



Ohio Revised Code

Section 3964.03 Organization.

Effective: April 12, 2021

Legislation: Senate Bill 276 - 133rd General Assembly

(A) A captive insurance company shall be organized under Chapter 1701., 1702., 1705., or 1706. of the Revised Code.

(B) A captive insurance company shall not operate in this state unless all of the following are met:

(1) The captive insurance company obtains from the superintendent a license to do the business of captive insurance in this state.

(2) The captive insurance company's board of directors holds at least one meeting each year in this state.

(3) The captive insurance company maintains its principal place of business in this state.

(4) The person managing the captive insurance company is a resident of this state.

(5) The captive insurance company appoints a registered agent to accept service of process and act on its behalf in this state.

(C) Whenever an agent required under division (B)(5) of this section cannot, with reasonable diligence, be found at the registered office of the captive insurance company, the superintendent shall be an agent of such a captive insurance company upon whom any process, notice, or demand may be served.

(D) A captive insurance company seeking a license to be a captive insurance company in this state shall file an application with the superintendent and shall submit all of the following along with the application:

(1) A certified copy of its articles of incorporation, bylaws, or other organizational document and



code of regulations;

(2) A statement, made under oath by the president and secretary, in a form prescribed by the superintendent, showing the captive insurance company's financial condition;

(3) A statement of the captive insurance company's assets relative to its risks, detailing the amount of assets and their liquidity;

(4) An account of the adequacy of the expertise, experience, and character of the person or persons who will manage the captive insurance company;

(5) An account of the loss prevention programs of the persons that the captive insurance company insures;

(6) Actuarial assumptions and methodologies that will be utilized in calculating reserves;

(7) Any other information considered necessary by the superintendent to determine whether the proposed captive insurance company will be able to meet its obligations.

(E)(1) A special purpose financial captive insurance company shall follow the national association of insurance commissioner's accounting practices and procedures manual.

(2)(a) Upon request, the superintendent may allow a special purpose financial captive insurance company to use a reserve basis other than that found in the national association of insurance commissioner's accounting practices and procedures manual.

(b) The superintendent, in accordance with Chapter 119. of the Revised Code, shall adopt rules that define acceptable alternative reserve bases.

(c) Such rules shall be adopted prior to availability for use of any such alternative reserve basis and shall ensure that the resulting reserves meet all of the following conditions:

(i) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks



at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(ii) Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(iii) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(d) An alternative basis for calculating a reserve approved by the superintendent shall be treated as a public document after the date the alternative basis for calculating the reserve has been approved, regardless of the application of the uniform trade secrets act set forth in sections 1333.61 to 1333.69 of the Revised Code.

(3) The special purpose financial captive insurance company shall submit a request for an alternative reserve basis in writing, and affirmed by the company's appointed actuary, that includes, at a minimum, the following information for the superintendent to consider in evaluating the request:

(a) The reserves based on the national association of insurance commissioner's accounting practices and procedures manual and the reserves based on the proposed alternative method for calculation and the difference between these two calculations;

(b) A detailed analysis of the proposed alternative method explaining why the use of an alternative basis for calculating the reserve is appropriate;

(c) All assumptions utilized within the proposed alternative method, together with the source of the assumptions, as well as information, satisfactory to the superintendent, supporting the appropriateness of the assumptions and analysis and identifying the assumptions that result in the greatest variability in the reserve and how that analysis was used in setting those assumptions;



(d) A detailed overview of the corporate governance and oversight of the actuarial valuation function;

(e) Any other information the superintendent may require to assess the proposed alternative method for approval or disapproval.

(4) At the expense of the special purpose financial captive insurance company, the superintendent may require the company to secure the affirmation of an independent qualified actuary in support of any alternative basis for calculating the reserve that is requested pursuant to this section or to assist the superintendent in the review of said request.

(5) If the superintendent approves the use of an alternative basis for calculating a reserve, the special purpose financial captive insurance company, and the ceding insurer shall each include a note in its financial statements disclosing the use of a basis other than the national association of insurance commissioner's accounting practices and procedures manual and the difference between the reserve amount determined under the alternative basis and the reserve amount that would have been determined had the company utilized the national association of insurance commissioner's accounting practices and procedures manual.

(6)(a) The superintendent shall establish an acceptable total capital and surplus requirement for each insurance company that will cede risks and obligations to a special purpose financial captive insurance company. The total capital and surplus requirement must be met at the time the special purpose financial captive insurance company applies for a license to do the business of captive insurance. The total capital and surplus requirement shall be determined in accordance with a minimum required total capital and surplus methodology that meets both of the following requirements:

(i) Is consistent with current risk-based capital principles;

(ii) Takes into account all material risks and obligations, as well as the assets, of the insurance company.

(b) An insurance company ceding risks and obligations to a special purpose financial captive



insurance company shall fully disclose all material risks and obligations, as well as its assets and all affiliated captive insurance company risks. The ceding insurance company shall advise the superintendent whenever there is a material change to such risks, obligations, or assets.

(F) In determining whether to approve an application for a license, the superintendent shall consider all of the following:

(1) The character, reputation, financial standing, and purposes of the incorporators, or other founders, of the captive insurance company;

(2) The character, reputation, financial responsibility, experience relating to insurance, and business qualifications of the officers and directors of the captive insurance company;

(3) The amount of liquidity and assets of the captive insurance company relative to the risks to be assumed;

(4) The adequacy of the expertise, experience, and character of the person or persons who will manage the captive insurance company;

(5) The overall soundness of the plan of operation;

(6) The adequacy of the loss prevention programs of the persons that the captive insurance company insures.

(G)(1) Each captive insurance company that offers direct insurance to its parent shall submit to the superintendent for approval a detailed description of the coverages, deductibles, coverage limits, proposed rates or rating plans, documentation from a qualified actuary that demonstrates the actuarial soundness of the proposed rates or rating plans, and other such additional information as the superintendent may require.

(2)(a) Any captive insurance company licensed under the provisions of this chapter that seeks to make any material change to any item described in division (G)(1) of this section shall submit to the superintendent for approval a detailed description of the revision, documentation from a qualified



actuary that demonstrates the actuarial soundness of the revised rates or rating plans, and other such additional information as the superintendent may require.

(b) Each filing under division (G)(2)(a) of this section is deemed approved thirty days after the filing is received by the superintendent of insurance, unless the filing is disapproved by the superintendent during that thirty-day period.

(c) If at any time subsequent to the thirty-day review period the superintendent finds that a filing does not demonstrate actuarial soundness, the superintendent shall hold a hearing requiring the captive insurance company to show cause why an order should not be made by the superintendent to disapprove the revised rates or rating plans.

(d) If, upon such a hearing, the superintendent finds that the captive insurance company failed to demonstrate the actuarial soundness of the rates or rating plans, the superintendent shall issue an order directing the captive insurance company to cease and desist from using the revised rates or rating plans and to use rates or rating plans as determined appropriate by the superintendent.

(H) Except as otherwise provided in this division, documents and information submitted by a captive insurance company pursuant to this section are not subject to section 149.43 of the Revised Code, and are confidential, and may not be disclosed by the superintendent or any employee of the department of insurance without the written consent of the company.

(1) Such documents and information may be discoverable in a civil action in which the captive insurance company filing the material is a party upon a finding by a court of competent jurisdiction that the information sought is relevant and necessary to the case and the information sought is unavailable from other, nonconfidential sources.

(2) The superintendent may, at the superintendent's sole discretion, share documents required under this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries provided



that the recipient agrees to maintain the confidential or privileged status of the documents and has authority to do so.

(I)(1) Each applicant for a license to do the business of a captive insurance company in this state shall pay to the superintendent a nonrefundable fee of five hundred dollars for processing its application for a license. The superintendent is authorized to retain legal, financial, and examination services from outside the department, at the expense of the applicant. Each captive insurance company shall annually pay a license renewal fee of five hundred dollars.

(2) The fees collected pursuant to division (I)(1) of this section shall be deposited into the state treasury to the credit of the captive insurance regulation and supervision fund created under section 3964.15 of the Revised Code.