February 20, 2007

HOUSE BILL No. 1417

DIGEST OF HB 1417 (Updated February 19, 2007 10:42 am - DI 97)

Citations Affected: IC 27-1.

Synopsis: Captive insurers in Indiana. Specifies requirements for a captive insurer to do business in Indiana. Imposes fees and premium taxes to be paid by a captive insurer. Establishes a captive insurer trust fund.

Effective: July 1, 2007.

Ripley, Fry

January 16, 2007, read first time and referred to Committee on Insurance.
February 19, 2007, amended, reported — Do Pass.

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February 20, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1417

A BILL FOR AN ACT to amend the Indiana Code concerning insurance and to make an appropriation.

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

SECTION 1. IC 27-1-40 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 40. Captive Insurers

Sec. 1. A definition set forth in IC 27-1-2-3 does not apply to this chapter unless this chapter specifies that the definition applies to this chapter.

Sec. 2. As used in this chapter, "affiliate" means a business entity that, directly or indirectly through one (1) or more intermediaries:

(1) controls;

(2) is controlled by; or

(3) is under common control with;

another person.

Sec. 3. As used in this chapter, "agency captive insurer" means a captive insurer that:

(1) is owned and controlled by one (1) or more insurance

producers or brokers; and

(2) reinsures only risks under policies that are placed by or through the insurance producers or brokers that own and control the captive insurer.

Sec. 4. As used in this chapter, "alien captive insurer" means an alien company that:

(1) is formed to write insurance business for the alien company's parent or affiliate; and

(2) is licensed under the laws of a foreign country that imposes statutory or regulatory standards, in a form acceptable to the commissioner, on companies transacting the business of insurance in the foreign jurisdiction.

Sec. 5. As used in this chapter, "alien company" has the meaning set forth in IC 27-1-2-3.

Sec. 6. As used in this chapter, "association" means a legal entity that consists of two (2) or more individuals, corporations, partnerships, associations, or other forms of business organizations.

Sec. 7. (a) As used in this chapter, "association captive insurer" means a captive insurer that:

(1) is owned and controlled by an association; and

(2) insures only the risks of the association, the association's member organizations, and affiliates of the association's member organizations.

(b) The term does not include a captive insurer formed to insure risks of the captive insurer's direct or indirect owners or members under the federal Liability and Risk Retention Act, as amended (15 U.S.C. 3901 et seq.).

Sec. 8. As used in this chapter, "branch business" means an insurance business transacted by a branch captive insurer in Indiana.

Sec. 9. As used in this chapter, "branch captive insurer" means an alien captive insurer that is authorized by the commissioner to transact the business of insurance in Indiana through a business unit having a principal place of business in Indiana.

Sec. 10. As used in this chapter, "branch operations" means business operations of a branch captive insurer in Indiana.

Sec. 11. As used in this chapter, "business entity" refers to:

(1) a corporation organized as a stock corporation or a nonstock corporation;

(2) a partnership;

(3) a limited liability company;

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(4) a limited liability partnership;
(5) a joint venture;
(6) an association;
(7) a joint stock company;
(8) a trust;
(9) an unincorporated organization;
(10) an entity similar to an entity described in, or a combination of entities described in, this section.

Sec. 12. (a) As used in this chapter, "captive insurer" means a business entity that insures the risks of:
(1) the business entity's parent or affiliates of the business entity's parent;
(2) member organizations of an association and the affiliates of the member organizations; or
(3) other policyholders or participants that have entered into a contractual relationship with the business entity for the purchase of insurance.

(b) The term includes a business entity that qualifies for and is granted a certificate of authority under this chapter as:
(1) an agency captive insurer;
(2) an alien captive insurer;
(3) an association captive insurer;
(4) a branch captive insurer;
(5) an industrial insured captive insurer;
(6) a mutual captive insurer;
(7) a pure captive insurer;
(8) a rental captive insurer;
(9) a risk retention group captive insurer;
(10) a sponsored captive insurer; or
(11) a special purpose captive insurer.

Sec. 13. As used in this chapter, "captive manager" means a person that maintains a physical presence in Indiana and that the commissioner has determined to be qualified by education and experience to:
(1) oversee the operational results of a captive insurer;
(2) analyze the captive insurer's financial performance and condition; and
(3) report the operational results, financial performance, and condition to the commissioner.

Sec. 14. As used in this chapter, "commissioner" has the meaning set forth in IC 27-1-2-3.

Sec. 15. As used in this chapter, "company" has the meaning set

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forth in IC 27-1-2-3.

Sec. 16. As used in this chapter, "control" means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person:

(1) through the control or beneficial ownership of voting securities or membership interests;

(2) by contract other than a commercial contract for goods or nonmanagement services; or

(3) otherwise, unless the power is the result of an official position as a member of the governing body, a manager, or an officer of an entity.

Sec. 17. As used in this chapter, "department" has the meaning set forth in IC 27-1-2-3.

Sec. 18. As used in this chapter, "domestic company" has the meaning set forth in IC 27-1-2-3.

Sec. 19. As used in this chapter, "excess worker's compensation insurance" means insurance in excess of the specified per incident or aggregate limit established by:

(1) the commissioner, if the insurance is transacted in Indiana; or

(2) the chief regulatory officer for insurance in the jurisdiction in which the insurance is transacted.

Sec. 20. As used in this chapter, "foreign company" has the meaning set forth in IC 27-1-2-3.

Sec. 21. As used in this chapter, "general assets" means the assets of a captive insurer that are not protected cell assets.

Sec. 22. As used in this chapter, "governing body" means the board of trustees, governing board, board of directors, or other body responsible for governing a business entity.

Sec. 23. As used in this chapter, "industrial insured" has the meaning set forth in IC 27-4-5-2(a)(8).

Sec. 24. As used in this chapter, "industrial insured captive insurer" means a captive insurer that insures risks of:

(1) the industrial insureds that comprise an industrial insured group; and

(2) the industrial insured group's affiliates.

Sec. 25. As used in this chapter, "industrial insured group" means a group of industrial insureds that collectively:

(1) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer that is incorporated as a stock insurer or a limited liability company; or

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(2) have complete voting control over an industrial insured captive insurer that is incorporated as a mutual captive.

Sec. 26. As used in this chapter, "member organization" means a business entity that belongs to an association.

Sec. 27. As used in this chapter, "mutual captive insurer" means a captive insurer that is organized as a nonstock, nonprofit corporation under IC 23-17 to act as a captive insurer.

Sec. 28. As used in this chapter, "net direct premiums" means:

(1) direct premiums that are collected or contracted for on policies or contracts of insurance written by a captive insurer during the preceding calendar year; minus

(2) amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums and premium deposits returned or credited to policyholders.

Sec. 29. (a) As used in this chapter, "organizational documents" means basic documents related to the creation, organization, and functioning of a business entity.

(b) The term includes:

(1) articles of incorporation;

(2) articles of association;

(3) a partnership agreement;

(4) a trust agreement;

(5) a shareholder agreement;

(6) other applicable documents;

(7) bylaws, rules, regulations, or other documents that regulate the internal affairs of the entity; and

(8) amendments to the documents specified in subdivisions (1) through (7).

Sec. 30. (a) As used in this chapter, "parent" means the person that directly or indirectly owns, controls, or holds power to vote fifty percent (50%) or more of the outstanding voting securities of a pure captive insurer.

(b) The term, as it applies to a pure captive insurer, includes an employee benefit plan or trust.

Sec. 31. As used in this chapter, "participant" means a person, or affiliate of a person, that meets both of the following conditions:

(1) The person or affiliate is insured by a sponsored captive insurer.

(2) The person's or affiliate's losses are limited under a contract with the sponsored captive insurer to the assets of a protected cell.

Sec. 32. As used in this chapter, "participant contract" means

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a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of the protected cell.

Sec. 33. As used in this chapter, "person" has the meaning set forth in IC 27-1-2-3.

Sec. 34. As used in this chapter, "protected cell" means an account separately established and maintained by a captive insurer:

(1) for which the minimum capital and surplus required by applicable law is provided by one (1) or more persons;

(2) that is formed or granted a certificate of authority under this chapter;

(3) that insures risks of each individual participant under a contract;

(4) that is comprised of one (1) or more participants who are authorized to act on matters relating to the protected cell; and

(5) that segregates each participant's liability through one (1) or more protected cells.

Sec. 35. As used in this chapter, "protected cell assets" or "protected cell's assets" means the assets of a captive insurer that are held in or on behalf of a protected cell of the captive insurer as follows:

(1) Capital stock, retained earnings, and additional paid in capital or surplus attributable to the protected cell.

(2) All other assets held in or on behalf of the protected cell.

Sec. 36. As used in this chapter, "pure captive insurer" means a captive insurer that insures or reinsures only risks of:

(1) the captive insurer's parent; and

(2) affiliates or controlled unaffiliated business.

Sec. 37. As used in this chapter, "redomestication" means the transfer to Indiana of the insurance domicile of:

(1) a foreign company; or

(2) an alien company;

that is authorized by the commissioner to do insurance business in Indiana.

Sec. 38. As used in this chapter, "risk retention group captive insurer" means a captive insurer that is formed to insure only the similar liability risks of the captive insurer's direct or indirect members or owners to the extent permitted by the federal Liability and Risk Retention Act, as amended (15 U.S.C. 3901 et seq.)

Sec. 39. As used in this chapter, "rental captive insurer" means a captive insurer that:

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(1) is formed to enter into contracts with policyholders or associations to offer the benefits of a program of captive insurance; and

(2) only insures risks of policyholders or associations described in subdivision (1).

Sec. 40. As used in this chapter, "sponsored captive insurer" means a captive insurer:

(1) for which the minimum capital and surplus required by applicable law is provided by one (1) or more sponsors;

(2) that is formed or granted a certificate of authority under this chapter;

(3) that insures the risks of separate participants through a contract; and

(4) that segregates each participant's liability through one (1) or more protected cells.

Sec. 41. As used in this chapter, "special purpose captive insurer" means a captive insurer that is formed under Indiana law to act as a captive insurer:

(1) of a type that is not otherwise defined in this chapter; and

(2) that:

(A) is consistent with the type of captive insurer permitted under the laws of another jurisdiction; and

(B) the commissioner approves as a captive insurer under this chapter.

Sec. 42. As used in this chapter, "stock insurer" means an incorporated company with issued and outstanding stock whose capital and surplus is owned by the company's stockholders.

Sec. 43. For purposes of this chapter, insurance written by a captive insurer or protected cell of a worker's compensation qualified self insured plan of the captive insurer's parent or affiliate is considered to be reinsurance.

Sec. 44. (a) A captive insurer may, if permitted by the captive insurer's organizational documents, apply to the commissioner for a certificate of authority as a captive insurer to engage in the business of insurance in Indiana. However, except as provided in subsection (b), a captive insurer may not:

(1) directly provide personal motor vehicle or homeowner's insurance coverage;

(2) accept or cede reinsurance, except as provided in section 60 of this chapter;

(3) if the captive insurer is a pure captive insurer, insure risks other than risks of the captive insurer's parent and affiliates;

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(4) if the captive insurer is an association captive insurer, insure risks other than risks of the captive insurer's association, member organizations of the association, and affiliates of the member organizations;

(5) if the captive insurer is an agency captive insurer, insure risks other than risks of the policies that are placed by or through the insurance producer or broker that owns the captive insurer;

(6) if the captive insurer is a risk retention group captive insurer, insure risks other than the similar liability risks of the captive insurer's direct or indirect members or owners;

(7) if the captive insurer is a rental captive insurer, insure risks other than risks of the policyholders or associations that have entered into insurance contracts with the captive insurer using a contract form approved by the commissioner;

(8) provide excess worker's compensation insurance to the captive insurer's parent or affiliate if the provision of excess worker's compensation insurance to the captive insurer's parent or affiliate is prohibited by the law of the state in which the worker's compensation insurance is transacted;

(9) directly insure the worker's compensation liability of the captive insurer's parent or affiliate, or reinsure worker's compensation insurance provided under a self funded insurance program of the captive insurer's parent or affiliate, unless:

(A) either:

(i) if the worker's compensation insurance is transacted in Indiana, the parent or affiliate that provides the self funded insurance is certified by the commissioner as a self insured employer; or

(ii) the self funded insurance program is otherwise qualified under or in compliance with the law of the state in which the worker's compensation insurance is transacted; or

(B) the captive insurer receives a worker's compensation endorsement from the commissioner, which is valid only for Indiana worker's compensation liability; or

(10) write insurance or reinsurance for employee benefits that are subject to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001 et seq.) for an entity other than the captive insurer's parent or affiliate.

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(b) The commissioner may authorize a captive insurer that is otherwise qualified to engage in insurance business in Indiana to engage in activity in which the captive insurer is permitted to engage in another jurisdiction.

(c) A captive insurer must file with the commissioner a written request to engage in activity described in subsection (b). The commissioner shall approve the request not more than thirty (30) days after receiving the request, unless the commissioner determines that the activity is harmful to the captive insurer's policyholders.

Sec. 45. A captive insurer may not use or adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for the name of another insurer authorized to engage in insurance business in Indiana.

Sec. 46. (a) A captive insurer may be organized in Indiana as a stock or nonstock corporation, limited liability company, partnership, limited liability partnership, or another form of entity recognized by Indiana law and authorized by the commissioner.

(b) The organizational documents of a captive insurer must meet all of the following minimum requirements:

(1) The capital stock of a captive insurer incorporated as a stock insurer must be issued at not less than par value.

(2) The captive insurer may not have less than two (2) incorporators or organizers.

(3) The captive insurer must be managed under the direction of at least three (3) members of the captive insurer's governing body, at least one (1) of whom is a resident of Indiana.

(4) The organizational documents of a captive insurer must specify that a quorum of the governing body consists of more than one-third (1/3) of the number of members of the governing body prescribed by the organizational documents.

(5) Additional provisions required by the commissioner.

(c) The commissioner may:

(1) at the request of a captive insurer, issue a certificate of good standing; and

(2) charge a fee established by the commissioner for each certificate of good standing.

(d) Indiana law applies to a captive insurer organized in Indiana to the same extent that the law applies to another business entity of the same type as the captive insurer.

(e) This chapter is controlling in the event of a conflict with any

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other law.

Sec. 47. (a) To engage in insurance business in Indiana, a captive insurer shall do all of the following:

(1) Obtain from the commissioner a certificate of authority authorizing the captive insurer to engage in the business of insurance in Indiana.

(2) Hold at least one (1) board meeting each year in Indiana.

(3) Maintain:

(A) the captive insurer's principal place of business in Indiana; or

(B) if the captive insurer is a branch captive insurer, maintain the principal place of business for the captive insurer's branch operations in Indiana;

at which location copies of all corporate and financial records shall be maintained.

(4) Make adequate arrangements with:

(A) an Indiana chartered bank; or

(B) a branch, located in Indiana, of a bank:

(i) that is a member of the United States Federal Reserve System; or

(ii) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(5) Employ or enter into a contract with a qualified, experienced, certified public accountant that meets appropriate standards of competence and experience in matters concerning the regulation of insurance in Indiana, as determined by the commissioner.

(6) Employ or enter into a contract with a qualified, experienced actuary to perform reviews and evaluations of the operations of the captive insurer.

(7) Employ or enter into a contract with an attorney who is licensed to practice law in Indiana and meets appropriate standards of competence and experience in matters concerning the regulation of insurance in Indiana, as determined by the commissioner.

(8) Appoint a resident registered agent to accept service of process and to otherwise act on the captive insurer's behalf in Indiana.

(9) Retain a captive manager approved by the commissioner, who shall do all of the following:

(A) Review the results of the captive insurer's operations.

(B) Consult with the captive insurer's management to

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ensure that the captive insurer is operated in a sound and financially responsible manner and in compliance with the captive insurer's business plan currently on file with the commissioner.

(C) File a report with the commissioner at least annually, on a form prescribed by the commissioner, concerning the captive insurer's operations and financial conditions.

(b) Before receiving a certificate of authority, a captive insurer shall file all of the following with the commissioner:

(1) If the captive insurer is formed as a corporation or a nonprofit corporation:

(A) a certified copy of the captive insurer's organizational documents;

(B) a statement under oath of the captive insurer's president and secretary showing the captive insurer's financial condition; and

(C) other information required by the commissioner.

(2) If the captive insurer is formed as a limited liability company or other form of business entity:

(A) a certified copy of the captive insurer's organizational documents;

(B) a statement under oath by the captive insurer's managers showing the captive insurer's financial condition; and

(C) other information required by the commissioner

(3) Evidence of:

(A) the amount and liquidity of the captive insurer's assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person that will manage the captive insurer;

(C) the overall soundness of the captive insurer's plan of operation;

(D) the adequacy of the loss prevention programs of the captive insurer's parent, member organizations, or industrial insureds, as applicable;

(E) a pro forma financial statement for the captive insurer that has been prepared by a certified public accountant or other professional approved by the commissioner; and

(F) other factors considered by the commissioner to be relevant in determining whether the captive insurer is able to meet the captive insurer's policy obligations.

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(4) If the captive insurer is a sponsored captive insurer:

(A) a business plan demonstrating the manner by which the sponsored captive insurer will:

(i) account for the loss and expense experience of each protected cell at a level of detail determined sufficient by the commissioner; and

(ii) report the loss and expense experience to the commissioner;

(B) a statement acknowledging that all financial records of the sponsored captive insurer, including records that pertain to protected cells, are available for inspection by the commissioner;

(C) all contracts or sample contracts between the sponsored captive insurer and participants; and

(D) evidence that expenses are allocated to each protected cell in an equitable manner.

(c) The commissioner shall consider the following in determining whether to grant a certificate of authority under this section:

(1) The character, reputation, financial standing, and purposes of:

(A) the captive insurer's incorporators; or

(B) other sponsors, organizers, or creators of the captive insurer.

(2) The character, reputation, financial responsibility, experience related to insurance, and business qualifications of the members of the governing body of the captive insurer.

(3) The competence of any person who will manage the affairs of the captive insurer under a contract with the captive insurer.

(4) The competence, reputation, and experience related to the regulation of insurance of the legal counsel of the captive insurer.

(5) If the captive insurer is a rental captive insurer, the competence, reputation, and experience of the underwriter of the captive insurer.

(6) The strategic business plan of the captive insurer.

(7) Other aspects of the captive insurer as determined by the commissioner.

(d) If the commissioner is satisfied from the information filed under subsection (b) that the captive insurer is in compliance with this chapter, the commissioner may grant a certificate of authority

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authorizing the captive insurer to engage in the business of insurance in Indiana.

(e) A certificate of authority granted under subsection (d) is effective until:

(1) the captive insurer fails to pay applicable fees; or

(2) the withdrawal, suspension, or revocation of the certificate of authority by the commissioner.

Sec. 48. (a) Except as provided in subsection (b) or (c), information filed with the commissioner under this chapter is confidential.

(b) Information filed with the commissioner is discoverable by a party in a civil action or contested case to which the captive insurer that filed the information is a party, upon a specific finding by the court that:

(1) the captive insurer is a necessary party to the action and not joined only to evade the confidentiality provisions of this section; and

(2) the information sought is:

(A) relevant, material to, and necessary for the prosecution or defense of the claim asserted in the litigation; and

(B) not available through another source.

(c) The commissioner may disclose information filed with the commissioner to a public official that has jurisdiction over the regulation of insurance in another state if:

(1) the public official agrees in writing to maintain the confidentiality of the information; and

(2) the laws of the state in which the public official serves require the information to be confidential.

Sec. 49. (a) At the time a captive insurer applies for a certificate of authority under this chapter, the captive insurer shall pay to the department a nonrefundable application fee of five hundred dollars ($500).

(b) The commissioner may:

(1) retain legal, financial, and examination consulting services to examine and investigate the application, the reasonable cost of which may be charged to the captive insurer; or

(2) use internal resources to examine and investigate the application for a fee of two thousand four hundred dollars ($2,400).

(c) A captive insurer shall pay to the department a certificate of authority renewal fee of five hundred dollars ($500) annually after the year the certificate of authority is granted under section 47 of

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this chapter.

(d) The department may charge a fifteen dollar ($15) fee for a document that requires:

(1) a certification of authenticity by the department; or

(2) the signature of the commissioner or the commissioner's designee.

Sec. 50. (a) A captive insurer may form one (1) or more protected cells to:

(1) insure the risks of one (1) or more participants; or

(2) segregate the captive insurer's assets and liabilities from the assets and liabilities of a protected cell formed under subdivision (1).

The assets and liabilities of each protected cell must be held separately from the assets and liabilities of all other protected cells.

(b) A captive insurer is a single legal entity and each protected cell of a captive insurer:

(1) may be established as a legal entity that is separate from the captive insurer; and

(2) must be separately identified or designated as being a part of the captive insurer.

(c) A captive insurer that maintains a protected cell shall, at the time of paying the annual certificate of authority renewal fee under section 49 of this chapter, pay an additional annual fee in an amount to be established by the commissioner for each protected cell.

Sec. 51. (a) A captive insurer may create and issue one (1) or more classes or series of shares for one (1) or more protected cells. The proceeds of the issue must be included in the assets of the protected cell that issues the shares.

(b) The proceeds of an issue of shares other than protected cell shares must be included in the captive insurer's general assets.

(c) A captive insurer may pay a dividend on a class or series of protected cell shares regardless of whether a dividend is declared on another class or series of protected cell shares or other shares.

(d) Dividends may be paid on protected cell shares from protected cell assets. Protected cell dividends must be paid only to the shareholders of the protected cell from which the protected cell shares are issued, and otherwise in accordance with the rights of the shares.

Sec. 52. (a) An act, a matter, a deed, an agreement, a contract, an instrument under seal, or another instrument or arrangement that is binding on or inures to the benefit of a protected cell must

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be:

(1) executed by the captive insurer for and on behalf of the protected cell and identified as an act, a matter, a deed, an agreement, a contract, an instrument under seal, or another instrument or arrangement; and

(2) if the act, matter, deed, agreement, contract, instrument, or arrangement is in writing, the act, matter, deed, agreement, contract, instrument, or arrangement must indicate that the execution is in the name of, or by, or for the account of the protected cell.

(b) If a captive insurer violates subsection (a), the following apply:

(1) Except as provided in subsection (c), the members of the governing body of the captive insurer shall, notwithstanding a provision to the contrary in:

(A) the captive insurer's organizational documents;

(B) a contract with the captive insurer; or

(C) any other document;

incur personal liability for the liabilities of the captive insurer and a protected cell or the matter, deed, agreement, contract, instrument, or arrangement executed.

(2) Unless the members of the governing body of the captive insurer were fraudulent, reckless, negligent, or acted in bad faith:

(A) in the case of a matter on behalf of or attributable to a protected cell, the members of the governing body have a right of indemnity against the assets of the protected cell; and

(B) in the case of a matter not on behalf of or attributable to a protected cell or account, the members of the governing body have a right of indemnity against the general assets of the captive insurer.

(c) A court may relieve a member of the governing body of all or part of the member's personal liability under subsection (b)(1) if the member satisfies the court that the member should be relieved because the member:

(1) was not aware of the circumstances giving rise to the liability and so was not fraudulent or reckless and did not act in bad faith; or

(2) expressly objected, and exercised the rights that a member of the governing body, by way of voting power or otherwise, should exercise to prevent the circumstances giving rise to the

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liability.

(d) If a court relieves a member of the governing body of all or part of the member's personal liability under subsection (c), the court may order the liability in question to be paid from the protected cell, or from the general assets of the captive insurer.

(e) A provision:

(1) that is set forth in:

(A) the organizational documents of a captive insurer; or

(B) a contract entered into by a captive insurer under which the captive insurer may be liable; and

(2) that purports to indemnify a member of the governing body of the captive insurer for conduct that would otherwise make the member of the governing body ineligible for indemnification under subsection (b)(2);

is void.

Sec. 53. (a) The assets of a captive insurer must be protected cell assets or general assets.

(b) It is the duty of the members of the governing body of a captive insurer to establish and maintain, or cause to be established and maintained, procedures to:

(1) keep protected cell assets separate and separately identifiable from general assets;

(2) keep each protected cell's assets separate and separately identifiable from every other protected cell's assets; and

(3) apportion or transfer protected cell assets and liabilities between protected cells, or between protected cells and general assets of the protected cell captive insurer.

(c) Protected cell assets of a particular protected cell:

(1) may be available and used only to meet liabilities to creditors of the protected cell, and are subject to recourse only of the creditors of the protected cell; and

(2) may not be available or used to meet liabilities to, and must be protected from, creditors of the captive insurer that are not creditors of the protected cell, and are not subject to recourse of creditors that are not creditors of the protected cell.

(d) If a liability of a captive insurer to a person arises from a matter related to, or is otherwise imposed with respect to, a particular protected cell, the liability extends, and the person is entitled to recourse, only to:

(1) first, the protected cell's assets; and

(2) second, the captive insurer's general assets, to the extent

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that the:

(A) protected cell's assets are insufficient to satisfy the liability; and

(B) captive insurer's general assets exceed minimum capital amounts required under this chapter.

(e) If a liability of a captive insurer to a person:

(1) arises other than from a matter related to a particular protected cell; or

(2) is imposed other than in relation to a particular protected cell;

the liability extends, and the person has recourse, only to the captive insurer's general assets.

(f) A liability of a captive insurer that is not attributable to a protected cell must be discharged from the captive insurer's general assets.

(g) Income, receipts, and other property or rights of a captive insurer that are not attributable to a protected cell must be attributed to the captive insurer's general assets to the extent that the captive insurer's general assets exceed minimum capital amounts required under this chapter.

Sec. 54. (a) Each protected cell must be accounted for separately in the records of a captive insurer to reflect the financial condition and results of operations of the protected cell, including:

(1) net income or loss;

(2) dividends or other distributions to participants; and

(3) other factors:

(A) provided in a participant contract; or

(B) required by the commissioner.

(b) A captive insurer may not make a sale, an exchange, or another transfer of assets between the captive insurer's protected cells without the written consent of the protected cells and the commissioner.

(c) A sale, an exchange, a transfer of assets, a dividend, or a distribution may not be made from a protected cell to any person unless the commissioner provides prior written approval upon a finding that the sale, exchange, transfer, dividend, or distribution will not result in the insolvency or impairment of the protected cell.

Sec. 55. (a) A captive insurer that forms a protected cell shall annually file with the commissioner financial reports required by the commissioner, including financial statements detailing the financial experience of each protected cell.

(b) A captive insurer described in subsection (a) shall notify the

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commissioner not more than ten (10) business days after a protected cell becomes insolvent or otherwise unable to meet the protected cell's obligations.

Sec. 56. (a) A participant contract must be approved by the commissioner in writing before the participant contract is effective.

(b) The addition of a new protected cell or the withdrawal of a participant from an existing protected cell constitutes a change in the strategic business plan of the protected cell and requires the commissioner's prior written approval.

(c) Any person may be a participant in a protected cell formed or authorized under this chapter.

(d) A participant in a protected cell is not required to be a shareholder insured:

(1) in the protected cell;

(2) by the captive insurer; or

(3) by an affiliate of the captive insurer.

Sec. 57. (a) Except as provided in subsection (b), (c), or (d), a captive insurer shall at all times maintain a minimum unimpaired capital of one hundred thousand dollars ($100,000) in the form of cash or an irrevocable letter of credit that satisfies the requirements of subsection (h).

(b) A risk retention group captive insurer that issues a nonassessable policy shall maintain minimum unimpaired capital of three hundred thousand dollars ($300,000).

(c) A captive insurer seeking authority to directly insure worker's compensation liability shall maintain minimum unimpaired capital of one million dollars ($1,000,000).

(d) The commissioner may:

(1) require a captive insurer, including each protected cell, to maintain additional unimpaired capital based on the type, volume, and nature of the insurance business engaged in by the captive insurer; and

(2) determine the amount of capital, if any, that may be in the form of an irrevocable letter of credit.

(e) Except as provided in subsection (f), in addition to the minimum unimpaired capital required by this section, a captive insurer must have a minimum unencumbered surplus:

(1) in the form of cash or an irrevocable letter of credit; or

(2) in another form approved by the commissioner;

of one hundred fifty thousand dollars ($150,000).

(f) The minimum unencumbered surplus that must be maintained by the following types of captive insurers is as follows:

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(1) For an association captive insurer incorporated as a stock insurer or a limited liability company, not less than three hundred thousand dollars ($300,000).

(2) For an agency captive insurer, not less than three hundred thousand dollars ($300,000).

(3) For a rental captive insurer, not less than three hundred thousand dollars ($300,000).

(4) For an association captive insurer incorporated as a nonstock corporation, not less than five hundred thousand dollars ($500,000).

(5) For an industrial insured captive insurer, not less than:

(A) four hundred thousand dollars ($400,000) if organized as a stock corporation or limited liability company; or

(B) five hundred thousand dollars ($500,000) if organized other than as a stock corporation or limited liability company.

(6) For a risk retention group captive insurer, not less than:

(A) three hundred thousand dollars ($300,000) if the risk retention group captive insurer issues only assessable policies; or

(B) the lesser of:

(i) one million dollars ($1,000,000); or

(ii) the greater of three hundred thousand dollars ($300,000) or an amount equal to ten thousand dollars ($10,000) times the number of the risk retention group captive insurer's insureds;

if the risk retention group captive insurer insures policies other than assessable policies.

(7) For a captive insurer seeking authority to insure worker's compensation liability, not less than two hundred fifty thousand dollars ($250,000).

(8) For each protected cell, not less than an amount established by the commissioner.

(g) The commissioner may prescribe additional requirements:

(1) relating to a captive insurer's required surplus based on the type, volume, and nature of the insurance business engaged in by the captive insurer or protected cell; and

(2) allowing surplus to be in the form of an irrevocable letter of credit.

(h) A letter of credit used by a captive insurer or protected cell as evidence of capital or surplus required under this section must:

(1) be issued by:

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(A) a bank chartered in Indiana; or

(B) a branch, located in Indiana, of a bank:

(i) that is a member of the United States Federal Reserve System; or

(ii) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(2) be issued on a form approved by the commissioner; and

(3) include a provision specifying that the letter of credit is automatically renewed each year.

Sec. 58. (a) Except as otherwise provided in this chapter, a captive insurer or protected cell may pay dividends or make any other distribution from the captive insurer's capital or surplus only to the extent that the capital and surplus remaining after the dividend is paid or the distribution is made exceeds:

(1) the minimum capital and surplus required by this chapter; or

(2) a higher amount of capital and surplus required by the commissioner.

(b) The commissioner may approve an ongoing plan for the payment of dividends or other distributions by a captive insurer or protected cell if:

(1) at the time of each payment or distribution, the amount of capital and surplus retained by the captive insurer or protected cell exceeds the amount required by the commissioner; and

(2) the ongoing plan includes one (1) of the following:

(A) A specific amount that a captive insurer or protected cell must have in excess capital and surplus.

(B) A formula under which the specific amount of required excess capital and surplus may be calculated.

Sec. 59. (a) A captive insurer shall file with the commissioner a schedule of the captive insurer's proposed investments and material changes to investments.

(b) The commissioner:

(1) may approve a filing described in subsection (a) if the commissioner determines that the proposed investments do not threaten the solvency or liquidity of the captive insurer; and

(2) may not unreasonably disapprove a filing described in subsection (a).

(c) A captive insurer or protected cell may make a loan to the captive insurer's parent or affiliate if the loan:

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(1) has been approved in writing by the commissioner;
(2) is evidenced by a note that is in a form approved by the commissioner; and
(3) does not include money that has been set aside as capital or surplus as required by section 57 of this chapter.

Sec. 60. A captive insurer or protected cell may do the following:

(1) Provide reinsurance on risks ceded by another insurer, captive insurer, or protected cell.
(2) Take credit for the reinsurance of risks or portions of risks ceded to reinsurers in compliance with the requirements for credit for reinsurance that apply to domestic companies.
(3) Cede or take credit for the reinsurance risks or portions of risks ceded to reinsurers not in compliance with the requirements referred to subdivision (2) if the captive insurer or protected cell has the prior approval of the commissioner.
(4) Take credit for the reinsurance of risks or portions of risks ceded to a reinsurance pool, exchange, or association acting as a reinsurer that has been authorized by the commissioner. In determining whether to authorize the reinsurance pool, exchange, or association acting as a reinsurer, the commissioner may do the following:
(A) Require documents, financial information, or other evidence that the reinsurance pool, exchange, or association is able to provide adequate security for the pool's, exchange's, or association's financial obligations.
(B) Deny authorization or impose limitations on the activities of the reinsurance pool, exchange, or association that the commissioner determines to be necessary to provide adequate security for the ceding captive insurer or protected cell and for the protection and benefit of the public.

Sec. 61. (a) Except as otherwise provided in this section, a captive insurer is liable for a tax on net direct premiums, to be paid not later than March 1 of each year, as follows:

(1) Two hundred fifty thousandths of one percent (0.250%) on the first five million dollars ($5,000,000) of the captive insurer's net direct premiums.
(2) One hundred fifty thousandths of one percent (0.150%) on the next twenty-five million dollars ($25,000,000) of the captive insurer's net direct premiums.
(3) Fifty thousandths of one percent (0.050%) on each

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additional dollar ($1) of the captive insurer's net direct premiums.

(b) Except as otherwise provided in this section, a captive insurer is liable for a tax on assumed reinsurance premiums, to be paid not later than March 1 of each year, as follows:

(1) Two hundred twenty-five thousandths of one percent (0.225%) on the first twenty-five million dollars ($25,000,000) of revenue from assumed reinsurance premiums.

(2) One hundred fifty thousandths of one percent (0.150%) on the next twenty-five million dollars ($25,000,000) of revenue from assumed reinsurance premiums.

(3) Twenty-five thousandths of one percent (0.025%) on each additional dollar ($1) of revenue from assumed reinsurance premiums.

(c) The tax on assumed reinsurance premiums under subsection (b) must not be levied on net direct premiums for risks or portions of risks that are subject to taxation under subsection (a).

(d) A captive insurer is not required to pay an assumed reinsurance premium tax under subsection (b) on revenue related to the receipt of assets by the captive insurer in exchange for the assumption of loss reserves and other liabilities of another insurer that is under common ownership and control with the captive insurer, if the transaction is part of a plan to discontinue the operation of the other insurer and the intent of the parties to the transaction is to renew or maintain the business with the captive insurer.

(e) If the sum of taxes to be paid by a captive insurer, other than a risk retention group captive insurer, calculated under subsections (a) and (b) is less than seven thousand five hundred dollars ($7,500) in a particular year, the captive insurer shall pay a minimum tax of seven thousand five hundred dollars ($7,500) for the year.

(f) If the sum of the taxes to be paid by a risk retention group captive insurer calculated under subsections (a) and (b) is less than ten thousand dollars ($10,000) in a particular year, the captive insurer shall pay a minimum tax of ten thousand dollars ($10,000) for the year.

(g) The total state tax paid by a captive insurer must not exceed one hundred thousand dollars ($100,000) in a particular year.

(h) The taxes required under this section must be calculated annually, notwithstanding policies or contracts of insurance, or contracts of reinsurance, issued on a multiyear basis. If a policy or contract is issued on a multiyear basis, the premium must be

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prorated to determine the tax obligation under this section.

(i) Any insurance transaction engaged in by a captive insurer granted a certificate of authority under this chapter, regardless of the location of the risk or domicile of the purchaser, must be included for purposes of calculating the amount of tax owed under this section. However, upon presentation of evidence that another jurisdiction has claimed, and the captive insurer has paid, premium tax to the other jurisdiction on the same transaction, the captive insurer may credit the amount paid to the other jurisdiction against taxes owed under this section.

(j) A captive insurer that is issued a certificate of authority during the fourth quarter of a calendar year may file a written request with the commissioner for a reduction in the minimum premium tax obligation calculated under subsection (e) or (f). The commissioner may grant the request according to a methodology established by the commissioner under rules adopted under IC 4-22-2.

(k) One hundred percent (100%) of the revenues collected from taxes required under this section must be deposited in the captive insurer trust fund established by section 68 of this chapter.

(l) Notwithstanding any other law, and except:

(1) as provided in this section; and

(2) for real or personal property taxes;

the taxes required under this section constitute all taxes collectible from a captive insurer under Indiana law.

(m) This section:

(1) applies only to the branch business of a branch captive insurer; and

(2) does not apply to annuity business.

Sec. 62. (a) A captive insurer shall:

(1) before March 1 of each year, file with the commissioner, on a form prescribed by the commissioner, a report prepared by a certified public accountant of the captive insurer's financial condition;

(2) file a consolidated report on behalf of each of the captive insurer's protected cells; and

(3) in preparing the report, use generally accepted accounting principles and include useful or necessary modifications or adaptations of the generally accepted accounting principles that have been approved or accepted by the commissioner for the type of insurance and kinds of insurers included in the report, and as supplemented by additional information

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required by the commissioner.

(b) A pure captive insurer may apply to the commissioner in writing for authorization to file the pure captive insurer's annual report based on a fiscal year that is consistent with the fiscal year of the pure captive insurer. If the commissioner grants an alternative date:

(1) the annual report is due not later than sixty (60) days after the end of each of the pure captive insurer's fiscal years; and

(2) the pure captive insurer shall file, before March 1 of each year, forms required by the commissioner to provide sufficient detail to support the pure captive insurer's premium tax return filed under section 61 of this chapter.

Sec. 63. (a) The commissioner or the commissioner's designee may visit a captive insurer whenever the commissioner considers it necessary to examine the affairs of the captive insurer or a protected cell of the captive insurer to ascertain:

(1) the financial condition of the captive insurer;

(2) the ability of the captive insurer to fulfill the captive insurer's obligations; and

(3) whether the captive insurer has complied with this chapter.

(b) The commissioner may require a captive insurer to retain qualified independent legal, financial, and examination services from outside the department to conduct an examination under this section and make recommendations to the commissioner. The captive insurer shall pay the cost of an examination.

(c) IC 27-1-3.1 applies to examinations conducted under this section.

(d) Protected cells of a captive insurer may not be individually examined unless the commissioner has cause to examine one (1) or more protected cells individually.

Sec. 64. (a) The commissioner may revoke or suspend the certificate of authority of a captive insurer if the captive insurer:

(1) has failed or refused to comply with this chapter;

(2) is impaired in capital or surplus;

(3) is insolvent;

(4) is determined to be in a hazardous financial condition such that the further transaction of insurance business by the captive insurer is hazardous to the captive insurer's policyholders or creditors or to the public;

(5) has failed or refused to submit a report or statement required by law or order of the commissioner;

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(6) has failed or refused to comply with a provision of the captive insurer's organizational documents;

(7) has used a method of transacting insurance business that is detrimental to the operation of the captive insurer or makes the captive insurer's condition unsound with respect to the captive insurer's policyholders or the public; or

(8) has failed otherwise to comply with the law of any jurisdiction.

(b) After notice and hearing under IC 4-21.5, the commissioner may impose on a captive insurer a civil penalty of not more than five thousand dollars ($5,000) for each violation of this chapter.

Sec. 65. (a) A captive insurer may not join or contribute financially to a risk sharing plan, risk pool, or insurance insolvency guaranty fund in Indiana, and a captive insurer or:

(1) an insured of the captive insurer;

(2) the parent or affiliate of the captive insurer; or

(3) a member organization of the captive insurer's association;

may not receive a benefit from a risk sharing plan, risk pool, or insurance insolvency guaranty fund in Indiana for claims arising out of the operations of the captive insurer.

(b) IC 27-9 applies to a captive insurer and to a protected cell of a captive insurer. If IC 27-9 and this chapter conflict, this chapter is controlling.

(c) In the winding up of a captive insurer, the liquidator:

(1) shall deal with the assets of a protected cell only in accordance with the procedures set out in subsections (f), (g), and (h); and

(2) in the discharge of the claims of creditors of the captive insurer, shall apply the assets of a protected cell only to the persons entitled to recourse against the protected cell.

(d) A petition for a liquidation or rehabilitation order with respect to a protected cell of a captive insurer may be made by:

(1) the protected cell captive insurer;

(2) the majority of the members of the governing body of the protected cell captive insurer;

(3) a creditor of the protected cell; or

(4) the commissioner.

(e) Notice of a petition to a court for a liquidation or rehabilitation order with respect to a protected cell of a captive insurer must be served upon:

(1) the captive insurer;

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(2) the commissioner; or

(3) other persons as directed by the court.

(f) A court may issue a liquidation or rehabilitation order with respect to a particular protected cell if, in relation to the captive insurer, the court is satisfied that:

(1) the protected cell assets attributable to the particular protected cell of the captive insurer are or may be insufficient to discharge the claims of creditors with respect to the protected cell;

(2) the creditors of the captive insurer with respect to the protected cell are entitled to recourse against the captive insurer's general assets; and

(3) the issuance of an order under this section would achieve the purposes described in subsection (g).

(g) A liquidation or rehabilitation order must direct that the business and protected cell assets of a protected cell must be managed by a liquidator or rehabilitator specified in the order to ensure:

(1) the orderly closing or rehabilitation of the business of, or attributable to, the protected cell; and

(2) the distribution of the protected cell assets to persons entitled to recourse against the protected cell.

(h) The liquidator or rehabilitator of a protected cell:

(1) has all the powers and duties of the members of the governing body who are responsible for the business and protected cells assets of the protected cell;

(2) may at any time apply to the court for:

(A) direction concerning the extent or exercise of a power or duty;

(B) the liquidation or rehabilitation order to be discharged or varied; or

(C) an order concerning a matter that occurs during the course of the liquidation or rehabilitation; and

(3) in exercising the liquidator's or rehabilitator's powers and duties, acts as the agent of the captive insurer, and does not incur personal liability.

(i) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:

(1) a proceeding may not be instituted or continued by or against the captive insurer or protected cell that is the subject of the liquidation or rehabilitation order; and

(2) steps may not be taken to enforce a security or in the

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execution of legal process concerning the business or protected cell assets of the protected cell that is the subject of the liquidation or rehabilitation order, except by leave of the court.

(j) During the period of operation of a liquidation or rehabilitation order:

(1) the powers and duties of the members of the governing body cease concerning the business of the protected cell or protected cell assets that are the subject of the order; and

(2) the liquidator or rehabilitator of the protected cell may attend all meetings of the captive insurer or protected cell and vote at the meetings as if the liquidator or rehabilitator were a member of the governing body of the captive insurer. Unless there are no creditors entitled to recourse against the captive insurer's general assets, the liquidator's or rehabilitator's voting authority includes matters concerning the captive insurer's general assets.

(k) A court shall not discharge a liquidation or rehabilitation order issued under this section unless it appears to the court that the purpose for which the order was issued has been achieved, has been substantially achieved, or is incapable of being achieved.

(l) A court, on hearing a petition for the discharge or variance of a liquidation or rehabilitation order, may issue an interim order or adjourn the proceeding.

(m) When a court issues an order discharging a liquidation or rehabilitation order for a protected cell on the ground that the purpose for which the order was made has been achieved or substantially achieved, the court may direct that a payment made by the liquidator or rehabilitator to a creditor of the captive insurer, with respect to the protected cell, is full satisfaction of the liability of the captive insurer to the creditor with respect to the protected cell, and the creditor's claims against the captive insurer with respect to the protected cell are extinguished.

Sec. 66. (a) A captive insurer that is licensed in a foreign or alien jurisdiction may transfer the captive insurer's domicile to Indiana and become a domestic company by:

(1) complying with the requirements for a certificate of authority under this chapter; and

(2) designating an office located in Indiana.

(b) A captive insurer, after redomestication, may engage in the insurance business in Indiana, and is subject to the authority of the commissioner.

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(c) All insurance contracts in existence when a captive insurer undergoes redomestication by merger, consolidation, or another lawful method continue in force after redomestication if the captive insurer is authorized in Indiana to transact the types of insurance business represented by the existing contracts.

(d) A captive insurer, before undergoing redomestication, shall:

(1) notify the commissioner of the details of a proposed redomestication; and

(2) promptly file resulting amendments to application documents that have been filed or are required to be filed with the commissioner.

(e) A domestic captive insurer, upon the approval of the commissioner, may transfer the captive insurer's domicile to a state in which the captive insurer is licensed to engage in insurance business as a captive insurer, and upon the transfer ceases to be a domestic company. The commissioner shall approve a proposed transfer unless the commissioner determines that the transfer is not in the best interest of the captive insurer's policyholders.

Sec. 67. (a) To be authorized to function as a captive manager in Indiana, a person shall register with the department and provide information determined by the commissioner to be necessary or appropriate to establish the person's qualifications to act as a captive manager in Indiana.

(b) A captive manager is subject to the authority of the commissioner.

(c) If a registered resident agent appointed by a captive insurer under section 47(a)(8) of this chapter cannot with reasonable diligence be found at the registered office of the captive insurer, a captive manager identified in the department's records as the captive manager for the captive insurer is considered to be an agent of the captive insurer upon whom any process, notice, or demand may be served, and any service of process identifying the captive insurer served upon the captive manager is conclusive proof of service on the captive insurer.

Sec. 68. (a) The captive insurer trust fund is established for the purpose of funding the enforcement of this chapter. The fund shall be administered by the commissioner.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that

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accrues from these investments shall be deposited in the fund.

(d) Money in the fund is annually appropriated for the purposes of the fund.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 69. A captive insurer is not required to join a rating organization.

Sec. 70. The parent of a branch captive insurer is subject to the jurisdiction of Indiana courts for all matters involving the branch captive insurer.

Sec. 71. Except as provided in this chapter, IC 27 does not apply to a captive insurer.

Sec. 72. IC 27-4-1 applies to a captive insurer.

Sec. 73. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1417, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 14, delete "," and insert "**;**".

Page 8, delete lines 12 through 17, begin a new line block indented and insert:

"**(7) if the captive insurer is a rental captive insurer, insure risks other than risks of the policyholders or associations that have entered into insurance contracts with the captive insurer using a contract form approved by the commissioner;**".

and when so amended that said bill do pass.

(Reference is to HB 1417 as introduced.)

FRY, Chair

Committee Vote: yeas 8, nays 1.

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