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National Council of Insurance Legislators (NCOIL)

Uniform Captive Insurer Model Act

**Sponsored by Sen. Jason Rapert (AR)*

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Section 1. Title

This Act shall be known and may be cited as "The Uniform Captive Insurer Act."

Section 2. Purpose

The purpose of this Act is to provide uniform requirements for licensing of captive insurance companies within each of the fifty states in the United States of America.

Section 3. Definitions

As used in this Act, unless the context requires otherwise:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities, the member organizations of which or which does itself, whether or not in conjunction with some or all of the member organizations:

(A) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(B) have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(C) constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(D) have complete voting control over an association captive insurance company formed as a limited liability company.

(3) "Association captive insurance company" means any company that insures risks of the member organizations of the association and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself.

(4) "Captive insurance company" means any pure captive insurance company, association captive insurance company, or industrial insured captive insurance company, formed or licensed under the provisions of this Act.

(5) "Commissioner" means the Commissioner of Insurance {state specific chief insurance regulator}.

(6) "Controlled unaffiliated business" means any person:

(A) that is not in the corporate system of a parent and its affiliated companies in the case of a pure captive insurance company, or that is not in the corporate system of an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company;

(B) that has an existing contractual relationship with a parent or one of its affiliated companies in the case of a pure captive insurance company, or with an industrial insured or one of its affiliated companies in the case of an industrial insured captive insurance company; and

(C) whose risks are managed by a pure captive insurance company or an industrial insured captive insurance company, as applicable, in accordance with rules established by the Commissioner.

(7) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable State or federal law, insurance in excess of a specified per-incident or aggregate limit established by the Commissioner.

(8) "Industrial insured" means an insured:

(A) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(B) whose aggregate annual premiums for insurance on all risks total at least \$25,000.00; and

(C) who has at least 25 full-time employees. {or per State's Industrial Insured exemption requirements }

(9) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and that may insure the risks of the affiliated companies of the industrial insureds and the risks of the controlled unaffiliated business of an industrial insured or its affiliated companies.

(10) "Industrial insured group" means any group of industrial insureds that collectively:

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

(B) have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(C) constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer; or

(D) have complete voting control over an industrial insured captive insurance company formed as a limited liability company.

(11) "Member organization" means any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association.

(12) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members.

(13) "Parent" means a corporation, limited liability company, partnership, other entity, or individual, that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting:

(A) securities of a pure captive insurance company organized as a stock corporation; or

(B) membership interests of a pure captive insurance company organized as a nonprofit corporation; or

(C) membership interests of a pure captive insurance company organized as a limited liability company.

(14) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

Section 4. Name

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the State of {STATE} nor any name likely to mislead the public.

Section 5. Requirements and Limitations of Captive Insurance Companies

(a) Any captive insurance company, when permitted by its articles of association, charter, or other organizational document, may apply to the Commissioner for a license to do any and all insurance comprised in subdivisions {state definitions of insurance, except worker's compensation, which must be fronted} of this title and may grant annuity contracts as defined in {state specific} of this title; provided, however, that:

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

(2) No association captive insurance company may insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies.

(3) No industrial insured captive insurance company may insure any risks other than those of the industrial insureds that comprise the industrial insured group, those of their affiliated companies, and those of the controlled unaffiliated business of an industrial insured or its affiliated companies.

(4) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof.

(5) No captive insurance company may accept or cede reinsurance except as provided in {state specific} of this title.

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

(7) Any captive insurance company that insures risks described in subdivisions {state specific health care laws/regulations} of this title shall comply with all applicable State and federal laws.

(b) No captive insurance company shall do any insurance business in this State unless:

(1) it first obtains from the Commissioner a license authorizing it to do insurance business in this State;

(2) its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one meeting each year in this State;

(3) it maintains its principal place of business in this State; and

(4) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this State; provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the

Commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c)(1) Before receiving a license, a captive insurance company shall:

(A) File with the Commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the Commissioner.

(B) Submit to the Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the Commissioner may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the Commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the Commissioner. The captive insurance company shall inform the Commissioner of any material change in rates within 30 days of the adoption of such change.

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

(A) the amount and liquidity of its assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(C) the overall soundness of its plan of operation;

(D) the adequacy of the loss prevention programs of its insureds; and

(E) such other factors deemed relevant by the Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted pursuant to this subsection shall be and remain confidential, and may not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the company, except that:

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

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

(ii) the information sought is unavailable from other nonconfidential sources; and

(iii) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Commissioner; and

(B) the Commissioner may, in the Commissioner's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that:

(i) such public official shall agree in writing to maintain the confidentiality of such information; and

(ii) the laws of the state in which such public official serves require such information to be and to remain confidential.

(d) Each captive insurance company shall pay to the Commissioner a nonrefundable fee of \${state specific} for examining, investigating, and processing its application for license, and for issuing same, and the Commissioner is authorized to retain legal, financial, and examination services from outside the Department, the reasonable cost of which may be charged against the applicant. The provisions of {state specific examination laws/NAIC model examinations} of this title shall apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license renewal fee for each year thereafter of \${state specific}.

(e) If the Commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this Act, the Commissioner may grant a license authorizing it to do insurance business in this State until {state specific date} thereafter, which license may be renewed.

Section 6. Capital and Surplus Requirements

(a) No captive insurance company shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:

(1) in the case of a pure captive insurance company, not less than \$250,000.00 {state specific};

(2) in the case of an association captive insurance company, not less than \$500,000.00{state specific};

(3) in the case of an industrial insured captive insurance company, not less than \$500,000.00{state specific};

(b) The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(c) Capital and surplus may be in the form of cash, cash equivalents, or an irrevocable letter of credit issued by a bank approved by the Commissioner and in a form approved by the Commissioner. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

Section 7. Formation

(a) Subject to the approval of the Commissioner, a captive insurance company may be formed as any type of entity permissible under {STATE} law.

(b) A captive insurance company incorporated or organized in this State shall have one or more incorporators or one or more organizers, at least one of which shall be a resident of this State.

(c) Before any required formation documents are transmitted to the Secretary of State, the incorporators or organizers shall petition the Commissioner to issue a certificate setting forth the Commissioner's finding that the establishment and maintenance of the proposed entity will promote the general good of the State. In arriving at such a finding, the Commissioner shall consider:

(1) the character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or members of the governing board; and

(3) such other aspects the Commissioner deems advisable.

(d) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(e) In the case of a captive insurance company:

(1) formed as a corporation, at least one of the members of the board of directors shall be a resident of this State;

(2) formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this State;

(3) formed as a limited liability company, at least one of the managers shall be a resident of this State.

Section 8. Organizational Documents

The application documents shall include the National Association of Insurance Commissioners Uniform Certificate of Authority Application forms 1P, 2P, 8, 11, and 13.

Section 9. License Suspension/Revocation

(a) The license of a captive insurance company may be suspended or revoked by the Commissioner for any of the following reasons:

- (1) insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of section 6 of this Act;
- (3) refusal or failure to submit an annual report, as required by this Act, or any other report or statement required by law or by lawful order of the Commissioner;
- (4) failure to comply with the provisions of its own charter, bylaws, or other organizational document;
- (5) failure to submit to or pay the cost of examination or any legal obligation relative thereto, as required by this Act;
- (6) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (7) failure otherwise to comply with the laws of this State.

(b) If the Commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has violated any provision of subsection (a) of this section, the Commissioner may suspend or revoke such company's license if the Commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

Section 10. Investments

(a) No captive insurance company as defined in the Act shall be subject to any restrictions on allowable investments; provided that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any company. Each company shall file with the

Commissioner a statement of investment policy approved by its governing body that describes the types of investment that the company may elect to undertake, and may not make investments that materially deviate from the statement of investment policy that is on file with the Commissioner.

(b) The Commissioner may require any company subject to this subsection to limit or withdraw from certain investments or discontinue certain investment practices if the Commissioner determines that such investments or practices of the company might be hazardous to the policyholders or the general public.

(c) No captive insurance company may make a loan to or an investment in its parent company or affiliates without prior written approval of the Commissioner, and any such loan or investment must be evidenced by documentation approved by the Commissioner. Loans of minimum capital and surplus funds required by section 6 of this title are prohibited.

Section 11. Reinsurance

(a) Any captive insurance company may provide reinsurance on risks ceded by any other insurer, and may provide reinsurance of annuity contracts that are granted by any other insurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of {state specific} of this title. Prior approval of the Commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with {state specific} of this title, except for business written by an alien captive insurance company outside the United States.

(c) In addition to reinsurers authorized under the provisions of section {state specific} of this title, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has been authorized by the Commissioner. The Commissioner may require any other documents, financial information, or other evidence that such a pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the Commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(d) For all purposes of this Act, insurance by a captive insurance company of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

Section 12. Taxes (To Be State Specific)

The tax provided for in this section shall constitute all taxes collectible under the laws of this State from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the State or any county, city, or municipality within this State, except meals and rooms taxes, sales and use taxes, and ad valorem taxes on real and personal property used in the production of income.

Annually, X percent of the premium tax revenues collected pursuant to this section shall be transferred to the Department of Insurance for the regulation of captive insurance companies under this Act.

Section 13. Rules for Controlled Unaffiliated Business

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

Section 14. Rules and Regulations

The Commissioner is authorized to promulgate rules and regulations necessary to effectuate the purposes of this Act. All such rules and regulations shall be promulgated in accordance with the {State} Administrative Procedures Act.

Section 15. Recognition in Other States

Notwithstanding anything in this Act to the contrary, this state shall recognize a captive insurance company domiciled in any other state as a single-state insurer subject solely to regulation by the state of domicile.

Section 16. Examinations and Investigations

(a) Whenever the Commissioner determines it to be prudent, but not less frequently than once every five years, the Commissioner shall personally, or by some competent person appointed by the Commissioner, inspect and examine each captive insurance company to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this Act. The expenses and charges of the examination shall be paid to the State by the company or companies examined.

(b) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the

Commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the Commissioner from using such information in furtherance of the Commissioner's regulatory authority under this title. The Commissioner may, in the Commissioner's discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this State or any other state or agency of the federal government at any time, so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.

Section 17. Dividends

No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the Commissioner. Notwithstanding the provisions of {state specific laws regarding dividends made by a not for profit corporation} may make such distributions as are in conformity with its purposes and approved by the Commissioner.

Section 18. Laws Applicable

No provisions of {state insurance laws}, other than those contained in this Act or contained in specific references contained in this Act, shall apply to captive insurance companies.

Section 19. Insolvency

Except as otherwise provided in this Act, the terms and conditions set forth in {state specific bankruptcy laws} shall apply in full to captive insurance companies formed or licensed under this Act.

Section 20. Reports and Statements

(a) Captive insurance companies shall not be required to make any annual report except as provided in this Act.

(b) Prior to March 15 of each year, each captive insurance company shall submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, statutory accounting principles, or international financial reporting standards as approved by the Commissioner, in each case with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the Commissioner for the type of insurance and

kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner. As used in this section, statutory accounting principles shall mean the accounting principles codified in the NAIC Accounting Practices and Procedures Manual.

(c) Any captive insurance company may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted, the annual report is due 75 days after the fiscal year-end.

Section 21. Exemption from Compulsory associations, Rating Organizations; Memberships

(a) No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

(b) No captive insurance company shall be required to join a rating organization.

Section 22. Severability

If any clause, sentence, paragraph, section or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and the application thereof to other persons or circumstance, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved.