive insurer relative to the**
- 24 **risks to be assumed by the applicant captive insurer;**
- 25 **(B) The adequacy of the expertise, experience and character of the individual who will**
- 26 **manage the applicant captive insurer;**
- 27 **(C) The overall soundness of the plan of operation of the applicant captive insurer;**
- 28 **(D) The adequacy of the loss prevention programs for any parent or member organization**
- 29 **of the applicant captive insurer; and**
- 30 **(E) Any other factor the director adopts by rule and considers relevant in ascertaining**
- 31 **whether the applicant captive insurer is able to meet the policy obligations of the applicant**
- 32 **captive insurer.**
- 33 **(5)(a) A captive insurer shall pay to the department nonrefundable fees established by the**
- 34 **director by rule for:**
- 35 **(A) Examining, investigating and processing the captive insurer's application for issuance**
- 36 **of a certificate of authority;**
- 37 **(B) Obtaining a certificate of authority for the year the director issues a certificate of**
- 38 **authority to the captive insurer in an amount not less than \$5,000; and**
- 39 **(C) Renewing a certificate of authority in an amount not less than \$5,000.**
- 40 **(b) The fees a captive insurer pays to the Department of Consumer and Business Services**
- 41 **for obtaining or renewing a certificate of authority are in lieu of any payment of premium**
- 42 **assessment on receipt of premium by the captive insurer. Fees for obtaining or renewing a**
- 43 **certificate of authority may be increased by the department by rule and may be scaled on**
- 44 **the basis of premiums the captive insurer collects in any given year.**
- 45 **(c) The director may retain legal, financial and examination services from outside the**

1 department to perform any functions described in sections 2 to 22 of this 2012 Act and may
2 charge the applicant captive insurer the reasonable cost of services performed.

3 (6) If the director is satisfied that the documents and statements filed by the applicant
4 captive insurer meet the requirements of sections 2 to 22 of this 2012 Act, the director may
5 issue a certificate of authority that authorizes the captive insurer to transact insurance in
6 this state.

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

10 (8) Upon approval of the director, a foreign or alien captive insurer may become a do-
11 mestic captive insurer by complying with all of the requirements of the Insurance Code re-
12 lative to the organization and licensing of a domestic captive insurer of the same or
13 equivalent type in this state and by filing with the director certified copies of the insurer's
14 articles of association, charter or other organizational document, together with any appro-
15 priate amendments adopted in accordance with the laws of this state bringing those articles
16 of association, charter or other organizational document into compliance with the laws of
17 this state. After complying with these requirements, the captive insurer is entitled to the
18 necessary or appropriate certificates and licenses to continue transacting insurance in this
19 state and is subject to the authority and jurisdiction of this state. In connection with this
20 redomestication, the director may waive any requirements for public hearings. It is not
21 necessary for a captive insurer redomesticating into this state to merge, consolidate, trans-
22 fer assets or otherwise engage in any other reorganization, other than as specified in this
23 section.

24 **SECTION 7.** A captive insurer may assume a business name only if consistent with the
25 provisions of ORS 731.430.

26 **SECTION 8.** (1) To qualify for authority to transact insurance in this state, a captive
27 insurer shall possess and thereafter maintain capital or surplus, or any combination thereof,
28 of not less than:

29 (a) \$250,000 for a pure captive insurer.

30 (b) \$750,000 for an association captive insurer incorporated as a stock insurer or as a
31 mutual insurer.

32 (c) \$300,000,000 for a captive reinsurer.

33 (2) In accordance with ORS 731.554 (6), for the protection of the public, the Director of
34 the Department of Consumer and Business Services may require a captive insurer to possess
35 and maintain capital or surplus, or any combination thereof, in excess of the amount other-
36 wise required under this section.

37 (3) The capital and surplus required under subsections (1) and (2) of this section may be
38 in the form of:

39 (a) Cash or cash equivalent; or

40 (b) An irrevocable letter of credit issued by an insured institution, as described in ORS
41 731.510, and approved by the director.

42 (4)(a) Except as provided in paragraph (d) of this subsection, a branch captive insurer,
43 as security for the payment of liabilities attributable to branch operations, must establish
44 and maintain, through its branch operations, a trust fund funded by an irrevocable letter of
45 credit or other asset approved by the director.

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

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

6 (A) The capital and surplus required under this section applicable to the line of business
7 written by the captive insurer; and

8 (B) The net reserves on the insurance policies or reinsurance contracts described in this
9 subsection, including:

10 (i) Case basis loss and allocated loss adjustment expense reserves;

11 (ii) Losses and allocated loss adjustment expense amounts incurred but not reported; and

12 (iii) Unearned premiums with regard to insurance transacted by branch operations.

13 (d) In accordance with ORS 731.510, the director may permit a branch captive insurer
14 that is required to post security for loss reserves on insurance transacted by its reinsurer
15 to reduce the funds in the trust fund established under this section by the same amount as
16 the security posted if the security remains posted with the reinsurer.

17 (5) A captive insurer may pay dividends or make distributions if all the following re-
18 quirements are met:

19 (a) Submission of a report to the director listing all dividends and distributions within
20 five business days following the declaration, and not less than 10 business days prior to
21 payment, of the dividends and distributions, commencing from the date of receipt of the re-
22 port by the director.

23 (b) The report required under paragraph (a) of this subsection must demonstrate that the
24 combined capital and surplus of the captive insurer following any dividend or distribution is
25 reasonable in relation to the captive insurer's outstanding liabilities and adequate to the
26 captive insurer's financial needs.

27 (c) A captive insurer may pay dividends or distributions only from earned surplus unless
28 the director gives prior approval for payment from another source.

29 **SECTION 9.** (1) A pure captive insurer must be incorporated as a stock insurer with the
30 capital of the pure captive insurer divided into shares and held by the shareholders of the
31 pure captive insurer.

32 (2) An association captive insurer may be:

33 (a) Incorporated as a stock insurer with the capital of the association captive insurer
34 divided into shares and held by the shareholders of the association captive insurer; or

35 (b) Incorporated as a mutual insurer without capital stock, with a governing body elected
36 by the member organizations of the association captive insurer.

37 (3) The requirements of ORS 732.085 apply to the incorporators of a captive insurer.

38 (4) Any person desiring to organize a captive insurer must first file an application with
39 the Director of the Department of Consumer and Business Services for a permit to organize
40 the captive insurer. The applicant shall pay the applicable fee to the director at the time the
41 application is filed. The application shall be on forms provided by the director and shall be
42 signed by the applicants and verified. The form shall specify information about the following:

43 (a) The character, reputation, financial responsibility and purposes of the proposed
44 incorporators;

45 (b) The character, reputation, financial responsibility, insurance experience and business

1 **qualifications of the proposed officers and directors and the proposed managers;**

2 **(c) Any information provided to the Department of Consumer and Business Services in**
3 **the application for a certificate of authority or that is maintained in the department's files;**
4 **and**

5 **(d) Other aspects the director considers advisable.**

6 **(5) The director shall approve an application for a permit to organize a captive insurer**
7 **only if the director finds that:**

8 **(a) The application is complete;**

9 **(b) The documents filed with the application are in the proper form;**

10 **(c) The proposed financial structure is adequate;**

11 **(d) The character, reputation, financial responsibility and general fitness of the persons**
12 **named in the application or otherwise found to be associated with or have an interest in the**
13 **proposed insurer are such as to command the confidence of the public;**

14 **(e) The proposed directors are collectively competent to assume responsibility for the**
15 **management and general policies and procedures of the captive insurer;**

16 **(f) The proposed management, collectively, possess the requisite general business ability**
17 **and experience in the business of insurance of the class or classes specified in the applica-**
18 **tion; and**

19 **(g) No fact is then known to the director that would prevent the proposed insurer from**
20 **completing its organization and receiving a certificate of authority to transact insurance as**
21 **a captive insurer.**

22 **(6) To the extent not otherwise inconsistent with the provisions of sections 2 to 22 of this**
23 **2012 Act, ORS 732.095, 732.105 and 732.115 apply for the filing of the articles of incorporation**
24 **of a captive insurer.**

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

27 **(A) The nation of an alien captive insurer imposes statutory or regulatory standards, in**
28 **a form acceptable to the director, on captive insurers transacting insurance in that nation;**
29 **and**

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

34 **(b) After the director issues a certificate under paragraph (a) of this subsection, the alien**
35 **captive insurer may register with the department to do business in this state as a branch**
36 **captive insurer.**

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

39 **(9) At least one-quarter of the members of the board of directors of a captive insurer**
40 **formed as a corporation shall be residents of this state.**

41 **(10)(a) A captive insurer formed as a corporation under sections 2 to 22 of this 2012 Act**
42 **has the privileges of and is subject to ORS chapters 60 and 732 and sections 2 to 22 of this**
43 **2012 Act.**

44 **(b) If a conflict exists between a provision of ORS chapters 60 and 732 and a provision**
45 **of sections 2 to 22 of this 2012 Act, sections 2 to 22 of this 2012 Act shall control.**

1 (c) Except as provided in paragraph (d) of this subsection, the provisions of sections 2 to
2 22 of this 2012 Act pertaining to a merger, consolidation, conversion, mutualization and
3 redomestication apply in determining the procedures to be followed by a captive insurer in
4 carrying out any of the transactions described in those provisions.

5 (d) The director may waive or modify the requirements of this subsection.

6 (11) The articles of incorporation or bylaws of a captive insurer may not authorize a
7 quorum of a board of directors to consist of less than one-third of the fixed or prescribed
8 number of directors as provided in rules adopted by the director.

9 **SECTION 10.** (1)(a) An association captive insurer must comply with the investment re-
10 quirements of ORS 733.510 to 733.780.

11 (b) Notwithstanding paragraph (a) of this subsection, the Director of the Department of
12 Consumer and Business Services may by rule approve the use of alternative reliable methods
13 of valuation and rating for an association captive insurer.

14 (2)(a) A pure captive insurer is not subject to any restrictions on allowable investments
15 under ORS 733.510 to 733.780.

16 (b) The director may prohibit or limit an investment that threatens the solvency or
17 liquidity of a pure captive insurer.

18 (3) A captive insurer may not make loans to the parent of the captive insurer or an af-
19 filiate of the captive insurer.

20 **SECTION 11.** (1) A captive insurer may provide reinsurance on risks ceded by an affiliate
21 of the insurer or a controlled unaffiliated business.

22 (2) A captive insurer may take credit for reserves on risks or portions of risks ceded to
23 reinsurers if the credit is acceptable to the Director of the Department of Consumer and
24 Business Services.

25 (3) Subject to the prior written approval of the director, a captive insurer may participate
26 in a pool for the purpose of risk distribution sharing. However, a captive insurer may not join
27 or contribute financially to a plan, pool, association or guaranty or insolvency fund in this
28 state, and a captive insurer, or its insured or its parent or any affiliated company or any
29 member organization of its association, may not receive a benefit from a plan, pool, associ-
30 ation or guaranty or insolvency fund for claims arising out of the operations of the captive
31 insurer.

32 (4) A captive reinsurer must annually file with the department an actuarial opinion pro-
33 vided by a qualified actuary on loss and loss adjustment expense reserves. The qualified
34 actuary providing the actuarial opinion must be independent and may not be an employee
35 of the captive reinsurer or an affiliate of the captive reinsurer for which the actuarial opin-
36 ion is filed.

37 (5) A captive reinsurer may discount its loss and loss adjustment expense reserves only
38 as allowed in rules adopted by the director.

39 (6) The director may disallow the discounting of loss and loss adjustment reserves of a
40 captive reinsurer if the captive reinsurer violates any provision of sections 2 to 22 of this
41 2012 Act.

42 **SECTION 12.** A captive insurer is not required to join a rating organization.

43 **SECTION 13.** (1) A captive insurer is not required to make a report except as specified
44 in this section.

45 (2)(a) Before March 1 of each year, or in accordance with rules adopted under subsection

1 (6) of this section, a captive insurer shall submit to the Director of the Department of Con-
2 sumer and Business Services a report of the financial condition of the captive insurer, veri-
3 fied by oath of two of the executive officers of the captive insurer.

4 (b) A captive insurer shall report:

5 (A) Using generally accepted accounting principles, except to the extent that the director
6 requires, approves or accepts the use of statutory accounting principles;

7 (B) Using a useful or necessary modification or adaptation to an accounting principle
8 that is required, approved or accepted by the director for the type of insurance and kind of
9 insurer to be reported upon; and

10 (C) Supplemental or additional information required by the director.

11 (c) Except as otherwise provided in sections 2 to 22 of this 2012 Act, an association cap-
12 tive insurer shall file the financial statement required by ORS 731.574.

13 (d) For the purposes of this subsection, "statutory accounting" means a method of ac-
14 counting using rules that insurance companies must follow in filing an annual financial
15 statement with the Department of Consumer and Business Services.

16 (3)(a) A pure captive insurer may make a written request to file the required report on
17 a fiscal year end that is consistent with the fiscal year of the parent company of the pure
18 captive insurer.

19 (b) If the director grants an alternative reporting date for a pure captive insurer as de-
20 scribed under paragraph (a) of this subsection, the annual report is due 60 days after the
21 fiscal year end.

22 (4)(a) Not later than 60 days after the fiscal year end, an alien captive insurer operating
23 as a branch captive insurer in this state shall file with the director a copy of all reports and
24 statements required to be filed under the laws of the jurisdiction in which the alien captive
25 insurer is formed, verified by oath by two of the alien captive insurer's executive officers.

26 (b) If the director is satisfied that the annual report filed by the alien captive insurer in
27 the jurisdiction in which the alien captive insurer is formed provides adequate information
28 concerning the financial condition of the alien captive insurer, the director may waive the
29 requirement for completion of the annual statement required for a captive insurer under this
30 section with respect to business written in the alien jurisdiction.

31 (c) A waiver granted by the director under paragraph (b) of this subsection shall be in
32 writing and is subject to public inspection.

33 (5) All captive insurers transacting insurance in this state shall engage a qualified
34 actuary with knowledge of this state for purposes of determining and setting premiums to
35 be charged by the captive insurer.

36 (6) The director may establish by rule criteria to waive or modify the requirements of
37 this section relating to the frequency of reporting and the contents of the report.

38 **SECTION 14.** (1)(a) The Director of the Department of Consumer and Business Services
39 shall examine the affairs of each captive insurer once in each three-year period.

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

42 (c) The examination is to be made as of December 31 of the full three-year period or as
43 of the last day of the month of an annual accounting period authorized for a captive insurer
44 under this section.

45 (d) In addition to an examination required under this subsection, the director may ex-

1 **amine a captive insurer whenever the director determines it to be prudent.**

2 **(2) During an examination under this section, the director shall thoroughly examine the**
3 **affairs of the captive insurer to ascertain:**

4 **(a) The financial condition of the captive insurer;**

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

6 **(c) Whether the captive insurer meets the requirements of sections 2 to 22 of this 2012**
7 **Act.**

8 **(3) The director may expand the three-year period described in subsection (1) of this**
9 **section to five years if during that period a captive insurer is subject to a comprehensive**
10 **annual audit:**

11 **(a) Of a scope satisfactory to the director; and**

12 **(b) Performed by independent auditors approved by the director.**

13 **(4) The director may accept a comprehensive annual independent audit in lieu of an ex-**
14 **amination if the scope of the examination is satisfactory to the director and the examination**
15 **is performed by a qualified independent auditor.**

16 **(5) A captive insurer that is examined under this section shall pay the expenses and**
17 **charges of the examination.**

18 **SECTION 15. Notwithstanding the limits of risk set forth in ORS 731.504, any captive**
19 **insurer for which the Director of the Department of Consumer and Business Services issues**
20 **a certificate of authority under sections 2 to 22 of this 2012 Act must comply with sound**
21 **actuarial principles as determined by the director and must submit reports demonstrating**
22 **such compliance to the director.**

23 **SECTION 16. (1) The Director of the Department of Consumer and Business Services**
24 **may suspend or revoke the certificate of authority issued to a captive insurer to transact**
25 **insurance in this state if the captive insurer:**

26 **(a) Is insolvent or impaired as defined in ORS 734.014;**

27 **(b) Fails to meet the requirements of sections 2 to 22 of this 2012 Act;**

28 **(c) Refuses or fails to submit an annual report required by section 13 of this 2012 Act or**
29 **any other report or statement required by law or by order of the director;**

30 **(d) Fails to comply with the charter, bylaws or other organizational document of the**
31 **captive insurer;**

32 **(e) Fails to submit to an examination under section 14 or 18 of this 2012 Act or any legal**
33 **obligation relative to an examination under section 14 or 18 of this 2012 Act;**

34 **(f) Refuses or fails to pay the cost of examination under section 14 or 18 of this 2012 Act;**

35 **(g) Uses methods that, although not otherwise specifically prohibited by law, render:**

36 **(A) The operation of the captive insurer detrimental to the public or the policyholders**
37 **of the captive insurer according to standards adopted by the director by rule; or**

38 **(B) The condition of the captive insurer unsound with respect to the public or to the**
39 **policyholders of the captive insurer; or**

40 **(h) Otherwise fails to comply with laws of this state.**

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

BRANCH CAPTIVE INSURERS

SECTION 17. Except as otherwise provided in sections 2 to 22 of this 2012 Act, a branch captive insurer must be a pure captive insurer with respect to business operations in this state, unless otherwise permitted by rule of the Director of the Department of Consumer and Business Services.

SECTION 18. (1) The Director of the Department of Consumer and Business Services shall examine only the branch operations of, and the insurance transacted by, a branch captive insurer in this state if the branch captive insurer:

(a) Provides annually to the director a certificate of compliance, or an equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurer is formed; and

(b) Demonstrates to the satisfaction of the director that the branch captive insurer is operating in sound financial condition in accordance with sections 2 to 22 of this 2012 Act and all applicable laws and regulations of the jurisdiction in which the branch captive insurer is formed.

(2) As a condition of its authority as a branch captive insurer, an alien captive insurer must authorize the director to examine the affairs of the alien captive insurer in the jurisdiction in which the alien captive insurer is formed.

(3) An alien captive insurer that is examined under this section shall pay the expenses and charges of the examination.

FOREIGN CAPTIVE INSURERS

SECTION 19. Notwithstanding ORS 731.022, a foreign captive insurer may provide insurance in this state if the foreign captive insurer meets both of the following conditions:

(1) The foreign captive insurer is domiciled in a state that regulates the foreign captive insurer as a captive insurer and the captive insurer is in good standing in that state.

(2) All activities related to the placement of the insurance occurs in the domicile state and the insurance otherwise complies with the laws of the domicile state, including the proposal to make an insurance contract, taking or receiving an application for insurance, collecting a premium or other consideration for the insurance and issuing or delivering policies of insurance.

CAPTIVE REINSURERS

SECTION 20. At least 35 percent of the assets of a captive reinsurer must be managed by an asset manager domiciled in this state.

SECTION 21. If permitted by its articles of incorporation or charter, and in accordance with sections 6 and 22 of this 2012 Act, a captive reinsurer may apply to the Director of the Department of Consumer and Business Services for a certificate of authority to transact reinsurance.

SECTION 22. (1) A captive reinsurer must be incorporated as a stock insurer with its capital divided into shares and held by the captive reinsurer's shareholders. In incorporating, a captive reinsurer must comply with the requirements of section 9 of this 2012 Act.

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

2 (3) At least one member of the board of directors of a captive reinsurer incorporated in
3 this state must be a resident of this state.

4
5 **TAX PROVISIONS**
6

7 **SECTION 23.** Section 24 of this 2012 Act is added to and made a part of ORS chapter 317.

8 **SECTION 24.** A captive insurer, as defined in section 2 of this 2012 Act, making a valid
9 election under section 831(b) of the Internal Revenue Code of 1986, as amended, shall be af-
10 farded the same tax treatment on receipt of premiums and tax on investment earnings for
11 state income tax purposes as exists for federal income tax purposes except that the income
12 tax rates on taxable income of the captive insurer shall be those identified under state law
13 rather than federal law.

14
15 **EXPENDITURE LIMITATION**
16

17 **SECTION 24a.** Notwithstanding any other law limiting expenditures, the maximum limit
18 for payment of expenses from fees, moneys or other revenues, including Miscellaneous Re-
19 cepts and including federal funds for occupational safety, manufactured home inspections
20 and senior health insurance benefit programs, but excluding lottery funds and other federal
21 funds, collected or received by the Department of Consumer and Business Services estab-
22 lished by section 1, chapter 617, Oregon Laws 2011, for the biennium beginning July 1, 2011,
23 is increased by \$100,326.

24
25 **UNIT CAPTIONS**
26

27 **SECTION 25.** The unit captions used in this 2012 Act are provided only for the conven-
28 ience of the reader and do not become part of the statutory law of this state or express any
29 legislative intent in the enactment of this 2012 Act.

30
31 **OPERATIVE DATE**
32

33 **SECTION 26.** Except as provided in section 27 of this 2012 Act, this 2012 Act becomes
34 operative on July 1, 2012.

35 **SECTION 27.** The Director of the Department of Consumer and Business Services may
36 take any action before the operative date of this 2012 Act that is necessary to enable the
37 director to exercise, on and after the operative date of this 2012 Act, all the duties, functions
38 and powers conferred on the director by this 2012 Act.

39
40 **EMERGENCY CLAUSE**
41

42 **SECTION 28.** This 2012 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect
44 on its passage.