

**As Passed by the House**

**130th General Assembly  
Regular Session  
2013-2014**

**Am. H. B. No. 117**

**Representatives Hackett, Stinziano**

**Cosponsors: Representatives Henne, Sears, Carney, Retherford, Anielski,  
Beck, Blair, Blessing, Buchy, Budish, Burkley, Curtin, Grossman, Hagan, C.,  
Letson, Milkovich, O'Brien, Patterson, Rogers, Smith, Stebelton, Wachtmann,  
Winburn Speaker Batchelder**

—

**A B I L L**

To amend section 4123.351 and to enact sections 1  
3964.01 to 3964.15, 3964.17, 3964.171, 3964.172, 2  
3964.173, 3964.174, 3964.175, 3964.176, 3964.177, 3  
3964.178, 3964.179, 3964.1710, 3964.18, 3964.20, 4  
and 3964.21 of the Revised Code to provide for the 5  
operation of captive insurance companies in Ohio. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 4123.351 be amended and sections 7  
3964.01, 3964.02, 3964.03, 3964.04, 3964.05, 3964.06, 3964.07, 8  
3964.08, 3964.09, 3964.10, 3964.11, 3964.12, 3964.13, 3964.14, 9  
3964.15, 3964.17, 3964.171, 3964.172, 3964.173, 3964.174, 10  
3964.175, 3964.176, 3964.177, 3964.178, 3964.179, 3964.1710, 11  
3964.18, 3964.20, and 3964.21 of the Revised Code be enacted to 12  
read as follows: 13

**Sec. 3964.01.** As used in this chapter: 14

(A) "Affiliated company" means any company in the same 15  
corporate system as a parent, or a member organization by virtue 16

of common ownership, control, operation, or management. 17

(B) "Captive insurance company" means any insurer that 18  
insures only the risks of its parent or affiliated companies of 19  
its parent. "Captive insurance company" includes any protected 20  
cell captive insurance company formed or licensed under the 21  
provisions of this chapter. 22

(C) "Department" means the department of insurance. 23

(D) "Parent" means a corporation, limited liability company, 24  
partnership, other entity, or individual that directly or 25  
indirectly owns, controls, or holds, with power to vote, more than 26  
fifty per cent of either of the following: 27

(1) Securities of a captive insurance company, organized as a 28  
stock corporation; 29

(2) Membership interests of a captive insurance company 30  
organized as a nonprofit corporation or a limited liability 31  
company. 32

(E) "Protected cell captive insurance company" means a 33  
captive insurance company organized pursuant to sections 3964.17 34  
to 3964.1710 of the Revised Code. 35

(F) "Qualified actuary" means an individual who is both of 36  
the following: 37

(1) A member of the American academy of actuaries; 38

(2) Qualified to provide such certifications as described in 39  
the United States qualifications standards promulgated by the 40  
American academy of actuaries pursuant to the code of professional 41  
conduct adopted by the American academy of actuaries, the society 42  
of actuaries, the American society of pension professionals and 43  
actuaries, the casualty actuarial society, and the conference of 44  
consulting actuaries. 45

(G) "Superintendent" means the superintendent of the 46

department of insurance. 47

Sec. 3964.02. (A) A captive insurance company may apply for 48  
authority to insure only the following lines of insurance: 49

(1) Commercial multiple peril; 50

(2) Ocean marine; 51

(3) Inland marine; 52

(4) Medical malpractice; 53

(5) Workers' compensation, to the extent permitted by law, 54  
but only for the purpose of indemnification of a self-insuring 55  
employer pursuant to division (B)(1) of section 4123.82 of the 56  
Revised Code; 57

(6) Commercial auto liability; 58

(7) Commercial auto physical damage; 59

(8) Fidelity; 60

(9) Surety; 61

(10) Any other line which the superintendent, at the 62  
superintendent's sole discretion, permits. 63

(B) A captive insurance company may purchase reinsurance 64  
coverage for any risk that a captive insurance company is 65  
permitted to write directly. 66

(C) A captive insurance company shall not issue insurance 67  
policies or certificates, or any other similar documentation, to 68  
any person other than its parent or affiliated companies. 69

(D) A captive insurance company may reinsure any risks 70  
insured by its parent or an affiliated company, as approved by the 71  
superintendent. 72

Sec. 3964.03. (A) A captive insurance company shall be 73

organized under Chapter 1701., 1702., or 1705. of the Revised 74  
Code. 75

(B) A captive insurance company shall not operate in this 76  
state unless all of the following are met: 77

(1) The captive insurance company obtains from the 78  
superintendent a license to do the business of captive insurance 79  
in this state. 80

(2) The captive insurance company's board of directors holds 81  
at least one meeting each year in this state. 82

(3) The captive insurance company maintains its principal 83  
place of business in this state. 84

(4) The person managing the captive insurance company is a 85  
resident of this state. 86

(5) The captive insurance company appoints a registered agent 87  
to accept service of process and act on its behalf in this state. 88

(C) Whenever an agent required under division (B)(5) of this 89  
section cannot, with reasonable diligence, be found at the 90  
registered office of the captive insurance company, the 91  
superintendent shall be an agent of such a captive insurance 92  
company upon whom any process, notice, or demand may be served. 93

(D) A captive insurance company seeking a license to be a 94  
captive insurance company in this state shall file an application 95  
with the superintendent and shall submit all of the following 96  
along with the application: 97

(1) A certified copy of its articles of incorporation, 98  
bylaws, or other organizational document and code of regulations; 99

(2) A statement, made under oath by the president and 100  
secretary, in a form prescribed by the superintendent, showing the 101  
captive insurance company's financial condition; 102

<u>(3) A statement of the captive insurance company's assets</u>	103
<u>relative to its risks, detailing the amount of assets and their</u>	104
<u>liquidity;</u>	105
<u>(4) An account of the adequacy of the expertise, experience,</u>	106
<u>and character of the person or persons who will manage the captive</u>	107
<u>insurance company;</u>	108
<u>(5) An account of the loss prevention programs of the persons</u>	109
<u>that the captive insurance company insures;</u>	110
<u>(6) Actuarial assumptions and methodologies that will be</u>	111
<u>utilized in calculating reserves;</u>	112
<u>(7) Any other information considered necessary by the</u>	113
<u>superintendent to determine whether the proposed captive insurance</u>	114
<u>company will be able to meet its obligations.</u>	115
<u>(E) In determining whether to approve an application for a</u>	116
<u>license, the superintendent shall consider all of the following:</u>	117
<u>(1) The character, reputation, financial standing, and</u>	118
<u>purposes of the incorporators, or other founders, of the captive</u>	119
<u>insurance company;</u>	120
<u>(2) The character, reputation, financial responsibility,</u>	121
<u>experience relating to insurance, and business qualifications of</u>	122
<u>the officers and directors of the captive insurance company;</u>	123
<u>(3) The amount of liquidity and assets of the captive</u>	124
<u>insurance company relative to the risks to be assumed;</u>	125
<u>(4) The adequacy of the expertise, experience, and character</u>	126
<u>of the person or persons who will manage the captive insurance</u>	127
<u>company;</u>	128
<u>(5) The overall soundness of the plan of operation;</u>	129
<u>(6) The adequacy of the loss prevention programs of the</u>	130
<u>persons that the captive insurance company insures.</u>	131

(F)(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 (F)(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 (F)(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.

(G) 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. 164  
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(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. 170  
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(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. 176  
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(H)(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. 188  
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(2) The fees collected pursuant to division (H)(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. 196  
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**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." 200  
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**Sec. 3964.05.** (A) No captive insurance company shall be issued a license unless it possesses and maintains unimpaired, paid-in capital and surplus as follows: 205  
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(1) Not less than two hundred fifty thousand dollars; 208

(2) In the case of a protected cell captive insurance company, not less than five hundred thousand dollars. 209  
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(B) The superintendent may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted. 211  
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(C) Capital and surplus may be in the form of any of the following: 214  
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(1) Cash; 216

(2) Marketable securities, as approved by the superintendent; 217

(3) Irrevocable, unconditional, and automatically renewable letters of credit that are issued or confirmed by a qualified United States financial institution. 218  
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(D) For purposes of division (C)(3) of this section, a United States financial institution is qualified if all of the following apply: 221  
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(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. 224  
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(2) It is regulated, supervised, and examined by federal or state officials that have regulatory authority over banks and trust companies. 228  
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(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. 231  
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**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. 236  
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(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. 246  
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(C)(1) For the purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of 253  
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cash or other property, whose fair market value, together with 255  
that of other dividends or distributions made within the preceding 256  
twelve months, exceeds the greater of ten per cent of the 257  
insurance company's surplus as regards policy holders as of the 258  
thirty-first day of December immediately preceding, or the net 259  
income of the insurance company for the twelve-month period ending 260  
the thirty-first day of December immediately preceding. 261

(2) Pro rata distributions of any class of the insurance 262  
company's own securities shall not be considered an extraordinary 263  
distribution under division (C)(1) of this section. 264

(D) Any dividend or distribution paid from a source other 265  
than earned surplus shall be considered an extraordinary dividend 266  
or extraordinary distribution. 267

(E) For the purposes of this section, "earned surplus" means 268  
an amount equal to an insurance company's unassigned funds as set 269  
forth in its most recent financial statement submitted to the 270  
superintendent, including net unrealized capital gains and losses 271  
or revaluation of assets. 272

**Sec. 3964.07.** (A) A captive insurance company shall not be 273  
required to make any annual report except as required by this 274  
section. 275

(B)(1) Two of the executive officers of a captive insurance 276  
company, or a majority of the directors of a captive insurance 277  
company, shall annually prepare under oath and submit to the 278  
superintendent, on the first day of January or within sixty days 279  
thereafter, a statement showing the financial condition of the 280  
company on the thirty-first day of the December next preceding. 281  
The statement shall include an opinion from a qualified actuary 282  
regarding the adequacy of the company's required reserves to make 283  
full provision for the company's liabilities. 284

(2) All captive insurance companies shall have an annual 285  
audit by an independent certified public accountant and shall file 286  
an audited financial report with the superintendent on or before 287  
the first day of June as a supplement to the annual statement 288  
required under division (B)(1) of this section. 289

(C) Each captive insurance company shall report using 290  
generally accepted accounting principles, unless the 291  
superintendent requires, approves, or accepts the use of statutory 292  
accounting principles or other comprehensive basis accounting, any 293  
appropriate, necessary modifications or adaptations required or 294  
approved or accepted by the superintendent for each type of 295  
insurance or kind of insurance company that makes such a report, 296  
and as supplemented by additional information required by the 297  
superintendent. 298

(D) Captive insurance companies shall prepare, at a minimum, 299  
internal quarterly financial statements. These statements shall be 300  
made available upon request to the superintendent. 301

(E) The superintendent shall adopt by rule the prescribed 302  
forms, instructions, and manuals by which captive insurance 303  
companies shall make the reports required under this section, as 304  
the superintendent considers necessary. 305

(F) Division (G) of section 3964.03 of the Revised Code shall 306  
apply to each report filed under this section. 307

**Sec. 3964.08.** (A) Captive insurance companies shall be 308  
examined, evaluated, and monitored pursuant to section 3901.07 of 309  
the Revised Code. 310

(B) All examination reports, preliminary examination reports 311  
or results, working papers, recorded information, documents and 312  
copies thereof produced by, obtained by, or disclosed to the 313  
superintendent or any other person in the course of an examination 314

made under this section are confidential and are not subject to 315  
subpoena and may not be made public by the superintendent or an 316  
employee or agent of the superintendent without the written 317  
consent of the company, except to the extent provided in this 318  
section. However, nothing in this section shall prevent the 319  
superintendent from using such information in the furtherance of 320  
the superintendent's regulatory authority under this chapter. 321

(C) The superintendent may, in the superintendent's sole 322  
discretion, share documents that are the subject of this section 323  
with the chief deputy rehabilitator, the chief deputy liquidator, 324  
other deputy rehabilitators and liquidators, and any other person 325  
employed by, or acting on behalf of, the superintendent pursuant 326  
to Chapter 3901. or 3903. of the Revised Code, with other local, 327  
state, federal, and international regulatory and law enforcement 328  
agencies, with local, state, and federal prosecutors, and with the 329  
national association of insurance commissioners and its affiliates 330  
and subsidiaries provided that the recipient agrees to maintain 331  
the confidential or privileged status of the confidential or 332  
privileged work paper and has authority to do so. 333

**Sec. 3964.09.** The superintendent may suspend or revoke the 334  
license of a captive insurance company, in accordance with Chapter 335  
119. of the Revised Code, for any of the following reasons: 336

(A) Insolvency or impairment of capital or surplus; 337

(B) Failure to meet the requirements of section 3964.05 of 338  
the Revised Code; 339

(C) Refusal or failure to submit an annual report, as 340  
required by section 3964.07 of the Revised Code, or any other 341  
report or statement required by law or by lawful order of the 342  
superintendent; 343

(D) Failure to comply with the provisions of its own 344

articles, bylaws, code of regulations, or other organizational 345  
documents; 346

(E) Failure to submit to, or pay the cost of, examination, or 347  
any legal obligation related to examination, as required by this 348  
chapter; 349

(F) Use of practices that, although not otherwise 350  
specifically prohibited by law, are determined by the 351  
superintendent to render its operation detrimental or its 352  
condition unsound with respect to the public or to its 353  
policyholders; 354

(G) Failure to otherwise comply with the laws of this state. 355

**Sec. 3964.10.** (A) The board of directors of a captive 356  
insurance company shall determine appropriate investments for the 357  
company. With respect to all of the insurance company's 358  
investments, the board of directors shall exercise the judgment 359  
and care, under the circumstances then prevailing, that a person 360  
of reasonable prudence, discretion, and intelligence might 361  
exercise in the management of a like enterprise, that person not 362  
having an intent to speculate, but having regard for the permanent 363  
disposition of the person's funds, considering the probable income 364  
as well as the probable safety of the person's capital. 365

(B)(1) Investments shall be of sufficient value, liquidity, 366  
and diversity to assure the captive insurance company's ability to 367  
meet its outstanding obligations, based on reasonable estimations 368  
of new business production for current lines of business. A copy 369  
of the investment policy adopted by the board of directors shall 370  
be filed with the superintendent. 371

(2) If the superintendent determines that a board of 372  
directors of a captive insurance company has failed to comply with 373  
the requirements of division (B)(1) of this section, the company 374

shall be notified in writing that it is required to file a 375  
schedule of its proposed investments with the superintendent. 376

(C)(1) No captive insurance company may make a loan to, or an 377  
investment in, its parent company or affiliates without prior 378  
written approval of the superintendent. 379

(2) Any such loan or investment shall be evidenced by 380  
documentation approved by the superintendent. 381

(3) Loans that violate the minimum capital and surplus funds 382  
requirements of section 3964.05 of the Revised Code are 383  
prohibited. 384

Sec. 3964.11. No captive insurance company shall be required 385  
to join a rating organization. 386

Sec. 3964.12. No captive insurance company shall be permitted 387  
to join or contribute financially to any plan, pool, association, 388  
or guaranty or insolvency fund in this state, nor shall any 389  
captive insurance company, or any insured or affiliate thereof, 390  
receive any benefit from any such plan, pool, association, or 391  
guaranty or insolvency fund for claims arising out of the 392  
operations of the captive insurance company. 393

Sec. 3964.13. (A)(1) Not later than the second day of March 394  
of each year, a captive insurance company shall pay to the 395  
superintendent of insurance a fee computed in accordance with both 396  
of the following: 397

(a) 0.35 per cent on its net direct premiums; 398

(b) 0.15 per cent on revenue from assumed reinsurance 399  
premiums. 400

(2) The annual minimum aggregate fee to be paid by a captive 401  
insurance company calculated under this division shall be seven 402

thousand five hundred dollars. The annual maximum aggregate fee to 403  
be paid by a captive insurance company calculated under this 404  
division shall be two hundred fifty thousand dollars. 405

(B) The fee on reinsurance premiums set forth under division 406  
(A)(1)(b) of this section shall not be levied on premiums for 407  
risks or portions of risks that are subject to the fee under 408  
division (A)(1)(a) of this section. 409

(C) A captive insurance company shall not pay any reinsurance 410  
fee pursuant to division (A)(1)(b) of this section on revenue 411  
related to the receipt of assets by the captive insurance company 412  
in exchange for the assumption of loss reserves and other 413  
liabilities of another insurance company that is under common 414  
ownership and control with the captive insurance company, if the 415  
transaction is part of a plan to discontinue the operation of the 416  
other insurance company and the intent of the exchange is to renew 417  
or maintain such business with the captive insurance company. 418

(D)(1) The fee imposed in division (A) of this section shall 419  
be calculated on an annual basis, notwithstanding policies, 420  
contracts, insurance, or contracts of reinsurance issued on a 421  
multi-year basis. 422

(2) In the case of multi-year policies or contracts, the 423  
premium shall be prorated for purposes of determining the fee 424  
required under division (A) of this section. 425

(E) All fees collected under this section shall be deposited 426  
into the state treasury to the credit of the captive insurance 427  
regulation and supervision fund. 428

**Sec. 3964.14. (A) Except as provided in this chapter, captive** 429  
**insurance companies shall be governed by this chapter and are** 430  
**exempt from all other provisions of the insurance laws of this** 431  
**state. No insurance law of this state shall apply to captive** 432

insurance companies unless captive insurance companies are 433  
expressly designated as being subject to the law or, with respect 434  
to a line of authority granted to a captive insurance company 435  
pursuant to division (A)(10) of section 3964.02 of the Revised 436  
Code, as required in the articles, bylaws, code of regulations, or 437  
other organizational documents as approved by the superintendent. 438

(B) Except as otherwise provided in this chapter, sections 439  
3903.01 to 3903.59 of the Revised Code shall apply to captive 440  
insurance companies. 441

**Sec. 3964.15.** (A) There is hereby created in the state 442  
treasury the captive insurance regulation and supervision fund, 443  
which shall consist of all fees, fines, penalties, and assessments 444  
received by the superintendent under this chapter. 445

(B) The superintendent may charge captive insurance companies 446  
for any of the following expenses incurred in carrying out this 447  
chapter: 448

(1) The entire compensation for each day, or portion thereof, 449  
worked by all personnel, including those who are not employees of 450  
the department of insurance, in any of the following capacities: 451

(a) The conduct of an examination, calculated at the rates 452  
provided in the financial condition examiners' handbook published 453  
by the national association of insurance commissioners; 454

(b) The review and analysis of a company's annual report 455  
submitted pursuant to section 3964.07 of the Revised Code, and any 456  
interim financial statements and examination reports or related 457  
documents of captive insurance companies in this state; 458

(c) The ongoing evaluation and monitoring of the financial 459  
affairs of captive insurance companies; 460

(d) The determination and review of the premium franchise fee 461



<u>liability of a captive insurance company;</u>	462
<u>(e) The training and continuing education costs of examiners and analysts.</u>	463 464
<u>(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;</u>	465 466 467 468 469 470
<u>(3) All other incidental expenses incurred by or on behalf of such personnel in the conduct of such examination;</u>	471 472
<u>(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.</u>	473 474 475 476 477 478 479
<u>(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.</u>	480 481 482 483
<u>(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.</u>	484 485 486 487
<u>(E) As used in this section, "examination" means the examination required under section 3964.08 of the Revised Code.</u>	488 489
<u>Sec. 3964.17. (A) As used in sections 3964.17 to 3964.1710 of the Revised Code:</u>	490 491

(1) "Protected cell" means a captive insurance company that 492  
is a part of another captive insurance company, and that has a 493  
separate legal identity from the captive insurance company of 494  
which it is a part. 495

(2) "Protected cell captive insurance company" means a 496  
captive insurance company that meets all of the following 497  
requirements: 498

(a) Is formed and licensed under the provisions of this 499  
chapter; 500

(b) Insures or reinsures the risks of separate participants 501  
through a participant contract; 502

(c) Segregates each participant's liability into a protected 503  
cell. 504

(3) "Participant" means an individual, company, corporation, 505  
partnership, limited liability company, and their affiliated 506  
entities that insure or reinsure with a protected cell. 507  
"Participant" includes an insurance agent licensed in this state 508  
that accepts a stated percentage of risk on a pro rata basis 509  
within a defined category of business underwritten by a licensed 510  
insurance company that is domiciled in this state and that is 511  
affiliated with a protected cell captive insurance company. 512

(4) "Participant contract" means a contract by which a 513  
protected cell captive insurance company insures or reinsures the 514  
risks of a participant. 515

(a) A participant that is not an insurance agent licensed in 516  
this state shall insure or reinsure only its own risks through a 517  
protected cell. 518

(b) If the participant is an insurance agent licensed in this 519  
state, the participant contract must define each risk covered by 520  
the contract with fixed and certain terms. 521

(B) A captive insurance company may be organized as a 522  
protected cell captive insurance company and shall be permitted to 523  
form one or more protected cells under this section to insure or 524  
reinsure risks of one or more participants. 525

(C) The assets and liabilities of each protected cell shall 526  
be held separately from the assets and liabilities of all other 527  
protected cells. 528

(D) A protected cell of a protected cell captive insurance 529  
company may be organized pursuant to Chapter 1701., 1702., or 530  
1705. of the Revised Code. 531

(E) A protected cell captive insurance company shall, at the 532  
time of paying the annual fee required under section 3964.13 of 533  
the Revised Code, pay an additional annual fee for each protected 534  
cell in an amount to be established by the superintendent. 535

(F) Each protected cell of a protected cell captive insurance 536  
company shall be treated as a captive insurance company for 537  
purposes of this chapter. 538

(G) Unless otherwise permitted by the articles of 539  
incorporation, bylaws, code of regulations, or other 540  
organizational document of a protected cell captive insurance 541  
company, each protected cell of the protected cell captive 542  
insurance company shall have the same directors, secretary, and 543  
registered office as the protected cell captive insurance company. 544

(H) A protected cell captive insurance company may provide in 545  
its articles of incorporation, bylaws, code of regulations, or 546  
other organizational documents that a protected cell it creates 547  
shall be wound up and dissolved upon any of the following: 548

(1) The bankruptcy, death, expulsion, insanity, resignation, 549  
or retirement of any participant of the protected cell; 550

(2) The happening of some event that is not the expiration of 551

a fixed period of time; 552

(3) The expiration of a fixed period of time. 553

(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. 554  
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(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. 559  
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(J) The name of a protected cell captive insurance company shall include the words "protected cell captive" or the abbreviation "PCC." 562  
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(K) A protected cell captive insurance company shall assign a distinctive name to each of its protected cells that meets all of the following: 565  
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(1) The name identifies the protected cell as being part of the protected cell captive insurance company. 568  
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(2) The name distinguishes the protected cell from any other protected cell of the protected cell captive insurance company. 570  
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(3) The name includes the words "protected cell" or the abbreviation "PC." 572  
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(L) A protected cell has no legal identity separate from that of the protected cell captive insurance company of which it is a part. 574  
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(M)(1) 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. 577  
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(2) Such an agreement shall be enforceable as if each protected cell of the protected cell captive insurance company 580  
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were a separate legal entity. 582

(N)(1) The assets of a protected cell captive insurance company shall be either cell assets or general assets. 583  
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(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. 585  
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(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. 588  
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(O)(1) The liabilities of a protected cell captive insurance company shall be either cell liabilities or general liabilities. 591  
592

(2) The cell liabilities comprise the obligations of the protected cell captive insurance company attributable to its protected cells. 593  
594  
595

(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. 596  
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(P) 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. 599  
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(Q) 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 606  
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cell. 612

(R) An officer or manager of a protected cell captive insurance company shall immediately notify the superintendent if any protected cell of the company is trending toward reserves that are inadequate, or if the company becomes insolvent or is otherwise unable to meet its claims or other obligations. 613  
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(S) 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. 618  
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**Sec. 3964.171.** (A) A protected cell captive insurance company may create and issue shares in one or more classes or series for one or more protected cells. 621  
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(1) The proceeds of the issue of shares for a specific protected cell shall be included in the assets of that protected cell. 624  
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(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. 627  
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(B) A protected cell captive insurance company may pay a dividend on protected cell shares of any class or series, regardless of whether a dividend is declared on any other class or series of shares of a protected cell or any other shares of the company. Such payment is subject to section 3964.06 of the Revised Code. 630  
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(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. 636  
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**Sec. 3964.172.** (A) No sale, exchange, or other transfer of 640

assets may be made by a protected cell captive insurance company 641  
between or among any of its protected cells without the written 642  
consent of the participants of the protected cell and the 643  
superintendent. 644

(B)(1) No sale, exchange, transfer of assets, dividend, or 645  
distribution may be made from a protected cell to any person 646  
without the superintendent's prior written approval. 647

(2) The superintendent shall not give approval if the sale, 648  
exchange, transfer, dividend, or distribution would result in the 649  
insolvency or impairment of the protected cell in question. 650

**Sec. 3964.173.** (A) The owners of a protected cell captive 651  
insurance company, shall not, by virtue of being owners, be the 652  
owners or participants of any protected cell of the protected cell 653  
captive insurance company. 654

(B) The participants of a protected cell shall not, by virtue 655  
of being such participants, be the owners of the protected cell 656  
captive insurance company or participants or owners of any other 657  
protected cell of the protected cell captive insurance company. 658

(C) A participant in a protected cell need not be a 659  
shareholder or member of the protected cell or of the protected 660  
cell captive insurance company or any affiliate thereof. 661

(D) No participant contract shall take effect without the 662  
superintendent's prior written approval. 663

(E) The addition of a new protected cell, or the withdrawal 664  
or other transfer of any participant from any existing protected 665  
cell, shall constitute a change in the strategic business plan of 666  
that protected cell, requiring the superintendent's prior written 667  
approval. 668

(F) A protected cell captive insurance company shall, in 669

addition to keeping a register of its owners or participants, keep 670  
a register of the participants of each of its protected cells. 671

Sec. 3964.174. (A) If a protected cell captive insurance 672  
company enters into a transaction with respect to a particular 673  
protected cell, or incurs a liability arising from an activity or 674  
asset of a particular protected cell, a claim by any person in 675  
connection with the transaction or liability extends only to the 676  
cell assets of the protected cell. 677

(B) If a protected cell captive insurance company enters into 678  
a transaction in its own right and not in respect of any of its 679  
protected cells, incurs a liability arising from an activity in 680  
its own right and not in respect of any of its protected cells, or 681  
incurs a liability arising from an asset held in its own right and 682  
not in respect of any of its protected cells, then a claim by any 683  
person or a liability in connection with this type of transaction, 684  
activity, or ownership shall extend only to the general assets of 685  
the protected cell captive insurance company. 686

(C) Except as provided by divisions (D) and (E) of this 687  
section, a protected cell captive insurance company shall not do 688  
either of the following: 689

(1) Satisfy a liability attributable to a particular 690  
protected cell of the protected cell captive insurance company 691  
from the general assets of the protected cell captive insurance 692  
company; 693

(2) Satisfy a liability, whether attributable to a particular 694  
protected cell or not, from the cell assets of another protected 695  
cell. 696

(D)(1) A protected cell captive insurance company may satisfy 697  
any liability attributable to a particular protected cell from the 698  
protected cell captive insurance company's general assets if both 699



of the following conditions are met: 700

(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. 701  
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(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. 705  
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(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: 710  
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(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. 718  
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(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 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 723  
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following the date on which the liability is proposed to be 731  
satisfied by the general assets of the protected cell captive 732  
insurance company or until the protected cell captive insurance 733  
company is dissolved, whichever first occurs. 734

(E)(1) A protected cell captive insurance company may satisfy 735  
any liability, whether attributable to a particular protected cell 736  
or not, from the cell assets of another protected cell if it is 737  
permitted to do so by the articles of incorporation, bylaws, code 738  
of regulations, or other organizational document, as well as the 739  
participant agreement, of the protected cell whose assets are 740  
proposed to be used to satisfy the liability. 741

(2)(a) Prior to a protected cell captive insurance company 742  
satisfying any liability from the assets of a protected cell that 743  
is not responsible for the liability, the directors who authorize 744  
the satisfaction shall make a full inquiry into the affairs and 745  
prospects of the protected cell whose assets are proposed to be 746  
used to satisfy the liability to determine that both of the 747  
following are true: 748

(i) Immediately following the date on which the liability is 749  
proposed to be met by the cell assets of the protected cell in 750  
question, the protected cell will be able to discharge its 751  
liabilities as they fall due. 752

(ii) Having regard to the prospects of the protected cell, 753  
the intentions of the directors with respect to the management of 754  
the protected cell's business, and the amount and character of the 755  
financial resources that will in their view be available to the 756  
protected cell in question, the protected cell will be able to 757  
continue to carry on business and will be able to discharge its 758  
liabilities as they become due or until the protected cell is 759  
dissolved, whichever first occurs. 760

(b) If the criteria of division (E)(2)(a) of this section are 761

met, the directors shall make a written authorization stating the 762  
outcome of their inquiry and shall submit the authorization to the 763  
superintendent for approval prior to satisfying the liability. 764

(F) A director who makes a statement under division (D) or 765  
(E) of this section without having reasonable grounds for the 766  
opinion expressed in the statement violates this chapter and may 767  
be removed by order of the superintendent. 768

**Sec. 3964.175.** If a protected cell captive insurance company 769  
is liable for any penalty, under this chapter or otherwise, due to 770  
an act or the failure to act of a protected cell or an officer or 771  
director of a protected cell, then both of the following apply: 772

(A) The penalty shall only be met by the protected cell 773  
captive insurance company from the cell assets of the protected 774  
cell responsible. 775

(B) The penalty shall not be enforceable in any way against 776  
any other assets of the protected cell captive insurance company 777  
or assets of any other protected cell. 778

**Sec. 3964.176.** The directors of a protected cell captive 779  
insurance company shall establish and maintain, or cause to be 780  
established and maintained, procedures to do all of the following: 781

(A) Segregate cell assets and liabilities separate and 782  
separately identifiable from general assets and liabilities; 783

(B) Segregate cell assets and liabilities of each protected 784  
cell separate and separately identifiable from cell assets and 785  
liabilities of any other protected cell; 786

(C) Apportion or transfer, where relevant, assets and 787  
liabilities between protected cells or between protected cells and 788  
the general assets and liabilities of the protected cell captive 789  
insurance company. 790

Sec. 3964.177. (A) If a protected cell captive insurance 791  
company enters into an agreement with respect to a protected cell 792  
of the company, the directors shall ensure that both of the 793  
following are met: 794

(1) The other party to the transaction knows, or ought 795  
reasonably to know, that the protected cell captive insurance 796  
company is acting with respect to a particular protected cell. 797

(2) The minutes of any meeting of directors held with regard 798  
to the agreement clearly record the fact that the company was 799  
entering into the agreement with respect to the protected cell in 800  
question and that the obligation imposed by division (A)(1) of 801  
this section has been, or will be, complied with. 802

(B) If a protected cell captive insurance company fails to 803  
comply with division (A) of this section, then both of the 804  
following shall apply: 805

(1) The directors of the protected cell captive insurance 806  
company shall be personally liable for the liabilities of the 807  
protected cell captive insurance company and the protected cell 808  
under the act, matter, deed, agreement, contract, instrument, or 809  
arrangement that was executed, notwithstanding any provisions to 810  
the contrary in the protected cell's organizational documents or 811  
in any contract with the protected cell captive insurance company 812  
or otherwise. 813

(2)(a) The directors of the protected cell captive insurance 814  
company shall have a right of indemnity, in the case of a matter 815  
on behalf of or attributable to a protected cell, against the 816  
assets of the protected cell, unless the directors were 817  
fraudulent, reckless, negligent, or acted in bad faith. 818

(b) The directors shall have a right of indemnity against the 819  
general assets of the protected cell captive insurance company, in 820

the case of a matter not on behalf of or attributable to a 821  
protected cell. 822

(C) Notwithstanding division (B)(1) of this section, a court 823  
may relieve a director of all or part of the personal liability 824  
required under division (B)(1) of this section if the director can 825  
demonstrate either of the following to the satisfaction of the 826  
court: 827

(1) The director was not aware of the circumstances giving 828  
rise to the liability and therefore was not fraudulent, reckless, 829  
or negligent and did not act in bad faith. 830

(2) The director expressly objected, and exercised the rights 831  
available to the director, whether by way of voting power or 832  
otherwise, to try to prevent the circumstances giving rise to the 833  
liability. 834

(D) If, pursuant to division (C) of this section, a court 835  
relieves a director of all or part of the director's personal 836  
liability under division (B)(1) of this section, the court may 837  
order that the liability in question instead be met from the 838  
assets of the protected cell or the general assets of the 839  
protected cell captive insurance company as the court finds 840  
appropriate. 841

(E) Any provision in the organizational document of a captive 842  
insurance company or any other contractual provision under which 843  
the protected cell captive insurance company may be liable shall 844  
be void if it purports to indemnify the directors of a protected 845  
cell captive insurance company despite fraudulent, negligent, 846  
reckless, bad faith, or other conduct that would otherwise exempt 847  
them from indemnification by virtue of division (B)(2)(a) of this 848  
section. 849

(F) The duties of a director of a protective cell captive 850  
insurance company under this chapter shall be in addition to and 851

not in lieu of, those under any other applicable law. 852

Sec. 3964.178. (A) A captive insurance company may amend its 853  
organizational document to become a protected cell captive 854  
insurance company. 855

(B) The amendment of the organizational document of a captive 856  
insurance company to become a protected cell captive insurance 857  
company shall require approval by both of the following: 858

(1) Holders of two-thirds of the outstanding shares or 859  
ownership interests of the captive insurance company, unless a 860  
greater amount is required by the organizational document of the 861  
captive insurance company; 862

(2) All the creditors of the captive insurance company. 863

(C) Notwithstanding division (B)(2) of this section, if the 864  
consent of all the creditors of the captive insurance company 865  
cannot be obtained, the amendment may be approved by the 866  
superintendent if the superintendent is satisfied that no creditor 867  
will be materially prejudiced by the amendment. 868

(D) A protected cell captive insurance company may amend its 869  
organizational document to cease to be a protected cell captive 870  
insurance company. 871

(E) The amendment of an organizational document of a 872  
protected cell captive insurance company to cease to be a 873  
protected cell captive insurance company shall require approval by 874  
all of the following: 875

(1) The superintendent; 876

(2) Holders of two-thirds of the outstanding shares or 877  
ownership interests of the protected cell captive insurance 878  
company, unless a greater amount is required by the organizational 879  
document of the protected cell captive insurance company; 880

(3) Two-thirds of the participants of each protected cell; 881

(4) All the creditors of the protected cell captive insurance company and its protected cells. 882  
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(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. 884  
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(G)(1) If a captive insurance company or protected cell captive insurance company seeks to change its status in accordance with this section, the company shall deliver both of the following to the superintendent: 889  
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(a) A copy of the amendment to its name; 893

(b) Evidence satisfactory to the superintendent that the requirements of division (B) or (E) of this section have been met. 894  
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(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. 896  
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(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. 899  
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**Sec. 3964.179.** (A) A protected cell of a protected cell captive insurance company may be transferred to another protected cell captive insurance company. 902  
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(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. 905  
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(C) A transfer of a protected cell shall be approved by the superintendent when all of the following are met: 908  
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(1) The board of directors of each protected cell captive insurance company involved in the transfer have approved the transfer. 910  
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(2) The transfer agreement is approved by the superintendent as an arrangement in accordance with this chapter. 913  
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(3) One of the following applies: 915

(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. 916  
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(b) If the agreement of all the creditors of the cell cannot be obtained, the superintendent may approve the transfer upon being satisfied that no creditor of the cell will be materially prejudiced by the transfer. 919  
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(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: 923  
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(1) A copy of the executed transfer agreement; 927

(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: 928  
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(a) The protected cell being transferred is able to discharge its liabilities as they become due. 932  
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(b) There are no creditors of the protected cell captive insurance company from which the cell is being transferred whose interests will be unfairly prejudiced by the transfer. 934  
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(c) The transfer agreement has been approved in accordance with this chapter. 937  
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(E) If a protected cell captive insurance company fails to 939



deliver the documents required under division (D) of this section 940  
within the required thirty-day period, the superintendent may void 941  
the transfer. 942

(F) The superintendent may void a transfer and order the 943  
removal of any director who makes a declaration under division 944  
(D)(2) of this section without having the grounds to do so. 945

(G) Upon fulfillment of the requirements of division (D) of 946  
this section, the superintendent shall do all of the following: 947

(1) Record the transfer of the protected cell; 948

(2) Issue to the protected cell a new license; 949

(3) Record that the protected cell has ceased to be a 950  
protected cell of the protected cell captive insurance company 951  
from which it was transferred. 952

(H) Upon the issuance of the new license under this section 953  
all of the following shall apply: 954

(1) The protected cell shall cease to be a protected cell of 955  
the protected cell captive insurance company from which it was 956  
transferred. 957

(2) The protected cell becomes a protected cell of the 958  
protected cell captive insurance company to which it has been 959  
transferred. 960

(3) All of the following shall apply: 961

(a) All property and rights to which the protected cell was 962  
entitled immediately before the issue of the new license shall 963  
remain the property and rights of the protected cell. 964

(b) All liabilities, contracts, debts, and other obligations 965  
to which the protected cell was subject immediately before the 966  
issue of the new license shall remain the liabilities, contracts, 967  
debts, and other obligations of the protected cell. 968

(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. 969  
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(I) The operation of division (H) of this section shall not be regarded as any of the following: 972  
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(1) A breach of contract or otherwise as a civil wrong; 974

(2) A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities; 975  
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(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. 978  
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(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 cell is to be transferred. 982  
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**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. 989  
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(B) 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 994  
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a part. 999

(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. 1000  
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(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. 1006  
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(2) Such a petition shall be made within thirty days after an application has been made under division (B) of this section. 1013  
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(E) If a protected cell is licensed as an independent legal entity pursuant to this section, then all of the following apply: 1015  
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(1) 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. 1017  
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(2) 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. 1020  
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(3) All contracts, debts, and other obligations of the protected cell shall remain the contracts, debts, and other obligations of the new entity. 1024  
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(4) All actions and other legal proceedings that, immediately before the licensure of the protected cell as a new entity, were 1027  
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pending by or against the protected cell may be continued by or 1029  
against the new entity. 1030

(F) The operation of division (E) of this section shall not 1031  
be regarded as any of the following: 1032

(1) A breach of contract; 1033

(2) A breach of any contractual provision prohibiting, 1034  
restricting, or regulating the assignment or transfer of rights or 1035  
liabilities; 1036

(3) Giving rise to any remedy by a party to a contract or 1037  
other instrument as an event of default under the contract or 1038  
other instrument or as causing or permitting the termination of 1039  
any contract, other instrument, obligation, or relationship. 1040

**Sec. 3964.18.** (A) If a protected cell captive insurance 1041  
company with one or more protected cells is being liquidated, the 1042  
protected cell captive insurance company may be considered to have 1043  
no assets and no liabilities only if the protected cell captive 1044  
insurance company continues to have no protected cells. 1045

(B) In the course of liquidating a protected cell captive 1046  
insurance company, each protected cell shall be dealt with one of 1047  
the following ways: 1048

(1) Transfer to another protected cell captive insurance 1049  
company; 1050

(2) Liquidation; 1051

(3) Continuation as a separate legal entity or protected cell 1052  
under the law of another jurisdiction; 1053

(4) Incorporation, independent of the protected cell captive 1054  
insurance company; 1055

(5) Merge with another insurance company. 1056

(C) If a protected cell captive insurance company is being 1057

liquidated, the liquidation shall not apply with respect to any 1058  
protected cell of the protected cell captive insurance company. 1059

(D) If a protected cell of a protected cell captive insurance 1060  
company is being liquidated, the liquidation shall not apply with 1061  
respect to the protected cell captive insurance company or any 1062  
other protected cell of the company. 1063

(E) A court, upon application of a protected cell captive 1064  
insurance company that is being liquidated, may determine, in 1065  
accordance with this chapter, if a liability of the protected cell 1066  
captive insurance company shall be satisfied by its general 1067  
assets, by the cell assets of a specific protected cell of the 1068  
company, or by a combination of those assets. 1069

(F) Notwithstanding any statutory provision or rule of law to 1070  
the contrary, in the disposition of a protected cell captive 1071  
insurance company, the liquidator shall do both of the following: 1072

(1) Deal with the protected cell captive insurance company's 1073  
assets only in accordance with the procedures set out in this 1074  
section; 1075

(2) Apply the protected cell captive insurance company's 1076  
assets to those entitled to have recourse to them under this 1077  
section, in the discharge of the claims of creditors of the 1078  
protected cell captive insurance company. 1079

(G)(1) A petition for a liquidation or rehabilitation order 1080  
with respect to a protected cell of a protected cell captive 1081  
insurance company may be made by any of the following: 1082

(a) The protected cell captive insurance company; 1083

(b) A majority of the directors of the protected cell captive 1084  
insurance company; 1085

(c) Any creditor of that protected cell; 1086

(d) The superintendent. 1087

(2) Notice of a petition to the court for a liquidation or 1088  
rehabilitation order with respect to a protected cell of a 1089  
protected cell captive insurance company shall be served upon all 1090  
of the following: 1091

(a) The protected cell captive insurance company; 1092

(b) The superintendent; 1093

(c) Such other persons as the court may direct. 1094

(H)(1) Except otherwise provided in this section, the court 1095  
may make a liquidation or rehabilitation order with respect to a 1096  
protected cell if, in relation to a captive insurance company, the 1097  
court is satisfied that both of the following are met: 1098

(a) The cell assets attributable to a particular protected 1099  
cell of the captive insurance company and the general assets of 1100  
the company, in those cases where creditors of the captive 1101  
insurance company with respect to the protected cell are entitled 1102  
to have recourse to the captive insurance company's general 1103  
assets, are, or are likely to be, insufficient to discharge the 1104  
claims of creditors with respect to that protected cell. 1105

(b) An order would achieve the purposes set forth in division 1106  
(H)(3) of this section. 1107

(2) A liquidation or rehabilitation order may be made with 1108  
respect to one or more protected cells. 1109

(3) A liquidation or rehabilitation order shall direct that 1110  
the business and cell assets of, or attributable to, a protected 1111  
cell shall be managed by a liquidator or rehabilitator specified 1112  
in the order for the purpose of accomplishing both of the 1113  
following: 1114

(a) The orderly closing or rehabilitation of the business of, 1115  
or attributable to, the protected cell; 1116

(b) The distribution of the cell assets, or assets 1117

attributable to the protected cell, to those having recourse 1118  
thereto. 1119

(I) All of the following apply to the liquidator or 1120  
rehabilitator of a protected cell: 1121

(1) The liquidator or rehabilitator shall have all the 1122  
functions and powers of the directors responsible for the business 1123  
and cell assets of, or attributable to, the protected cell. 1124

(2) The liquidator or rehabilitator may at any time apply to 1125  
the court for any of the following: 1126

(a) Directions as to the extent or exercise of any function 1127  
or power; 1128

(b) The liquidation or rehabilitation order to be discharged 1129  
or varied; 1130

(c) Any other order as to any matter occurring during the 1131  
course of the liquidation or rehabilitation. 1132

(3) The liquidator or rehabilitator shall act as the agent of 1133  
the captive insurance company and shall not incur personal 1134  
liability except to the extent that the liquidator or 1135  
rehabilitator acts fraudulently, recklessly, negligently, or in 1136  
bad faith, except that where the superintendent is appointed 1137  
liquidator or rehabilitator of a protected cell. If the 1138  
superintendent is appointed liquidator, section 3903.07 of the 1139  
Revised Code shall apply to the superintendent, any deputy 1140  
liquidator, any employee of the department of insurance, any 1141  
employee appointed by the superintendent as liquidator, and any 1142  
employee who serves under the liquidator. 1143

(4) The liquidator or rehabilitator shall administer the 1144  
assets pursuant to the provisions of this section and sections 1145  
3903.01 to 3903.59 of the Revised Code. 1146

(J) Upon the filing of a petition for a liquidation or 1147

rehabilitation order, and during the period of operation of 1148  
liquidation or rehabilitation, both of the following shall apply: 1149

(1) No proceedings shall be instituted or continued by or 1150  
against the captive insurance company or protected cell in respect 1151  
of which the liquidation or rehabilitation order was made. 1152

(2) No action shall be taken to enforce any security, and no 1153  
action shall be taken in the execution of a legal process with 1154  
respect to the business or cell assets of, or attributable to, the 1155  
protected cell with respect to which the liquidation or 1156  
rehabilitation order was made, except by leave of the court. 1157

(K) During the period of operation of a liquidation or 1158  
rehabilitation both of the following shall apply: 1159

(1) The functions and powers of the directors shall cease 1160  
with respect to the business of, or attributable to, any protected 1161  
cell or cell assets for which the order was made. 1162

(2)(a) The liquidator or rehabilitator of the protected cell 1163  
shall be entitled to be present at all meetings of the captive 1164  
insurance company and protected cell in question and to vote at 1165  
such meetings as if the liquidator or rehabilitator were a 1166  
director of the captive insurance company. 1167

(b) The liquidator's or rehabilitator's voting authority 1168  
shall include matters concerning the captive insurance company's 1169  
general assets, unless there are no creditors that are entitled to 1170  
have recourse to the captive insurance company's general assets. 1171

(L)(1) A court shall not discharge a liquidation or 1172  
rehabilitation order issued pursuant to this section unless it 1173  
appears to the court that the purpose for which the order was made 1174  
has been achieved, substantially achieved, or is incapable of 1175  
being achieved. 1176

(2) The court, on hearing a petition for the discharge or 1177



variation of a liquidation or rehabilitation order, may make any 1178  
interim order, discharge the order, or continue the liquidation or 1179  
rehabilitation unchanged. 1180

(3) Upon the court issuing an order discharging a liquidation 1181  
or rehabilitation order for a protected cell on the ground that 1182  
the purpose for which the order was made had been achieved or 1183  
substantially achieved, the court may direct that any payment made 1184  
by the liquidator or rehabilitator to any creditor of the captive 1185  
insurance company, with respect to that protected cell, shall be 1186  
considered full satisfaction of the liabilities of the captive 1187  
insurance company to the creditor with respect to the protected 1188  
cell. However, such an order or discharge shall not be considered 1189  
a bar to a creditor's claims against the captive cell insurance 1190  
company arising out of the captive cell insurance company's 1191  
administrative, regulatory, or marketing activities on behalf of 1192  
the captive cell in question. 1193

Sec. 3964.20. A captive insurance company organized under the 1194  
laws of another state or jurisdiction may become a domestic 1195  
captive insurance company pursuant to section 3913.40 of the 1196  
Revised Code after complying with all the requirements of this 1197  
chapter relative to the organization and formation of a domestic 1198  
captive insurance company. 1199

Sec. 3964.21. The superintendent may adopt rules in 1200  
accordance with Chapter 119. of the Revised Code as are reasonably 1201  
necessary for the implementation and operation of this chapter. 1202

Sec. 4123.351. (A) The administrator of workers' compensation 1203  
shall require every self-insuring employer, including any 1204  
self-insuring employer that is indemnified by a captive insurance 1205  
company granted a certificate of authority under Chapter 3694. of 1206  
the Revised Code, to pay a contribution, calculated under this 1207

section, to the self-insuring employers' guaranty fund established 1208  
pursuant to this section. The fund shall provide for payment of 1209  
compensation and benefits to employees of the self-insuring 1210  
employer in order to cover any default in payment by that 1211  
employer. 1212

(B) The bureau of workers' compensation shall operate the 1213  
self-insuring employers' guaranty fund for self-insuring 1214  
employers. The administrator annually shall establish the 1215  
contributions due from self-insuring employers for the fund at 1216  
rates as low as possible but such as will assure sufficient moneys 1217  
to guarantee the payment of any claims against the fund. The 1218  
bureau's operation of the fund is not subject to sections 3929.10 1219  
to 3929.18 of the Revised Code or to regulation by the 1220  
superintendent of insurance. 1221

(C) If a self-insuring employer defaults, the bureau shall 1222  
recover the amounts paid as a result of the default from the 1223  
self-insuring employers' guaranty fund. If a self-insuring 1224  
employer defaults and is in compliance with this section for the 1225  
payment of contributions to the fund, such self-insuring employer 1226  
is entitled to the immunity conferred by section 4123.74 of the 1227  
Revised Code for any claim arising during any period the employer 1228  
is in compliance with this section. 1229

(D)(1) There is hereby established a self-insuring employers' 1230  
guaranty fund, which shall be in the custody of the treasurer of 1231  
state and which shall be separate from the other funds established 1232  
and administered pursuant to this chapter. The fund shall consist 1233  
of contributions and other payments made by self-insuring 1234  
employers under this section. All investment earnings of the fund 1235  
shall be credited to the fund. The bureau shall make disbursements 1236  
from the fund pursuant to this section. 1237

(2) The administrator has the same powers to invest any of 1238  
the surplus or reserve belonging to the fund as are delegated to 1239

the administrator under section 4123.44 of the Revised Code with 1240  
respect to the state insurance fund. The administrator shall apply 1241  
interest earned solely to the reduction of assessments for 1242  
contributions from self-insuring employers and to the payments 1243  
required due to defaults. 1244

(3) If the bureau of workers' compensation board of directors 1245  
determines that reinsurance of the risks of the fund is necessary 1246  
to assure solvency of the fund, the board may: 1247

(a) Enter into contracts for the purchase of reinsurance 1248  
coverage of the risks of the fund with any company or agency 1249  
authorized by law to issue contracts of reinsurance; 1250

(b) Require the administrator to pay the cost of reinsurance 1251  
from the fund; 1252

(c) Include the costs of reinsurance as a liability and 1253  
estimated liability of the fund. 1254

(E) The administrator, with the advice and consent of the 1255  
board, may adopt rules pursuant to Chapter 119. of the Revised 1256  
Code for the implementation of this section, including a rule, 1257  
notwithstanding division (C) of this section, requiring 1258  
self-insuring employers to provide security in addition to the 1259  
contribution to the self-insuring employers' guaranty fund 1260  
required by this section. The additional security required by the 1261  
rule, as the administrator determines appropriate, shall be 1262  
sufficient and adequate to provide for financial assurance to meet 1263  
the obligations of self-insuring employers under this chapter and 1264  
Chapter 4121. of the Revised Code. 1265

(F) The purchase of coverage under this section by 1266  
self-insuring employers is valid notwithstanding the prohibitions 1267  
contained in division (A) of section 4123.82 of the Revised Code 1268  
and is in addition to the indemnity contracts that self-insuring 1269  
employers may purchase pursuant to division (B) of section 4123.82 1270

of the Revised Code. 1271

(G) The administrator, on behalf of the self-insuring 1272  
employers' guaranty fund, has the rights of reimbursement and 1273  
subrogation and shall collect from a defaulting self-insuring 1274  
employer or other liable person all amounts the administrator has 1275  
paid or reasonably expects to pay from the fund on account of the 1276  
defaulting self-insuring employer. 1277

(H) The assessments for contributions, the administration of 1278  
the self-insuring employers' guaranty fund, the investment of the 1279  
money in the fund, and the payment of liabilities incurred by the 1280  
fund do not create any liability upon the state. 1281

Except for a gross abuse of discretion, neither the board, 1282  
nor the individual members thereof, nor the administrator shall 1283  
incur any obligation or liability respecting the assessments for 1284  
contributions, the administration of the self-insuring employers' 1285  
guaranty fund, the investment of the fund, or the payment of 1286  
liabilities therefrom. 1287

**Section 2.** That existing section 4123.351 of the Revised Code 1288  
is hereby repealed. 1289