

**RULE AND REGULATION 73**                      **Agency # 054.00**  
**CONCERNING THE LICENSING AND REGULATION OF**  
**CAPTIVE INSURANCE COMPANIES**

Section

1. Purpose and Scope
  2. Authority
  3. Annual Reporting Requirements
  4. Annual Audit
  5. Designation of Independent Certified Public Accountant
  6. Notification of Adverse Financial Condition
  7. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant
  8. Organizational Examination
  9. Reinsurance
  10. Alternative Investments of Assets.
  11. Insurance Managers and Intermediaries
  12. Directors
  13. Conflict of Interest
  14. Rescission of Captive License
  15. Acquisition of Control of or Merger with Domestic Company
  16. Change of Business
  17. Adoption of Application and Forms
  18. Application Fees
  19. Effective Date
- Application and Forms

**§ 1. Purpose and Scope.**

A. The purpose of this Rule and Regulation is to establish financial and reporting requirements that the Commissioner of Insurance ("Commissioner") deems necessary for the regulation of captive insurance companies. Reference hereinunder to "company" shall mean captive insurance company or companies, unless otherwise specified.

B. This Rule and Regulation applies to captive insurance companies as that term is defined by Ark. Code Ann. § 23-63-1601(8). The provisions of the Arkansas Insurance Code do not apply to captive insurance companies except as specifically provided in Title 23, Chapter 63, Subchapter 16, of the Arkansas Code Annotated.

**§ 2. Authority**

This Rule is issued under the authority vested in the Commissioner by Ark. Code Ann. §§ 23-63-1615 and 25-15-203 – 204.

### **§ 3. Annual reporting requirements.**

A. An association captive insurance company and an industrial insured group doing business in this State shall quarterly and annually submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that required by Ark. Code Ann. Section 23-63-216(a).

B. A pure captive insurance company, sponsored captive insurance company, industrial insured captive insurance company or producer reinsurance captive insurance company doing business in this State shall annually submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the Commissioner as "Captive Annual Statement."

### **§ 4. Annual audit.**

A. All companies shall have an annual audit by an independent certified public accountant, authorized by the Commissioner, and shall file such audited financial report with the Commissioner on or before June 30 for the year ending December 31 immediately preceding. The annual audit shall be on the same accounting basis as the annual statement.

B. The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the Commissioner.

C. The annual audit shall consist of the following:

#### **(1) Opinion of Independent Certified Public Accountant**

(a) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

(b) The opinion of the independent certified public accountant shall cover all years presented.

(c) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

#### **(2) Report of Evaluation of Internal Controls**

(a) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, such controls as the system of authorization and approval and the separation of duties.

(b) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the Commissioner.

### (3) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(a) That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(b) The general background and experience of the staff engaged in the audit, including their experience in auditing insurance companies.

(c) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department.

(d) That the accountant consents to the requirements of section 7 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner or his appointed agent, the work papers as defined in section 7(C) of this regulation.

(e) That the accountant is properly licensed by an appropriate state licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants.

### (4) Financial Statements

(a) The financial statements required shall be as follows:

(1) Balance sheet,

(2) Statement of gain or loss from operations,

(3) Statement of changes in financial position, if appropriate,

(4) Statement of cash flow,

(5) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus), and

(6) Notes to financial statements.

(b) The notes to financial statements shall be those required by the accounting principles used in the annual statement, and shall include:

(1) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Commissioner.

(2) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(3) A narrative explanation of all material transactions with the company.

For purposes of this provision, no transaction shall be deemed material unless it involves three percent ( 3%) or more of a company's admitted assets as of the December 31 next preceding.

(5) Certification of Loss Reserves and Loss Expense Reserves

(a) The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

(b) The individual who certifies as to the adequacy of reserves shall be approved by the Commissioner and shall be a Fellow of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries.

(c) Certification shall be in such form as the Commissioner deems appropriate.

#### **§ 5. Designation of independent certified public accountant.**

Companies, after becoming subject to this regulation, shall within ninety days report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this regulation. Any independent certified public accountant retained by a company to conduct its annual audit shall make application to the Commissioner for authority to act as an independent certified public accountant for captive insurance companies on the "Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Company", which is adopted as part of this Rule and Regulation.

#### **§ 6. Notification of adverse financial condition.**

A company shall require the certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Commissioner. The company shall furnish such notification to the Commissioner within five working days of receipt thereof.

#### **§ 7. Availability and maintenance of working papers of the independent certified public accountant.**

A. Each company shall require the independent certified public accountant to make available for review by the Commissioner or his appointed agent, the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.

B. The aforementioned review by the Commissioner shall be considered investigations and all working papers obtained during the course of such investigations shall be confidential. The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the Department considers relevant. The Department may retain such working papers.

C. "Work Papers" or "working papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their audit of the company.

#### **§ 8. Organizational examination.**

In addition to the processing of the application, an organizational investigation or examination may be performed before an applicant is licensed. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the Commissioner deems necessary.

#### **§ 9. Reinsurance.**

Any captive insurance company authorized to do business in this State may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(A) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(B) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

The Commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.

#### **§ 10. Alternative investments of assets.**

A producer reinsurance captive insurance company which determines that bonds, notes, warrants or other securities of reasonable quality or liquidity, as determined by the company's management, and with the approval of the Commissioner, do not exist for purposes of compliance with Ark. Code Ann. § 23-63-1614(i), shall be permitted to invest such assets in any amount necessary to comply with the provisions of Ark. Code Ann. § 23-63-1614(i), in certificates of deposit of any bank organized under the laws of the United States whose home state is the State of Arkansas or any federally insured bank or savings institution organized and supervised under the laws of the State of Arkansas.

**§ 11. Insurance managers and intermediaries.**

No person shall act as an insurance manager or reinsurance intermediary for captive business in or from within this State without the authorization of the Commissioner. Application for such authorization must be on a form prescribed by the Commissioner. Any person who engages in the insurance or reinsurance business as a producer, agent, or broker for a captive insurance company shall be licensed as such pursuant to Chapter 64 of Title 23 of the Arkansas Code Annotated and shall be authorized as such by the Commissioner.

**§ 12. Directors.**

A. Every company shall report to the Commissioner within thirty days after any change in its executive officers or directors, including in its report a biographical affidavit of any new executive officer or director.

B. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

C. Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

**§ 13. Conflict of interest.**

A. Each company chartered in this State is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude such person from being a director or officer in more than one insurance company.

B. Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

**§ 14. Acquisition of control of or merger with domestic company.**

The acquisition of control of or merger of any company with a domestic insurance company shall be conducted pursuant to Ark. Code Ann. Section 23-69-142, *et seq.*

**§ 15. Rescission of captive license.**

A. The Commissioner may, subject to the provisions of this section, by order rescind the license of the company:

- (1) if the company has not commenced business according to its plan of operation within two years of being licensed; or
- (2) if the company ceases to carry on insurance business in or from within Arkansas; or
- (3) at the request of the company; or
- (4) for any reason provided in Ark. Code Ann. § 23-63-1609.

B. Before the Commissioner rescinds the license of a company under (A)(1) or (2) of this subsection, the Commissioner shall give the company notice in writing of the grounds on which he proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty days after receipt of notice. The Commissioner shall take into consideration any objection received by him within that period and, if he decides to cancel the license, cause the order of cancellation to be served on the company.

**§ 16. Change of business.**

A. Any change in the nature of the captive business from that stated in the company's plan of operation filed with the Commissioner upon application shall require prior approval from the Commissioner.

B. Any change in any other information filed with the application must be filed with the Commissioner but does not require prior approval.

**§ 17. Adoption of Application and Forms.**

A. A proposed captive insurance company shall make application to the Commissioner for authority to conduct insurance business on the "Captive Insurance Company Application", which is adopted as part of this Rule and Regulation. The application and its accompanying forms and attachments are intended to be used by the applicant in the preparation of the statements and information required by the Act and this Rule and Regulation. The applicant may use the application, forms and attachments as blank forms that are to be filled in by the applicant or as a guide in the preparation of the statements and information required by the Act.

Little Rock, AR 72201-1904  
Attention: Legal Division

At least one of the copies shall be manually signed in the manner prescribed on the application. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

**§ 18. Application Fees.**

A. The fees required for filing an application for authority to conduct insurance business are as follows:

- (1) Filing and review of each application.....\$200
- (2) License, when issued.....\$300
- (3) Annual License Renewal.....\$300
- (4) Actuary review of application.....Equal to cost to the Department

B. All fees imposed pursuant to this Rule and Regulation shall be due and payable to the "State Insurance Department Trust Fund" and shall be payable by company check, personal, certified or cashier's checks, cash or money orders

**§ 19. Effective Date.** The effective date shall be February 12, 2002.

  
\_\_\_\_\_  
MIKE PICKENS  
INSURANCE COMMISSIONER

2/12/02  
\_\_\_\_\_  
DATE



State of Arkansas

Department of Insurance

CAPTIVE INSURANCE COMPANY APPLICATION FORM

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SECTION A: GENERAL INFORMATION

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1. Name of Proposed Captive \_\_\_\_\_

2. Name(s) of Parent(s) or Sponsor(s) of Proposed Captive \_\_\_\_\_

a. Net Worth of Parent(s)/Sponsor(s) \$ \_\_\_\_\_

b. Name(s) and Address of Proposed Parent(s)

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

E-Mail \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

E-Mail \_\_\_\_\_

c. Please Explain the Relationship Among the Parents (Attach additional sheets, if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Name, address, and phone number of individual to be contacted regarding this application:

Name \_\_\_\_\_

Telephone \_\_\_\_\_

Address \_\_\_\_\_

E-Mail \_\_\_\_\_

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**4. Indicate Type of Proposed Captive (Please check one):**

- a.  Pure                      c.  Association                      e.  Industrial Insured  
b.  Branch                      d.  Sponsored                      f.  Producer Reinsurance

**5. Organization Form for Proposed Captive (Please check one):**

- a.  Stock                      b.  Mutual                      c.  Reciprocal

**6. Principal Office/Place of Business of Proposed Captive:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. Name and Address of Registered Agent For Service of Process:**

Name \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ Email \_\_\_\_\_  
\_\_\_\_\_ Cell Phone/Pager \_\_\_\_\_

**8. Location of Books and Records of Proposed Captive:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. Names of Directors of Proposed Captive:**

*(Biographical Affidavits Must be Provided for each Director. Use the Arkansas Biographical Affidavit form.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**10. Names of Officers of the Proposed Captive:**

*(Please use a separate sheet, if necessary, to list all officers of the proposed captive. Biographical affidavits must be furnished for all officers. Use the Arkansas Biographical Affidavit form.)*

President \_\_\_\_\_  
Vice President \_\_\_\_\_  
Secretary \_\_\_\_\_  
Treasurer \_\_\_\_\_

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**SECTION B: FINANCIAL INFORMATION**

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- c. \_\_\_\_\_  
\_\_\_\_\_
- d. \_\_\_\_\_  
\_\_\_\_\_

**6. Explain Relationship Among Beneficial Owners**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**SECTION C: SERVICE PROVIDERS**

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**1. Name and Address of Management Firm, If Applicable**

Name \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ E-Mail \_\_\_\_\_  
\_\_\_\_\_ Contact Person \_\_\_\_\_

**2. Name and Address of Attorney, If Applicable**

Name \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ E-Mail \_\_\_\_\_  
\_\_\_\_\_ Contact Person \_\_\_\_\_

**3. Name and Address of Claims Administrator, If Applicable**

Name \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ E-Mail \_\_\_\_\_  
\_\_\_\_\_ Contact Person \_\_\_\_\_

**4. Name and Address of Certified Public Accountant, If Applicable**

Name \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ E-Mail \_\_\_\_\_  
\_\_\_\_\_ Contact Person \_\_\_\_\_

**5. Name and Address of Actuary, If Applicable**

Name \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_

E-Mail \_\_\_\_\_

\_\_\_\_\_

Contact Person \_\_\_\_\_

**6. Name and Address of (Re)insurance Broker, If Applicable**

Name \_\_\_\_\_

Telephone \_\_\_\_\_

Address \_\_\_\_\_

E-Mail \_\_\_\_\_

\_\_\_\_\_

Contact Person \_\_\_\_\_

**7. If Applicant is an Industrial Insured Captive, please answer the following:**

- a. Name and address of each full-time employee acting as an Insurance Manager or Buyer

\_\_\_\_\_

\_\_\_\_\_

- b. Aggregate annual premium \$ \_\_\_\_\_

- c. Number of full-time employees \_\_\_\_\_

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**SECTION D: MISCELLANEOUS INFORMATION AND ATTACHMENTS**

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**1. Please include the following information with this Application:**

- a. An explanation of insurance coverage/limits/reinsurance. (Format attached)
- b. A certified copy of the captive charter, certificate of incorporation, articles of incorporation and bylaws or, if being formed as a reciprocal, a certified copy of the power of attorney-in-fact and subscription agreement. Certified copies of these documents must be filed before a license is issued.
- c. A non-refundable fee of \$200.
- d. A feasibility study prepared by a qualified, independent actuary.
- e. Statement of public benefit to State of Arkansas, to be certified by the Commissioner of Insurance.
- f. Biographical affidavits for all officers and directors.
- g. If applicant is an Association Captive, please give history, purpose, size and other details of parent association.
- h. List all other providers and their responsibilities together with how fees for services rendered are to be charged.
- i. If applicant is to be formed as a Reciprocal Captive, applicant must provide, for the Commissioner's approval, its coverages, deductibles, coverage limits, and rates.
- j. If applicant is a Sponsored Captive, applicant must provide all contracts between the Sponsored Captive and any of its participants.
- k. Statement under oath of its president and secretary, or attorney if formed as a reciprocal, showing its

financial condition.

- l. An applicant producer reinsurance captive or sponsored captive shall also file:
  - (1) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how it will report the experience to the commissioner;
  - (2) A statement acknowledging that all financial records of the captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner; and
  - (3) Evidence that expenses will be allocated to each protected cell in an equitable manner.

- m. A detailed Plan of Operation with supporting data including:
  - (1) Risks to be insured-direct, assumed, and ceded-by line of business;
  - (2) Fronting company if operating as a reinsurer;
  - (3) Expected net annual premium income;
  - (4) Maximum retained risk (per loss and annual aggregate);
  - (5) Rating program;
  - (6) Reinsurance program;
  - (7) Organization and responsibility for loss prevention and safety including the main procedures followed and steps taken to deal with events prior to possible claims;
  - (8) Loss experience for past three years (if applicable) together with projections for the ensuing three years;
  - (9) Organizational chart; and
  - (10) Financial projections on an expected and worse case scenario, certified by the president and secretary of the applicant.

Items (a) through (m) above should be submitted in a three-ring notebook with numbered and lettered tabs [i.e., A.1(a), A.1(b)] with the required information immediately following each tab. Items 1, 3, 4, and 10 above should be projected for a three-year period. NOTE: Prepare one extra copy of all documents required by this application.

- n. Annual Report of Parent.
- o. 10K or Personal Financial Statements of Owners.

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**SECTION E: CERTIFICATION**

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I certify that the information given in this application is true and correct and that all estimates given are true estimates based upon facts which have been carefully considered and assessed.

Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_  
(Authorized Officer)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature of Notary Public \_\_\_\_\_

NOTARY SEAL Notary Public authorized by law of the State of \_\_\_\_\_  
to administer oaths. My commission expires on \_\_\_\_\_

