

AN ACT

To amend section 4123.351 and to enact sections 3964.01 to 3964.15, 3964.17, 3964.171, 3964.172, 3964.173, 3964.174, 3964.175, 3964.176, 3964.177, 3964.178, 3964.179, 3964.1710, 3964.18, 3964.19, 3964.191, 3964.193, 3964.194, 3964.20, and 3964.21 of the Revised Code to provide for the operation of captive insurance companies in Ohio and special purpose financial captive insurance companies.

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

SECTION 1. That section 4123.351 be amended and sections 3964.01, 3964.02, 3964.03, 3964.04, 3964.05, 3964.06, 3964.07, 3964.08, 3964.09, 3964.10, 3964.11, 3964.12, 3964.13, 3964.14, 3964.15, 3964.17, 3964.171, 3964.172, 3964.173, 3964.174, 3964.175, 3964.176, 3964.177, 3964.178, 3964.179, 3964.1710, 3964.18, 3964.19, 3964.191, 3964.193, 3964.194, 3964.20, and 3964.21 of the Revised Code be enacted to read as follows:

Sec. 3964.01. As used in this chapter:

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

(B) "Captive insurance company" means any insurer that insures only the risks of its parent or affiliated companies of its parent. "Captive insurance company" includes any protected cell captive insurance company formed or licensed under the provisions of this chapter.

(C) "Department" means the department of insurance.

(D) "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 fifty per cent of either of the following:

(1) Securities of a captive insurance company, organized as a stock corporation;

(2) Membership interests of a captive insurance company organized as a

nonprofit corporation or a limited liability company.

(E) "Protected cell captive insurance company" means a captive insurance company organized pursuant to sections 3964.17 to 3964.1710 of the Revised Code.

(F) "Qualified actuary" means an individual who is both of the following:

(1) A member of the American academy of actuaries;

(2) Qualified to provide such certifications as described in the United States qualifications standards promulgated by the American academy of actuaries pursuant to the code of professional conduct adopted by the American academy of actuaries, the society of actuaries, the American society of pension professionals and actuaries, the casualty actuarial society, and the conference of consulting actuaries.

(G) "Special purpose financial captive insurance company" means a captive insurance company organized pursuant to sections 3964.19 to 3964.194 of the Revised Code.

(H) "Superintendent" means the superintendent of the department of insurance.

Sec. 3964.02. (A) A captive insurance company may apply for authority to insure only the following lines of insurance:

(1) Commercial multiple peril;

(2) Ocean marine;

(3) Inland marine;

(4) Medical malpractice;

(5) Workers' compensation, to the extent permitted by law, but only for the purpose of indemnification of a self-insuring employer pursuant to division (B)(1) of section 4123.82 of the Revised Code;

(6) Commercial auto liability;

(7) Commercial auto physical damage;

(8) Fidelity;

(9) Notwithstanding division (C) of this section, a special purpose financial captive may apply to provide reinsurance of life insurance risks of an Ohio domiciled parent or an affiliated company that is authorized to transact the business of life insurance in this state;

(10) Except as provided in division (C)(2) of this section, any other line which the superintendent, at the superintendent's sole discretion, permits.

(B) A captive insurance company may purchase reinsurance coverage for any risk that a captive insurance company is permitted to write directly.

(C)(1) A captive insurance company shall not issue, offer, or present insurance policies or certificates, evidence of coverage, or any other similar

documentation, to any person other than its parent or affiliated companies.

(2) A captive insurance company shall not do either of the following:

(a) Insure or reinsure any personal lines, as defined in division (B) of section 3905.06 of the Revised Code;

(b) Insure, offer, or enter a three-party agreement under which the captive agrees to pay a parent or affiliate, agrees to make complete, or become responsible for an obligation in response to the default, acts, or omissions of a third party, the parent, or an affiliate.

(D) A captive insurance company may reinsure any risks insured by its parent or an affiliated company, as approved by the superintendent.

Sec. 3964.03. (A) A captive insurance company shall be organized under Chapter 1701., 1702., or 1705. 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.

Sec. 3964.04. 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 this state. The name under which a captive insurance company engages in business must contain the word "captive."

Sec. 3964.05. (A) No captive insurance company shall be issued a license unless it possesses and maintains minimum unimpaired, paid-in total capital and surplus as follows:

(1) Not less than two hundred fifty thousand dollars;

(2) In the case of a protected cell captive insurance company, not less than five hundred thousand dollars.

(B) The superintendent 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 any of the following:

(1) Cash;

(2) Marketable securities, as approved by the superintendent;

(3) For a captive insurance company other than a special purpose financial captive insurance company, irrevocable, unconditional, and automatically renewable letters of credit that are issued or confirmed by a qualified United States financial institution.

(D) For purposes of division (C)(3) of this section, a United States financial institution is qualified if all of the following apply:

(1) It is organized under, or, in the case of the United States branch or agency office of a foreign banking organization, is chartered under the laws of the United States or any state thereof.

(2) It is regulated, supervised, and examined by federal or state officials that have regulatory authority over banks and trust companies.

(3) The superintendent has determined that it meets such standards of financial condition and standing as are necessary and appropriate for purposes of ensuring that its letters of credit will be of a quality that is acceptable to the superintendent, in the superintendent's sole discretion.

Sec. 3964.06. (A) No captive insurance company shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders or members other than in accordance with this section. The

declaration of an extraordinary dividend or distribution shall be conditional and shall confer no rights upon shareholders or members until thirty days after the superintendent has received notice of the declaration thereof and has not, within the thirty-day period, disapproved the dividend or distribution, unless the superintendent approves the dividend or distribution within the thirty-day period.

(B) Prior to paying any dividend or distribution, the insurance company shall notify the superintendent on a form provided by the superintendent for informational purposes within five business days following its declaration of any dividend or distribution and at least ten calendar days prior to payment of such dividend or distribution. Such a ten-calendar-day period is to begin on the date that the superintendent receives the notice.

(C)(1) For the purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value, together with that of other dividends or distributions made within the preceding twelve months, exceeds the greater of ten per cent of the insurance company's surplus as regards policy holders as of the thirty-first day of December immediately preceding, or the net income of the insurance company for the twelve-month period ending the thirty-first day of December immediately preceding.

(2) Pro rata distributions of any class of the insurance company's own securities shall not be considered an extraordinary distribution under division (C)(1) of this section.

(D) Any dividend or distribution paid from a source other than earned surplus shall be considered an extraordinary dividend or extraordinary distribution.

(E) In no instance shall any extraordinary dividend or distribution be permitted by a captive insurance company if such dividend or distribution results in a decrease of the unimpaired, total capital and surplus of the captive insurance company below the limits prescribed in section 3964.05 of the Revised Code.

(F) For the purposes of this section, "earned surplus" means an amount equal to an insurance company's unassigned funds as set forth in its most recent financial statement submitted to the superintendent, including net unrealized capital gains and losses or revaluation of assets.

Sec. 3964.07. (A) A captive insurance company shall not be required to make any annual report except as required by this section.

(B)(1) The chief financial officer and at least one additional executive officer of a captive insurance company, or a majority of the directors of a captive insurance company annually, on the first day of January, or within

sixty days thereafter prepare under oath and deposit in the office of the superintendent, a statement showing the financial condition of the captive insurance company on the thirty-first day of the December next preceding. An actuarial opinion from a qualified actuary regarding the adequacy of the company's required reserves to make full provision for the company's liabilities, insured or reinsured, shall be included in this statement. The qualified actuary shall submit a memorandum to the superintendent detailing the support for that opinion.

(2) All captive insurance companies shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the superintendent on or before the first day of June as a supplement to the annual statement required under division (B)(1) of this section.

(C) Each captive insurance company shall report using generally accepted accounting principles, unless the superintendent requires, approves, or accepts the use of statutory accounting principles or other comprehensive basis accounting, any appropriate, necessary modifications or adaptations required or approved or accepted by the superintendent for each type of insurance or kind of insurance company that makes such a report, and as supplemented by additional information required by the superintendent.

(D) Captive insurance companies shall prepare, at a minimum, internal quarterly financial statements. These statements shall be made available upon request to the superintendent.

(E) The superintendent shall adopt by rule the prescribed forms, instructions, and manuals by which captive insurance companies shall make the reports required under this section, as the superintendent considers necessary.

(F) Division (H) of section 3964.03 of the Revised Code shall apply to each report filed under this section.

(G)(1) Special purpose financial captive insurance companies are subject to sections 3903.81 to 3903.93 of the Revised Code.

(2)(a) Notwithstanding division (G)(1) of this section, the superintendent shall establish an acceptable total capital and surplus requirement for a special purpose financial captive insurance company that is permitted by the superintendent to use an alternative reserve basis pursuant to division (E)(2) of section 3964.03 of the Revised Code if there is an inherent inconsistency between the approved alternative reserve basis and sections 3903.81 to 3903.93 of the Revised Code.

(b) The total capital and surplus requirement as established by the

superintendent shall be determined in accordance with a minimum required total capital and surplus methodology that meets both of the following:

(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 special purpose financial captive insurance company.

Sec. 3964.08. (A) Captive insurance companies shall be examined, evaluated, and monitored pursuant to section 3901.07 of the Revised Code.

(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 superintendent 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 superintendent or an employee or agent of the superintendent without the written consent of the company, except to the extent provided in this section. However, nothing in this section shall prevent the superintendent from using such information in the furtherance of the superintendent's regulatory authority under this chapter.

(C) The superintendent may, in the superintendent's sole discretion, share documents that are the subject of 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 confidential or privileged work paper and has authority to do so.

Sec. 3964.09. The superintendent may suspend or revoke the license of a captive insurance company, in accordance with Chapter 119. of the Revised Code, for any of the following reasons:

(A) Insolvency or impairment of capital or surplus;

(B) Failure to meet the requirements of section 3964.05 of the Revised Code;

(C) Refusal or failure to submit an annual report, as required by section 3964.07 of the Revised Code, or any other report or statement required by law or by lawful order of the superintendent;

(D) Failure to comply with the provisions of its own articles, bylaws, code of regulations, or other organizational documents;

(E) Failure to submit to, or pay the cost of, examination, or any legal

obligation related to examination, as required by this chapter:

(F) Use of practices that, although not otherwise specifically prohibited by law, are determined by the superintendent to render its operation detrimental or its condition unsound with respect to the public or to its policyholders:

(G) Failure to otherwise comply with the laws of this state.

Sec. 3964.10. (A) The board of directors of a captive insurance company shall determine appropriate investments for the company. With respect to all of the insurance company's investments, the board of directors shall exercise the judgment and care, under the circumstances then prevailing, that a person of reasonable prudence, discretion, and intelligence might exercise in the management of a like enterprise, that person not having an intent to speculate, but having regard for the permanent disposition of the person's funds, considering the probable income as well as the probable safety of the person's capital.

(B)(1) Investments shall be of sufficient value, liquidity, and diversity to assure the captive insurance company's ability to meet its outstanding obligations, based on reasonable estimations of new business production for current lines of business. A copy of the investment policy adopted by the board of directors shall be filed with the superintendent.

(2) If the superintendent determines that a board of directors of a captive insurance company has failed to comply with the requirements of division (B)(1) of this section, the company shall be notified in writing that it is required to file a schedule of its proposed investments with the superintendent.

(C)(1) No captive insurance company may make a loan to, or an investment in, its parent company or affiliates without prior written approval of the superintendent.

(2) Any such loan or investment shall be evidenced by documentation approved by the superintendent.

(3) Loans that violate the minimum capital and surplus funds requirements of section 3964.05 of the Revised Code are prohibited.

Sec. 3964.11. No captive insurance company shall be required to join a rating organization.

Sec. 3964.12. 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 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 the captive insurance company.

Sec. 3964.13. (A)(1) Not later than the second day of March of each year, a captive insurance company shall pay to the superintendent of insurance a fee computed in accordance with both of the following:

(a) 0.35 per cent on its net direct premiums;

(b) 0.15 per cent on revenue from assumed reinsurance premiums.

(2) The annual minimum aggregate fee to be paid by a captive insurance company calculated under this division shall be seven thousand five hundred dollars. The annual maximum aggregate fee to be paid by a captive insurance company calculated under this division shall be two hundred fifty thousand dollars.

(B) The fee on reinsurance premiums set forth under division (A)(1)(b) of this section shall not be levied on premiums for risks or portions of risks that are subject to the fee under division (A)(1)(a) of this section.

(C) A captive insurance company shall not pay any reinsurance fee pursuant to division (A)(1)(b) of this section on revenue related to the receipt of assets by the captive insurance company in exchange for the assumption of loss reserves and other liabilities of another insurance company that is under common ownership and control with the captive insurance company, if the transaction is part of a plan to discontinue the operation of the other insurance company and the intent of the exchange is to renew or maintain such business with the captive insurance company.

(D)(1) The fee imposed in division (A) of this section shall be calculated on an annual basis, notwithstanding policies, contracts, insurance, or contracts of reinsurance issued on a multi-year basis.

(2) In the case of multi-year policies or contracts, the premium shall be prorated for purposes of determining the fee required under division (A) of this section.

(E) All fees collected under this section shall be deposited into the state treasury to the credit of the captive insurance regulation and supervision fund.

Sec. 3964.14. (A) Except as provided in this chapter, captive insurance companies shall be governed by this chapter and are exempt from all other provisions of the insurance laws of this state. No insurance law of this state shall apply to captive insurance companies unless captive insurance companies are expressly designated as being subject to the law or, with respect to a line of authority granted to a captive insurance company pursuant to division (A)(10) of section 3964.02 of the Revised Code, as required in the articles, bylaws, code of regulations, or other organizational documents as approved by the superintendent.

(B) Except as otherwise provided in this chapter, sections 3903.01 to

3903.59 of the Revised Code shall apply to captive insurance companies.

Sec. 3964.15. (A) There is hereby created in the state treasury the captive insurance regulation and supervision fund, which shall consist of all fees, fines, penalties, and assessments received by the superintendent under this chapter.

(B) The superintendent may charge captive insurance companies for any of the following expenses incurred in carrying out this chapter:

(1) The entire compensation for each day, or portion thereof, worked by all personnel, including those who are not employees of the department of insurance, in any of the following capacities:

(a) The conduct of an examination, calculated at the rates provided in the financial condition examiners' handbook published by the national association of insurance commissioners;

(b) The review and analysis of a company's annual report submitted pursuant to section 3964.07 of the Revised Code, and any interim financial statements and examination reports or related documents of captive insurance companies in this state;

(c) The ongoing evaluation and monitoring of the financial affairs of captive insurance companies;

(d) The determination and review of the premium franchise fee liability of a captive insurance company;

(e) The training and continuing education costs of examiners and analysts.

(2) Travel and living expenses of all personnel, including those who are not employees of the department of insurance, directly engaged in the conduct of an examination calculated at rates not to exceed the rates provided in the financial condition examiners' handbook published by the national association of insurance commissioners;

(3) All other incidental expenses incurred by or on behalf of such personnel in the conduct of such examination;

(4) An allocated share of all expenses not described in division (B)(1), (2), or (3) of this section, but that are necessarily incurred in carrying out the duties of the superintendent under this chapter, including the expenses of direct overhead and support staff for the examiners and persons appointed or employed pursuant to section 3964.08 of the Revised Code.

(C) All amounts collected by the superintendent under division (B) of this section shall be deposited into the state treasury to the credit of the captive insurance regulation and supervision fund.

(D) At the discretion of the superintendent, the expenses of the captive insurance regulation and supervision fund may be covered by the

department of insurance operating fund created under section 3901.021 of the Revised Code.

(E) As used in this section, "examination" means the examination required under section 3964.08 of the Revised Code.

Sec. 3964.17. (A) As used in sections 3964.17 to 3964.1710 of the Revised Code:

(1) "Protected cell" means an incorporated cell that is organized pursuant to Chapter 1701., 1702., or 1705. of the Revised Code and that has a separate legal identity from the protected cell captive insurance company of which it is a part.

(2) "Protected cell captive insurance company" means a captive insurance company that meets all of the following requirements:

(a) Is formed and licensed under the provisions of this chapter;

(b) Insures or reinsures the risks of separate participants through a participant contract;

(c) Segregates each participant's liability into a protected cell.

(3) "Participant" means an individual, company, corporation, partnership, limited liability company, and their affiliated entities that insure or reinsure with a protected cell. "Participant" includes an insurance agent licensed in this state that accepts a stated percentage of risk on a pro rata basis within a defined category of business underwritten by a licensed insurance company that is domiciled in this state and that is affiliated with a protected cell captive insurance company.

(4) "Participant contract" means a contract by which a protected cell insures or reinsures the risks of a participant.

(a) A participant that is not an insurance agent licensed in this state shall insure or reinsure only its own risks through a protected cell.

(b) If the participant is an insurance agent licensed in this state, the participant contract must define each risk covered by the contract with fixed and certain terms.

(B) A captive insurance company may be organized as a protected cell captive insurance company and shall be permitted to form one or more protected cells under this section to insure or reinsure risks of one or more participants.

(C) The assets and liabilities of each protected cell shall be held separately from the assets and liabilities of all other protected cells.

(D) A protected cell of a protected cell captive insurance company shall be organized pursuant to Chapter 1701., 1702., or 1705. of the Revised Code.

(E) A protected cell captive insurance company shall, at the time of

paying the annual fee required under section 3964.13 of the Revised Code, pay an additional annual fee for each protected cell in an amount to be established by the superintendent.

(F) Each protected cell of a protected cell captive insurance company shall be treated as a captive insurance company for purposes of this chapter.

(G) Unless otherwise permitted by the articles of incorporation, bylaws, code of regulations, or other organizational document of a protected cell captive insurance company, each protected cell of the protected cell captive insurance company shall have the same directors, secretary, and registered office as the protected cell captive insurance company.

(H) A protected cell captive insurance company may provide in its articles of incorporation, bylaws, code of regulations, or other organizational documents that a protected cell it creates shall be wound up and dissolved upon any of the following:

(1) The bankruptcy, death, expulsion, insanity, resignation, or retirement of any participant of the protected cell;

(2) The happening of some event that is not the expiration of a fixed period of time;

(3) The expiration of a fixed period of time.

(I)(1) The articles of incorporation, bylaws, code of regulations, or other organizational documents, of a protected cell captive insurance company shall provide that a protected cell shall not own shares or membership interests in the protected cell captive insurance company of which it is a part.

(2) Such a document may provide that a protected cell may own shares or membership interests in any other protected cell of the protected cell captive insurance company of which it is a part.

(J) The name of a protected cell captive insurance company shall include the words "protected cell captive" or the abbreviation "PCC."

(K) A protected cell captive insurance company shall assign a distinctive name to each of its protected cells that meets all of the following:

(1) The name identifies the protected cell as being part of the protected cell captive insurance company.

(2) The name distinguishes the protected cell from any other protected cell of the protected cell captive insurance company.

(3) The name includes the words "protected cell" or the abbreviation "PC."

(L) A protected cell may enter into an agreement with its protected cell captive insurance company or with another protected cell of the same protected cell captive insurance company.

(M)(1) The assets of a protected cell captive insurance company shall be either cell assets or general assets.

(2) The cell assets comprise the assets of the protected cell captive insurance company that are held within or on behalf of its protected cells.

(3) The general assets of a protected cell captive insurance company comprise the assets of the protected cell captive insurance company that are not cell assets.

(N)(1) The liabilities of a protected cell captive insurance company shall be either cell liabilities or general liabilities.

(2) The cell liabilities comprise the obligations of the protected cell captive insurance company attributable to its protected cells.

(3) The general liabilities of a protected cell captive insurance company comprise the obligations of the protected cell captive insurance company that are not cell liabilities.

(O) Each protected cell insurance company shall account separately on its books and records for each of its protected cells to reflect the financial condition and results of operations of the protected cell, including net income or loss, dividends or other distributions to participants, and such other factors as may be provided by participant contracts or required by the superintendent.

(P) Each protected cell captive insurance company shall annually file with the superintendent such financial reports as the superintendent requires, which shall include financial statements detailing the financial experience of each protected cell and a statement regarding the adequacy of reserves kept to make full provision for the liabilities insured by each protected cell.

(Q) An officer or manager of a protected cell captive insurance company shall immediately notify the superintendent if any protected cell of the protected cell captive insurance company or the protected cell captive insurance company itself is trending toward reserves that are inadequate, or if a protected cell or the protected cell captive insurance company becomes insolvent or is otherwise unable to meet its claims or other obligations.

(R) The duties of a director of a protected cell captive insurance company under this chapter shall be in addition to, and not in lieu of, those under other applicable law.

Sec. 3964.171. (A) A protected cell captive insurance company may create and issue shares in one or more classes for one or more protected cells.

(1) The proceeds of the issue of shares for a specific protected cell shall be included in the assets of that protected cell.

(2) The proceeds of the issue of shares that are not for a specific

protected cell shall be included in the protected cell captive insurance company's general assets.

(B) A protected cell captive insurance company may pay a dividend on protected cell or protected cell captive insurance company shares of any class, regardless of whether a dividend is declared on any other class of shares of a protected cell or any other shares of the protected cell captive insurance company. Such payment is subject to section 3964.06 of the Revised Code.

(C) Dividends may be paid on protected cell shares only from the cell assets of the protected cell that issued the shares and must otherwise be made in accordance with the rights of such shares and in accordance with section 3964.06 of the Revised Code.

Sec. 3964.172. (A) No sale, exchange, or other transfer of assets may be made by a protected cell captive insurance company between or among any of its protected cells without the written consent of the participants of the protected cell and the superintendent.

(B)(1) No sale, exchange, transfer of assets, or distribution may be made from a protected cell to any person without the superintendent's prior written approval.

(2) The superintendent shall not give approval if the sale, exchange, transfer, or distribution would result in the insolvency or impairment of the protected cell in question.

Sec. 3964.173. (A) The owners of a protected cell captive insurance company, shall not, by virtue of being owners of the protected cell captive insurance company, be the owners or participants of any protected cell of the protected cell captive insurance company.

(B) The participants of a protected cell shall not, by virtue of being such participants, be the owners of the protected cell captive insurance company or participants or owners of any other protected cell of the protected cell captive insurance company.

(C) No participant contract shall take effect without the superintendent's prior written approval.

(D) The addition of a new protected cell, or the withdrawal or other transfer of any participant from any existing protected cell, shall constitute a change in the strategic business plan of that protected cell captive insurance company, requiring the superintendent's prior written approval.

(E) A protected cell captive insurance company shall, in addition to keeping a register of its owners or participants, keep a register of the participants of each of its protected cells.

Sec. 3964.174. (A) If a protected cell captive insurance company enters

into a transaction with respect to a particular protected cell, or incurs a liability arising from an activity or asset of a particular protected cell, a claim by any person in connection with the transaction or liability extends only to the cell assets of the protected cell.

(B) If a protected cell captive insurance company enters into a transaction in its own right and not in respect of any of its protected cells, incurs a liability arising from an activity in its own right and not in respect of any of its protected cells, or incurs a liability arising from an asset held in its own right and not in respect of any of its protected cells, then a claim by any person or a liability in connection with this type of transaction, activity, or ownership shall extend only to the general assets of the protected cell captive insurance company.

(C) Except as provided by divisions (D) and (E) of this section, a protected cell captive insurance company shall not do either of the following:

(1) Satisfy a liability attributable to a particular protected cell of the protected cell captive insurance company from the general assets of the protected cell captive insurance company;

(2) Satisfy a liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell.

(D)(1) A protected cell captive insurance company may satisfy any liability attributable to a particular protected cell from the protected cell captive insurance company's general assets if both of the following conditions are met:

(a) The articles of incorporation, bylaws, code of regulations, or similar organization documents of the protected cell captive insurance company allow the protected cell captive insurance company to satisfy the liability.

(b) Satisfying the liability has been approved by two-thirds of the participants of the protected cell or, if the protected cell has more than one class of participants, two-thirds of each class of participants, unless the organizational document of the protected cell insurance company requires a greater percentage.

(2) Prior to a protected cell captive insurance company satisfying any liability attributable to a particular protected cell from the protected cell captive insurance company's general assets, the directors who authorize the satisfaction of the liability shall state as part of the authorization that, having inquired into the affairs and prospects of the protected cell captive insurance company, they have formed an opinion that includes both of the following:

(a) Immediately following the date on which the liability is proposed to be met by the general assets of the protected cell captive insurance

company, the protected cell captive insurance company will be able to discharge its liabilities as they fall due.

(b) Having regard to the prospects of the protected cell captive insurance company, the intentions of the directors with respect to the management of the protected cell captive insurance company's business, and the amount and character of the financial resources that will, in their view, be available to the protected cell captive insurance company, the protected cell captive insurance company will be able to continue its business and will be able to discharge its liabilities as they fall due for a period of one year immediately following the date on which the liability is proposed to be satisfied by the general assets of the protected cell captive insurance company or until the protected cell captive insurance company is dissolved, whichever first occurs.

(E)(1) A protected cell captive insurance company may satisfy any liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell if it is permitted to do so by the articles of incorporation, bylaws, code of regulations, or other organizational document, as well as the participant agreement, of the protected cell whose assets are proposed to be used to satisfy the liability.

(2)(a) Prior to a protected cell captive insurance company satisfying any liability from the assets of a protected cell that is not responsible for the liability, the directors who authorize the satisfaction shall make a full inquiry into the affairs and prospects of the protected cell whose assets are proposed to be used to satisfy the liability to determine that both of the following are true:

(i) Immediately following the date on which the liability is proposed to be met by the cell assets of the protected cell in question, the protected cell will be able to discharge its liabilities as they fall due.

(ii) Having regard to the prospects of the protected cell, the intentions of the directors with respect to the management of the protected cell's business, and the amount and character of the financial resources that will in their view be available to the protected cell in question, the protected cell will be able to continue to carry on business and will be able to discharge its liabilities as they become due or until the protected cell is dissolved, whichever first occurs.

(b) If the criteria of division (E)(2)(a) of this section are met, the directors shall make a written authorization stating the outcome of their inquiry and shall submit the authorization to the superintendent for approval prior to satisfying the liability.

(F) A director who makes a statement under division (D) or (E) of this

section without having reasonable grounds for the opinion expressed in the statement violates this chapter and may be removed by order of the superintendent.

Sec. 3964.175. If a protected cell captive insurance company is liable for any penalty, under this chapter or otherwise, due to an act or the failure to act of a protected cell or an officer or director of a protected cell, then both of the following apply:

(A) The penalty shall only be met by the protected cell captive insurance company from the cell assets of the protected cell responsible.

(B) The penalty shall not be enforceable in any way against any other assets of the protected cell captive insurance company or assets of any other protected cell.

Sec. 3964.176. The directors of a protected cell captive insurance company shall establish and maintain, or cause to be established and maintained, procedures to do all of the following:

(A) Segregate cell assets and liabilities separate and separately identifiable from general assets and liabilities;

(B) Segregate cell assets and liabilities of each protected cell separate and separately identifiable from cell assets and liabilities of any other protected cell;

(C) Apportion or transfer, where relevant, assets and liabilities between protected cells or between protected cells and the general assets and liabilities of the protected cell captive insurance company.

Sec. 3964.177. (A) If a protected cell captive insurance company enters into an agreement with respect to a protected cell of the protected cell captive insurance company, the directors shall ensure that both of the following are met:

(1) The other party to the transaction knows, or ought reasonably to know, that the protected cell captive insurance company is acting with respect to a particular protected cell.

(2) The minutes of any meeting of directors held with regard to the agreement clearly record the fact that the protected cell captive insurance company was entering into the agreement with respect to the protected cell in question and that the obligation imposed by division (A)(1) of this section has been, or will be, complied with.

(B) If a protected cell captive insurance company fails to comply with division (A) of this section, then both of the following shall apply:

(1) The directors of the protected cell captive insurance company shall be personally liable for the liabilities of the protected cell captive insurance company and the protected cell under the act, matter, deed, agreement,

contract, instrument, or arrangement that was executed, notwithstanding any provisions to the contrary in the protected cell's organizational documents or in any contract with the protected cell captive insurance company or otherwise.

(2)(a) The directors of the protected cell captive insurance company shall have a right of indemnity, in the case of a matter on behalf of or attributable to a protected cell, against the assets of the protected cell, unless the directors were fraudulent, reckless, negligent, or acted in bad faith.

(b) The directors shall have a right of indemnity against the general assets of the protected cell captive insurance company, in the case of a matter not on behalf of or attributable to a protected cell.

(C) Notwithstanding division (B)(1) of this section, a court may relieve a director of all or part of the personal liability required under division (B)(1) of this section if the director can demonstrate either of the following to the satisfaction of the court:

(1) The director was not aware of the circumstances giving rise to the liability and therefore was not fraudulent, reckless, or negligent and did not act in bad faith.

(2) The director expressly objected, and exercised the rights available to the director, whether by way of voting power or otherwise, to try to prevent the circumstances giving rise to the liability.

(D) If, pursuant to division (C) of this section, a court relieves a director of all or part of the director's personal liability under division (B)(1) of this section, the court may order that the liability in question instead be met from the assets of the protected cell or the general assets of the protected cell captive insurance company as the court finds appropriate.

(E) Any provision in the organizational document of a captive insurance company or any other contractual provision under which the protected cell captive insurance company may be liable shall be void if it purports to indemnify the directors of a protected cell captive insurance company despite fraudulent, negligent, reckless, bad faith, or other conduct that would otherwise exempt them from indemnification by virtue of division (B)(2)(a) of this section.

(F) The duties of a director of a protective cell captive insurance company under this chapter shall be in addition to and not in lieu of, those under any other applicable law.

Sec. 3964.178. (A) A captive insurance company may amend its organizational document to become a protected cell captive insurance company.

(B) The amendment of the organizational document of a captive

insurance company to become a protected cell captive insurance company shall require approval by both of the following:

(1) Holders of two-thirds of the outstanding shares or ownership interests of the captive insurance company, unless a greater amount is required by the organizational document of the captive insurance company;

(2) All the creditors of the captive insurance company.

(C) Notwithstanding division (B)(2) of this section, if the consent of all the creditors of the captive insurance company cannot be obtained, the amendment may be approved by the superintendent if the superintendent is satisfied that no creditor will be materially prejudiced by the amendment.

(D) A protected cell captive insurance company may amend its organizational document to cease to be a protected cell captive insurance company.

(E) The amendment of an organizational document of a protected cell captive insurance company to cease to be a protected cell captive insurance company shall require approval by all of the following:

(1) The superintendent;

(2) Holders of two-thirds of the outstanding shares or ownership interests of the protected cell captive insurance company, unless a greater amount is required by the organizational document of the protected cell captive insurance company;

(3) Two-thirds of the participants of each protected cell;

(4) All the creditors of the protected cell captive insurance company and its protected cells.

(F) Notwithstanding division (E)(4) of this section, if the consent of all the creditors of the captive insurance company and its protected cells cannot be obtained, the amendment may be approved by the superintendent upon being satisfied that no creditor will be materially prejudiced by the amendment.

(G)(1) If a captive insurance company or protected cell captive insurance company seeks to change its status in accordance with this section, the captive insurance company or protected cell captive insurance company shall deliver both of the following to the superintendent:

(a) A copy of the amendment to its name;

(b) Evidence satisfactory to the superintendent that the requirements of division (B) or (E) of this section have been met.

(2) If the documents required under division (G)(1) of this section are provided, the superintendent shall issue a license that is appropriate to the amended status of the company.

(H) If a company changes its status in accordance with this section, the

change of status shall take effect when the superintendent issues a new license.

Sec. 3964.179. (A) A protected cell of a protected cell captive insurance company may be transferred to another protected cell captive insurance company.

(B) The protected cell captive insurance companies between which a protected cell is being transferred shall enter into a written agreement that sets forth the terms of the transfer.

(C) A transfer of a protected cell shall be approved by the superintendent when all of the following are met:

(1) The board of directors of each protected cell captive insurance company involved in the transfer have approved the transfer.

(2) The transfer agreement is approved by the superintendent as an arrangement in accordance with this chapter.

(3) One of the following applies:

(a) The transfer agreement is consented to by at least two-thirds of the participants of the protected cell being transferred and all the creditors, if any, of that protected cell.

(b) If the agreement of all the creditors of the protected cell cannot be obtained, the superintendent may approve the transfer upon being satisfied that no creditor of the protected cell will be materially prejudiced by the transfer.

(D) Within thirty days after a transfer agreement is approved by the superintendent, the protected cell captive insurance company to which the protected cell is being transferred shall deliver both of the following to the superintendent:

(1) A copy of the executed transfer agreement;

(2) A declaration signed by the directors of the protected cell captive insurance company transferring the protected cell stating that each director has reason to believe all of the following:

(a) The protected cell being transferred is able to discharge its liabilities as they become due.

(b) There are no creditors of the protected cell captive insurance company from which the protected cell is being transferred whose interests will be unfairly prejudiced by the transfer.

(c) The transfer agreement has been approved in accordance with this chapter.

(E) If a protected cell captive insurance company fails to deliver the documents required under division (D) of this section within the required thirty-day period, the superintendent may void the transfer.

(F) The superintendent may void a transfer and order the removal of any director who makes a declaration under division (D)(2) of this section without having the grounds to do so.

(G) Upon fulfillment of the requirements of division (D) of this section, the superintendent shall do all of the following:

(1) Record the transfer of the protected cell;

(2) Issue to the protected cell a new license;

(3) Record that the protected cell has ceased to be a protected cell of the protected cell captive insurance company from which it was transferred.

(H) Upon the issuance of the new license under this section all of the following shall apply:

(1) The protected cell shall cease to be a protected cell of the protected cell captive insurance company from which it was transferred.

(2) The protected cell becomes a protected cell of the protected cell captive insurance company to which it has been transferred.

(3) All of the following shall apply:

(a) All property and rights to which the protected cell was entitled immediately before the issue of the new license shall remain the property and rights of the protected cell.

(b) All liabilities, contracts, debts, and other obligations to which the protected cell was subject immediately before the issue of the new license shall remain the liabilities, contracts, debts, and other obligations of the protected cell.

(c) All actions and other legal proceedings that were pending by or against a protected cell immediately before the issue of the new license may be continued by or against the protected cell.

(I) The operation of division (H) of this section shall not be regarded as any of the following:

(1) A breach of contract or otherwise as a civil wrong;

(2) A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities;

(3) Giving rise to any remedy by a party to a contract or other instrument as an event of default under any contract or other instrument or as causing or permitting the termination of any contract, other instrument, obligation, or relationship.

(J) Except as provided in this section, a protected cell shall not be transferred if the transfer would be inconsistent with the articles of incorporation, bylaws, code of regulations, or similar organizational document of the protected cell, the protected cell captive insurance company transferring the protected cell, or the protected cell captive insurance

company to which the protected cell is to be transferred.

Sec. 3964.1710. (A) Any insurance company organized under Chapter 3925. of the Revised Code, and any captive insurance company that is not a protected cell captive insurance company, may become a protected cell of a protected cell captive insurance company, with the approval of the superintendent.

(B)(1) A protected cell of a protected cell captive insurance company may apply to the superintendent to be incorporated as an insurance company, including a captive insurance company subject to the requirements of this chapter, independent from the protected cell captive insurance company of which it is currently a part.

(2) If a protected cell is licensed as an independent insurance company, then all of the following apply:

(a) All property and rights to which the protected cell was entitled immediately before its licensure as a new entity shall remain the property and rights of the new entity.

(b) The protected cell shall remain subject to all criminal and civil liabilities and all contracts, debts, and other obligations to which the protected cell was subject immediately before its licensure as a new entity.

(c) All contracts, debts, and other obligations of the protected cell shall remain the contracts, debts, and other obligations of the new entity.

(d) All actions and other legal proceedings that, immediately before the licensure of the protected cell as a new entity, were pending by or against the protected cell may be continued by or against the new entity.

(C) An application made under division (B) of this section shall be approved by two-thirds of the participants of the protected cell or, if the protected cell has more than one class of participants, two-thirds of each class of participant, unless the organizational document of the protected cell requires a greater percentage.

(D)(1) If a protected cell makes an application under division (B) of this section, any participant of the protected cell who objects to the protected cell being incorporated as an independent insurance company may petition the superintendent for an order denying the application on the grounds that the incorporation, or the terms of the incorporation, unfairly prejudice the interests of the participant.

(2) Such a petition shall be made within thirty days after an application has been made under division (B) of this section.

(E) The operation of division (B)(2) of this section shall not be regarded as any of the following:

(1) A breach of contract;

(2) A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities;

(3) Giving rise to any remedy by a party to a contract or other instrument as an event of default under the contract or other instrument or as causing or permitting the termination of any contract, other instrument, obligation, or relationship.

Sec. 3964.18. (A) If a protected cell captive insurance company with one or more protected cells is being liquidated, the protected cell captive insurance company may be considered to have no assets and no liabilities only if the protected cell captive insurance company continues to have no protected cells.

(B) In the course of liquidating a protected cell captive insurance company, each protected cell shall be dealt with one of the following ways:

(1) Transfer to another protected cell captive insurance company;

(2) Liquidation;

(3) Continuation as a separate legal entity or protected cell under the law of another jurisdiction;

(4) Incorporation, independent of the protected cell captive insurance company;

(5) Merge with another insurance company.

(C) If a protected cell captive insurance company is being liquidated, the liquidation shall not apply with respect to any protected cell of the protected cell captive insurance company.

(D) If a protected cell of a protected cell captive insurance company is being liquidated, the liquidation shall not apply with respect to the protected cell captive insurance company or any other protected cell of the protected cell captive insurance company.

(E) A court, upon application of a protected cell captive insurance company that is being liquidated, may determine, in accordance with this chapter, if a liability of the protected cell captive insurance company shall be satisfied by its general assets, by the cell assets of a specific protected cell of the protected cell captive insurance company, or by a combination of those assets.

(F) Notwithstanding any statutory provision or rule of law to the contrary, in the disposition of a protected cell captive insurance company, the liquidator shall do both of the following:

(1) Deal with the protected cell captive insurance company's assets only in accordance with the procedures set out in this section;

(2) Apply the protected cell captive insurance company's assets to those entitled to have recourse to them under this section, in the discharge of the

claims of creditors of the protected cell captive insurance company.

(G)(1) A petition for a liquidation or rehabilitation order with respect to a protected cell of a protected cell captive insurance company may be made by any of the following:

(a) The protected cell captive insurance company;

(b) A majority of the directors of the protected cell captive insurance company;

(c) Any creditor of that protected cell;

(d) The superintendent.

(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a protected cell of a protected cell captive insurance company shall be served upon all of the following:

(a) The protected cell captive insurance company;

(b) The superintendent;

(c) Such other persons as the court may direct.

(H)(1) Except as otherwise provided in this section, the court may make a liquidation or rehabilitation order with respect to a protected cell if, in relation to a protected cell captive insurance company, the court is satisfied that both of the following are met:

(a) The cell assets attributable to a particular protected cell of the protected cell captive insurance company and the general assets of the protected cell captive insurance company, in those cases where creditors of the protected cell are entitled to have recourse to the protected cell captive insurance company's general assets, are, or are likely to be, insufficient to discharge the claims of creditors with respect to that protected cell.

(b) An order would achieve the purposes set forth in division (H)(3) of this section.

(2) A liquidation or rehabilitation order may be made with respect to one or more protected cells.

(3) A liquidation or rehabilitation order shall direct that the business and cell assets of, or attributable to, a protected cell shall be managed by a liquidator or rehabilitator specified in the order for the purpose of accomplishing both of the following:

(a) The orderly closing or rehabilitation of the business of, or attributable to, the protected cell;

(b) The distribution of the cell assets, or assets attributable to the protected cell, to those having recourse thereto.

(I) All of the following apply to the liquidator or rehabilitator of a protected cell:

(1) The liquidator or rehabilitator shall have all the functions and

powers of the directors responsible for the business and cell assets of, or attributable to, the protected cell.

(2) The liquidator or rehabilitator may at any time apply to the court for any of the following:

(a) Directions as to the extent or exercise of any function or power;

(b) The liquidation or rehabilitation order to be discharged or varied;

(c) Any other order as to any matter occurring during the course of the liquidation or rehabilitation.

(3) The liquidator or rehabilitator shall act as the agent of the protected cell and the protected cell captive insurance company and shall not incur personal liability except to the extent that the liquidator or rehabilitator acts fraudulently, recklessly, negligently, or in bad faith, except that where the superintendent is appointed liquidator or rehabilitator of a protected cell. If the superintendent is appointed liquidator, section 3903.07 of the Revised Code shall apply to the superintendent, any deputy liquidator, any employee of the department of insurance, any employee appointed by the superintendent as liquidator, and any employee who serves under the liquidator.

(4) The liquidator or rehabilitator shall administer the assets pursuant to the provisions of this section and sections 3903.01 to 3903.59 of the Revised Code.

(J) Upon the filing of a petition for a liquidation or rehabilitation order, and during the period of operation of liquidation or rehabilitation, both of the following shall apply:

(1) No proceedings shall be instituted or continued by or against the protected cell captive insurance company or protected cell in respect of which the liquidation or rehabilitation order was made.

(2) No action shall be taken to enforce any security, and no action shall be taken in the execution of a legal process with respect to the business or cell assets of, or attributable to, the protected cell with respect to which the liquidation or rehabilitation order was made, except by leave of the court.

(K) During the period of operation of a liquidation or rehabilitation both of the following shall apply:

(1) The functions and powers of the directors shall cease with respect to the business of, or attributable to, any protected cell or cell assets for which the order was made.

(2)(a) The liquidator or rehabilitator of the protected cell shall be entitled to be present at all meetings of the protected cell captive insurance company and protected cell in question and to vote at such meetings as if the liquidator or rehabilitator were a director of the protected cell captive

insurance company.

(b) The liquidator's or rehabilitator's voting authority shall include matters concerning the protected cell captive insurance company's general assets, unless there are no creditors that are entitled to have recourse to the protected cell captive insurance company's general assets.

(L)(1) A court shall not discharge a liquidation or rehabilitation order issued pursuant to this section unless it appears to the court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved.

(2) The court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order, discharge the order, or continue the liquidation or rehabilitation unchanged.

(3) Upon the court issuing an order discharging a liquidation or rehabilitation order for a protected cell on the ground that the purpose for which the order was made had been achieved or substantially achieved, the court may direct that any payment made by the liquidator or rehabilitator to any creditor of the protected cell captive insurance company, with respect to that protected cell, shall be considered full satisfaction of the liabilities of the protected cell captive insurance company to the creditor with respect to the protected cell. However, such an order or discharge shall not be considered a bar to a creditor's claims against the protected cell captive insurance company arising out of the protected cell captive insurance company's administrative, regulatory, or marketing activities on behalf of the protected cell in question.

Sec. 3964.19. (A) As used in sections 3964.19 to 3964.194 of the Revised Code:

(1) "Counterparty" means a special purpose financial captive insurance company's parent or an affiliated entity that is an insurer domiciled in this state that cedes life insurance risks to the special purpose financial captive insurance company pursuant to a special purpose financial captive insurance company contract.

(2) "Insolvency" or "insolvent" means that the special purpose financial captive insurance company is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute.

(3) "Insurance securitization" means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, for which a special purpose financial captive insurance company obtains proceeds, either directly or indirectly, through the issuance of securities, where the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive

insurance company to the counterparty under the special purpose financial captive insurance company contract, in accordance with the transaction terms, and pursuant to this section. This includes situations where the securitization proceeds are held in trust to secure the obligations of the special purpose financial captive insurance company under one or more special purpose financial captive insurance company contracts.

(4) "Organizational document" means the special purpose financial captive insurance company's articles of incorporation, bylaws, code of regulations, operating agreement, or other foundational documents that establish the special purpose financial captive insurance company as a legal entity.

(5) "Securities" means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.

(6) "Special purpose financial captive insurance company contract" means a contract between a special purpose financial captive insurance company and a counterparty pursuant to which the special purpose financial captive insurance company agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business, and includes a contract entered into under division (F) of this section.

(7) "Special purpose financial captive insurance company securities" means the securities issued by a special purpose financial captive insurance company.

(B) The requirements of this section shall not apply to a specific special purpose financial captive insurance company if the superintendent finds a specific requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurance company and if the special purpose financial captive insurance company meets the criteria established by rules and regulations adopted and promulgated by the superintendent.

(C)(1) A special purpose financial captive insurance company may not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurance company contract. However, the special purpose financial captive insurance company may cede a risk assumed through a special purpose financial captive insurance company contract to a third-party reinsurer through the purchase of reinsurance or retrocession protection if approved by the superintendent.

(2) A special purpose financial captive insurance company may enter into contracts and conduct other commercial activities related or incidental

to and necessary to fulfill the purposes of special purpose financial captive insurance company contracts, insurance securitization, and this section. Those activities may include:

(a) Entering into special purpose financial captive insurance company contracts;

(b) Issuing securities of the special purpose financial captive insurance company in accordance with applicable securities law;

(c) Complying with the terms of special purpose financial captive insurance company contracts or securities;

(d) Entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions;

(e) Complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this section and in the plan of operation considered by the superintendent under division (F)(5) of section 3964.03 of the Revised Code.

(D)(1) A special purpose financial captive insurance company may issue securities, subject to and in accordance with applicable law, its plan of operation considered by the superintendent under division (E) of section 3964.03 of the Revised Code, and its organizational documents.

(2) A special purpose financial captive insurance company, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(3) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurance company shall reflect the risk associated with the obligations of the special purpose financial captive insurance company to the counterparty under the special purpose financial captive insurance company contract.

(E)(1) A special purpose financial captive insurance company may enter into asset management agreements, including swap agreements, guaranteed investment contracts, or other transactions with the objective of reducing timing differences in the funding of upfront, or ongoing, transaction expenses, or managing asset, credit, prepayment, or interest rate risk of the investments of the special purpose financial captive insurance company to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurance company insurance securitization transaction or the obligations required under a special purpose financial captive insurance company contract or for any other purpose

approved by the superintendent.

(2) An asset management agreement shall not be entered into under this section by a special purpose financial captive insurance company unless it has been approved by the superintendent.

(F)(1) If a special purpose financial captive insurance company has entered into a special purpose financial captive insurance company contract with a counterparty and the special purpose financial captive insurance company has conducted an insurance securitization that is made up, in part or in whole, of the risks of that contract, then the special purpose financial captive insurance company may enter into a second contract with the counterparty under which the counterparty is held liable for those losses or other obligations that were securitized.

(2) Such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria in sections 3907.14 and 3907.141 of the Revised Code.

(G)(1) A special purpose financial captive insurance company may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to an insurance securitization and a special purpose financial captive insurance company contract entered into under division (F) of this section.

(2) The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(H) A special purpose financial captive insurance company contract entered into under division (F) of this section shall contain all of the following:

(1) A requirement that the special purpose financial captive insurance company do either of the following:

(a) Enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders;

(b) Establish such other methods of security acceptable to the superintendent.

(2) A stipulation that assets deposited in the trust account shall be valued in accordance with their current fair-market value and shall consist only of investments permitted by sections 3907.14 and 3907.141 of the Revised Code;

(3) A requirement that, if a trust arrangement is used, the special purpose financial captive insurance company, before depositing assets with the trustee, execute assignments, execute endorsements in blank, or take such actions as are necessary to transfer legal title to the trustee of all assets requiring assignment, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurance company or another entity;

(4) A stipulation that, if a trust arrangement is used, the special purpose financial captive insurance company and the counterparty agree that the assets in the trust account established pursuant to the contract:

(a) May be withdrawn by the counterparty, or the trustee on its behalf, at any time, but only in accordance with the terms of the contract;

(b) Shall be utilized and applied by the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurance company, only for the purposes set forth in the credit for reinsurance laws and rules of this state. As used in this division, "counterparty" includes any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty.

(I) A special purpose financial captive insurance company contract entered into under division (F) of this section may contain provisions that give the special purpose financial captive insurance company the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurance company if such provisions comply with the credit for reinsurance laws and rules of this state.

(J)(1) A special purpose financial captive insurance company contract entered into under division (F) of this section, meeting the requirements of this section, shall be granted credit for reinsurance treatment or otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurance company as an assuming insurer for the benefit of the counterparty if both of the following apply:

(a) The assets are held or invested in one or more of the forms allowed in sections 3907.14 and 3907.141 of the Revised Code.

(b) The agreement is in compliance with section 3901.64 of the Revised Code.

(2) The contract shall be granted credit or otherwise qualify as an asset

or reduction from liability only to the extent of the value of the assets held in trust for, or letters of credit, that meet the requirements set forth in division (C) of section 3964.05 of the Revised Code, or as approved by the superintendent, for the benefit of the counterparty under the special purpose financial captive insurance company contract.

(K) A special purpose financial captive insurance company may make investments that meet the qualifications set forth in sections 3907.14 and 3907.141 of the Revised Code, however these investments shall not be subject to any limitations contained in such sections as to invested amounts. The superintendent may prohibit or limit any investment that threatens the solvency or liquidity of a special purpose financial captive insurance company or that is not made in accordance with the approved plan of operation.

Sec. 3964.191. (A) Notwithstanding the provisions of sections 3903.01 to 3903.59 of the Revised Code, the superintendent may apply to the court of common pleas of Franklin county for an order authorizing the superintendent to rehabilitate or liquidate a special purpose financial captive insurance company domiciled in this state on one or both of the following grounds:

(1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurance company intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurance company securities.

(2) The special purpose financial captive insurance company is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurance company securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(B) A court may not grant the relief provided by division (A) of this section unless, after notice and a hearing, the superintendent establishes that relief must be granted.

(C) Notwithstanding any other applicable law or rule, upon any order of rehabilitation or liquidation of a special purpose financial captive insurance company, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company pursuant to the provisions of section 3964.193 of the Revised Code.

(D) With respect to amounts recoverable under a special purpose financial captive insurance company contract, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an

order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding any provision in the contracts or other documentation governing a special purpose financial captive insurance company insurance securitization.

(E) An application or petition, or a temporary restraining order or injunction issued pursuant to sections 3903.01 to 3903.59 of the Revised Code, with respect to a counterparty, does not prohibit the transaction of business by a special purpose financial captive insurance company, including any payment by a special purpose financial captive insurance company made pursuant to a special purpose financial captive insurance company security, or any action or proceeding against a special purpose financial captive insurance company or its assets.

(F) Notwithstanding the provisions of any applicable law or rule, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurance company, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurance company made pursuant to a special purpose financial captive insurance company security or special purpose financial insurance company contract, and also does not prohibit the special purpose financial captive insurance company from taking any action required to make such payments.

(G) Notwithstanding the provisions of any other applicable law or rule, both of the following shall apply:

(1) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurance company of money or other property made pursuant to a special purpose financial captive insurance company contract.

(2) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property made to a counterparty pursuant to a special purpose financial captive insurance company contract or made to or for the benefit of any holder of a special purpose financial captive insurance company security on account of the special purpose financial captive insurance company security.

(H) With the exception of the fulfillment of the obligations under a special purpose financial captive insurance company contract, and notwithstanding the provisions of any other applicable law or rule, the assets of a special purpose financial captive insurance company, including assets held in trust, shall not be consolidated with or included in the estate of a

counterparty in any delinquency proceeding against the counterparty, pursuant to the provisions of this section, for any purpose, including distribution to creditors of the counterparty.

Sec. 3964.193. (A) Except as otherwise provided in this section, documents and information submitted by a company pursuant to sections 3964.19 to 3964.194 of the Revised Code 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.

(B) Such documents and information may be discoverable in a civil action in which the 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.

(C) The superintendent may, at the superintendent's sole discretion, share documents that are the subject of 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 confidential or privileged work paper and has authority to do so.

Sec. 3964.194. (A) Notwithstanding any other section of the Revised Code, a counterparty may take credit for reinsurance ceded to a special purpose financial captive insurance company that is a subsidiary or affiliate of the counterparty, if assets valued using the basis of accounting applicable to the special purpose financial captive insurance company under division (E) of section 3964.03 of the Revised Code at least equal to the reserves as determined under the basis elected under division (E) of section 3964.03 of the Revised Code for the reinsurance are held directly by the ceding counterparty or in trust on behalf of the ceding counterparty, as security for payment of the obligations under the reinsurance contract with the reinsuring special purpose financial captive insurance company.

(B) Such funds shall be held in compliance with the requirements of section 3901.63 of the Revised Code.

(C) An Ohio domiciled counterparty in recording its investment in a special purpose financial captive insurance company domiciled in this state,

shall value the investment using the special purpose financial captive insurance company's underlying audited statutory equity reflecting the reserves established pursuant to division (E) of section 3964.03 of the Revised Code.

(D) Notwithstanding any other provision of the Revised Code that would otherwise apply, any change in surplus that may be recognized by any Ohio domiciled ceding counterparty pursuant to this chapter may be recognized in such ceding counterparty's calculation of its investment in a United States insurance subsidiary, controlled and affiliated entity investment, or any of its Ohio domiciled parents' calculations of their investment in a United States insurance subsidiary, controlled, and affiliated entities.

Sec. 3964.20. A captive insurance company organized under the laws of another state or jurisdiction may become a domestic captive insurance company pursuant to section 3913.40 of the Revised Code after complying with all the requirements of this chapter relative to the organization and formation of a domestic captive insurance company.

Sec. 3964.21. The superintendent may adopt rules in accordance with Chapter 119. of the Revised Code as are reasonably necessary for the implementation and operation of this chapter.

Sec. 4123.351. (A) The administrator of workers' compensation shall require every self-insuring employer, including any self-insuring employer that is indemnified by a captive insurance company granted a certificate of authority under Chapter 3694. of the Revised Code, to pay a contribution, calculated under this section, to the self-insuring employers' guaranty fund established pursuant to this section. The fund shall provide for payment of compensation and benefits to employees of the self-insuring employer in order to cover any default in payment by that employer.

(B) The bureau of workers' compensation shall operate the self-insuring employers' guaranty fund for self-insuring employers. The administrator annually shall establish the contributions due from self-insuring employers for the fund at rates as low as possible but such as will assure sufficient moneys to guarantee the payment of any claims against the fund. The bureau's operation of the fund is not subject to sections 3929.10 to 3929.18 of the Revised Code or to regulation by the superintendent of insurance.

(C) If a self-insuring employer defaults, the bureau shall recover the amounts paid as a result of the default from the self-insuring employers' guaranty fund. If a self-insuring employer defaults and is in compliance with this section for the payment of contributions to the fund, such self-insuring employer is entitled to the immunity conferred by section 4123.74 of the

Revised Code for any claim arising during any period the employer is in compliance with this section.

(D)(1) There is hereby established a self-insuring employers' guaranty fund, which shall be in the custody of the treasurer of state and which shall be separate from the other funds established and administered pursuant to this chapter. The fund shall consist of contributions and other payments made by self-insuring employers under this section. All investment earnings of the fund shall be credited to the fund. The bureau shall make disbursements from the fund pursuant to this section.

(2) The administrator has the same powers to invest any of the surplus or reserve belonging to the fund as are delegated to the administrator under section 4123.44 of the Revised Code with respect to the state insurance fund. The administrator shall apply interest earned solely to the reduction of assessments for contributions from self-insuring employers and to the payments required due to defaults.

(3) If the bureau of workers' compensation board of directors determines that reinsurance of the risks of the fund is necessary to assure solvency of the fund, the board may:

(a) Enter into contracts for the purchase of reinsurance coverage of the risks of the fund with any company or agency authorized by law to issue contracts of reinsurance;

(b) Require the administrator to pay the cost of reinsurance from the fund;

(c) Include the costs of reinsurance as a liability and estimated liability of the fund.

(E) The administrator, with the advice and consent of the board, may adopt rules pursuant to Chapter 119. of the Revised Code for the implementation of this section, including a rule, notwithstanding division (C) of this section, requiring self-insuring employers to provide security in addition to the contribution to the self-insuring employers' guaranty fund required by this section. The additional security required by the rule, as the administrator determines appropriate, shall be sufficient and adequate to provide for financial assurance to meet the obligations of self-insuring employers under this chapter and Chapter 4121. of the Revised Code.

(F) The purchase of coverage under this section by self-insuring employers is valid notwithstanding the prohibitions contained in division (A) of section 4123.82 of the Revised Code and is in addition to the indemnity contracts that self-insuring employers may purchase pursuant to division (B) of section 4123.82 of the Revised Code.

(G) The administrator, on behalf of the self-insuring employers'

guaranty fund, has the rights of reimbursement and subrogation and shall collect from a defaulting self-insuring employer or other liable person all amounts the administrator has paid or reasonably expects to pay from the fund on account of the defaulting self-insuring employer.

(H) The assessments for contributions, the administration of the self-insuring employers' guaranty fund, the investment of the money in the fund, and the payment of liabilities incurred by the fund do not create any liability upon the state.

Except for a gross abuse of discretion, neither the board, nor the individual members thereof, nor the administrator shall incur any obligation or liability respecting the assessments for contributions, the administration of the self-insuring employers' guaranty fund, the investment of the fund, or the payment of liabilities therefrom.

SECTION 2. That existing section 4123.351 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 117

130th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____