

**As Reported by the Senate Insurance and Financial Institutions
Committee**

**130th General Assembly
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Sub. 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

Senator Kearney

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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, 3964.19, 4
3964.191, 3964.193, 3964.194, 3964.20, and 3964.21 5
of the Revised Code to provide for the operation 6
of captive insurance companies in Ohio and special 7
purpose financial captive insurance companies. 8

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

Section 1. That section 4123.351 be amended and sections 9
3964.01, 3964.02, 3964.03, 3964.04, 3964.05, 3964.06, 3964.07, 10
3964.08, 3964.09, 3964.10, 3964.11, 3964.12, 3964.13, 3964.14, 11
3964.15, 3964.17, 3964.171, 3964.172, 3964.173, 3964.174, 12
3964.175, 3964.176, 3964.177, 3964.178, 3964.179, 3964.1710, 13
3964.18, 3964.19, 3964.191, 3964.193, 3964.194, 3964.20, and 14
3964.21 of the Revised Code be enacted to read as follows: 15

Sec. 3964.01. As used in this chapter: 16

(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. 17
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(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. 20
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(C) "Department" means the department of insurance. 25

(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: 26
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(1) Securities of a captive insurance company, organized as a stock corporation; 30
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(2) Membership interests of a captive insurance company organized as a nonprofit corporation or a limited liability company. 32
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(E) "Protected cell captive insurance company" means a captive insurance company organized pursuant to sections 3964.17 to 3964.1710 of the Revised Code. 35
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(F) "Qualified actuary" means an individual who is both of the following: 38
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(1) A member of the American academy of actuaries; 40

(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 41
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of actuaries, the American society of pension professionals and 45
actuaries, the casualty actuarial society, and the conference of 46
consulting actuaries. 47

(G) "Special purpose financial captive insurance company" 48
means a captive insurance company organized pursuant to sections 49
3964.19 to 3964.194 of the Revised Code. 50

(H) "Superintendent" means the superintendent of the 51
department of insurance. 52

Sec. 3964.02. (A) A captive insurance company may apply for 53
authority to insure only the following lines of insurance: 54

(1) Commercial multiple peril; 55

(2) Ocean marine; 56

(3) Inland marine; 57

(4) Medical malpractice; 58

(5) Workers' compensation, to the extent permitted by law, 59
but only for the purpose of indemnification of a self-insuring 60
employer pursuant to division (B)(1) of section 4123.82 of the 61
Revised Code; 62

(6) Commercial auto liability; 63

(7) Commercial auto physical damage; 64

(8) Fidelity; 65

(9) Notwithstanding division (C) of this section, a special 66
purpose financial captive may apply to provide reinsurance of life 67
insurance risks of an Ohio domiciled parent or an affiliated 68
company that is authorized to transact the business of life 69
insurance in this state; 70

(10) Except as provided in division (C)(2) of this section, 71
any other line which the superintendent, at the superintendent's 72

sole discretion, permits. 73

(B) A captive insurance company may purchase reinsurance coverage for any risk that a captive insurance company is permitted to write directly. 74
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(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. 77
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(2) A captive insurance company shall not do either of the following: 81
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(a) Insure or reinsure any personal lines, as defined in division (B) of section 3905.06 of the Revised Code; 83
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(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. 85
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(D) A captive insurance company may reinsure any risks insured by its parent or an affiliated company, as approved by the superintendent. 90
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Sec. 3964.03. (A) A captive insurance company shall be organized under Chapter 1701., 1702., or 1705. of the Revised Code. 93
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(B) A captive insurance company shall not operate in this state unless all of the following are met: 96
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(1) The captive insurance company obtains from the superintendent a license to do the business of captive insurance in this state. 98
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(2) The captive insurance company's board of directors holds 101

at least one meeting each year in this state. 102

(3) The captive insurance company maintains its principal place of business in this state. 103
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(4) The person managing the captive insurance company is a resident of this state. 105
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(5) The captive insurance company appoints a registered agent to accept service of process and act on its behalf in this state. 107
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(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. 109
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(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: 114
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(1) A certified copy of its articles of incorporation, bylaws, or other organizational document and code of regulations; 118
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(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; 120
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(3) A statement of the captive insurance company's assets relative to its risks, detailing the amount of assets and their liquidity; 123
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(4) An account of the adequacy of the expertise, experience, and character of the person or persons who will manage the captive insurance company; 126
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(5) An account of the loss prevention programs of the persons that the captive insurance company insures; 129
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(6) Actuarial assumptions and methodologies that will be 131

utilized in calculating reserves; 132

(7) Any other information considered necessary by the 133
superintendent to determine whether the proposed captive insurance 134
company will be able to meet its obligations. 135

(E)(1) A special purpose financial captive insurance company 136
shall follow the national association of insurance commissioner's 137
accounting practices and procedures manual. 138

(2)(a) Upon request, the superintendent may allow a special 139
purpose financial captive insurance company to use a reserve basis 140
other than that found in the national association of insurance 141
commissioner's accounting practices and procedures manual. 142

(b) The superintendent, in accordance with Chapter 119. of 143
the Revised Code, shall adopt rules that define acceptable 144
alternative reserve bases. 145

(c) Such rules shall be adopted prior to availability for use 146
of any such alternative reserve basis and shall ensure that the 147
resulting reserves meet all of the following conditions: 148

(i) Quantify the benefits and guarantees, and the funding, 149
associated with the contracts and their risks at a level of 150
conservatism that reflects conditions that include unfavorable 151
events that have a reasonable probability of occurring during the 152
lifetime of the contracts. For policies or contracts with 153
significant tail risk, reflects conditions appropriately adverse 154
to quantify the tail risk. 155

(ii) Incorporate assumptions, risk analysis methods, and 156
financial models and management techniques that are consistent 157
with, but not necessarily identical to, those utilized within the 158
company's overall risk assessment process, while recognizing 159
potential differences in financial reporting structures and any 160
prescribed assumptions or methods; 161

(iii) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve. 162
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(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. 165
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(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: 171
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(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; 176
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(b) A detailed analysis of the proposed alternative method explaining why the use of an alternative basis for calculating the reserve is appropriate; 180
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(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; 183
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(d) A detailed overview of the corporate governance and oversight of the actuarial valuation function; 190
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(e) Any other information the superintendent may require to 192

assess the proposed alternative method for approval or 193
disapproval. 194

(4) At the expense of the special purpose financial captive 195
insurance company, the superintendent may require the company to 196
secure the affirmation of an independent qualified actuary in 197
support of any alternative basis for calculating the reserve that 198
is requested pursuant to this section or to assist the 199
superintendent in the review of said request. 200

(5) If the superintendent approves the use of an alternative 201
basis for calculating a reserve, the special purpose financial 202
captive insurance company, and the ceding insurer shall each 203
include a note in its financial statements disclosing the use of a 204
basis other than the national association of insurance 205
commissioner's accounting practices and procedures manual and the 206
difference between the reserve amount determined under the 207
alternative basis and the reserve amount that would have been 208
determined had the company utilized the national association of 209
insurance commissioner's accounting practices and procedures 210
manual. 211

(6)(a) The superintendent shall establish an acceptable total 212
capital and surplus requirement for each insurance company that 213
will cede risks and obligations to a special purpose financial 214
captive insurance company. The total capital and surplus 215
requirement must be met at the time the special purpose financial 216
captive insurance company applies for a license to do the business 217
of captive insurance. The total capital and surplus requirement 218
shall be determined in accordance with a minimum required total 219
capital and surplus methodology that meets both of the following 220
requirements: 221

(i) Is consistent with current risk-based capital principles; 222

(ii) Takes into account all material risks and obligations, 223

as well as the assets, of the insurance company. 224

(b) An insurance company ceding risks and obligations to a 225
special purpose financial captive insurance company shall fully 226
disclose all material risks and obligations, as well as its assets 227
and all affiliated captive insurance company risks. The ceding 228
insurance company shall advise the superintendent whenever there 229
is a material change to such risks, obligations, or assets. 230

(F) In determining whether to approve an application for a 231
license, the superintendent shall consider all of the following: 232

(1) The character, reputation, financial standing, and 233
purposes of the incorporators, or other founders, of the captive 234
insurance company; 235

(2) The character, reputation, financial responsibility, 236
experience relating to insurance, and business qualifications of 237
the officers and directors of the captive insurance company; 238

(3) The amount of liquidity and assets of the captive 239
insurance company relative to the risks to be assumed; 240

(4) The adequacy of the expertise, experience, and character 241
of the person or persons who will manage the captive insurance 242
company; 243

(5) The overall soundness of the plan of operation; 244

(6) The adequacy of the loss prevention programs of the 245
persons that the captive insurance company insures. 246

(G)(1) Each captive insurance company that offers direct 247
insurance to its parent shall submit to the superintendent for 248
approval a detailed description of the coverages, deductibles, 249
coverage limits, proposed rates or rating plans, documentation 250
from a qualified actuary that demonstrates the actuarial soundness 251
of the proposed rates or rating plans, and other such additional 252
information as the superintendent may require. 253

(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. 254
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(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. 262
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(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. 266
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(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. 272
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(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. 279
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(1) Such documents and information may be discoverable in a 285
civil action in which the captive insurance company filing the 286
material is a party upon a finding by a court of competent 287
jurisdiction that the information sought is relevant and necessary 288
to the case and the information sought is unavailable from other, 289
nonconfidential sources. 290

(2) The superintendent may, at the superintendent's sole 291
discretion, share documents required under this section with the 292
chief deputy rehabilitator, the chief deputy liquidator, other 293
deputy rehabilitators and liquidators, and any other person 294
employed by, or acting on behalf of the superintendent pursuant to 295
Chapter 3901. or 3903. of the Revised Code, with other local, 296
state, federal, and international regulatory and law enforcement 297
agencies, with local, state, and federal prosecutors, and with the 298
national association of insurance commissioners and its affiliates 299
and subsidiaries provided that the recipient agrees to maintain 300
the confidential or privileged status of the documents and has 301
authority to do so. 302

(I)(1) Each applicant for a license to do the business of a 303
captive insurance company in this state shall pay to the 304
superintendent a nonrefundable fee of five hundred dollars for 305
processing its application for a license. The superintendent is 306
authorized to retain legal, financial, and examination services 307
from outside the department, at the expense of the applicant. Each 308
captive insurance company shall annually pay a license renewal fee 309
of five hundred dollars. 310

(2) The fees collected pursuant to division (I)(1) of this 311
section shall be deposited into the state treasury to the credit 312
of the captive insurance regulation and supervision fund created 313
under section 3964.15 of the Revised Code. 314

Sec. 3964.04. No captive insurance company shall adopt a name 315

that is the same, deceptively similar, or likely to be confused 316
with, or mistaken for, any other existing business name registered 317
in this state. The name under which a captive insurance company 318
engages in business must contain the word "captive." 319

Sec. 3964.05. (A) No captive insurance company shall be 320
issued a license unless it possesses and maintains minimum 321
unimpaired, paid-in total capital and surplus as follows: 322

(1) Not less than two hundred fifty thousand dollars; 323

(2) In the case of a protected cell captive insurance 324
company, not less than five hundred thousand dollars. 325

(B) The superintendent may prescribe additional capital and 326
surplus based upon the type, volume, and nature of insurance 327
business transacted. 328

(C) Capital and surplus may be in the form of any of the 329
following: 330

(1) Cash; 331

(2) Marketable securities, as approved by the superintendent; 332

(3) For a captive insurance company other than a special 333
purpose financial captive insurance company, irrevocable, 334
unconditional, and automatically renewable letters of credit that 335
are issued or confirmed by a qualified United States financial 336
institution. 337

(D) For purposes of division (C)(3) of this section, a United 338
States financial institution is qualified if all of the following 339
apply: 340

(1) It is organized under, or, in the case of the United 341
States branch or agency office of a foreign banking organization, 342
is chartered under the laws of the United States or any state 343
thereof. 344

(2) It is regulated, supervised, and examined by federal or 345
state officials that have regulatory authority over banks and 346
trust companies. 347

(3) The superintendent has determined that it meets such 348
standards of financial condition and standing as are necessary and 349
appropriate for purposes of ensuring that its letters of credit 350
will be of a quality that is acceptable to the superintendent, in 351
the superintendent's sole discretion. 352

Sec. 3964.06. (A) No captive insurance company shall pay any 353
extraordinary dividend or make any other extraordinary 354
distribution to its shareholders or members other than in 355
accordance with this section. The declaration of an extraordinary 356
dividend or distribution shall be conditional and shall confer no 357
rights upon shareholders or members until thirty days after the 358
superintendent has received notice of the declaration thereof and 359
has not, within the thirty-day period, disapproved the dividend or 360
distribution, unless the superintendent approves the dividend or 361
distribution within the thirty-day period. 362

(B) Prior to paying any dividend or distribution, the 363
insurance company shall notify the superintendent on a form 364
provided by the superintendent for informational purposes within 365
five business days following its declaration of any dividend or 366
distribution and at least ten calendar days prior to payment of 367
such dividend or distribution. Such a ten-calendar-day period is 368
to begin on the date that the superintendent receives the notice. 369

(C)(1) For the purposes of this section, an extraordinary 370
dividend or distribution includes any dividend or distribution of 371
cash or other property, whose fair market value, together with 372
that of other dividends or distributions made within the preceding 373
twelve months, exceeds the greater of ten per cent of the 374
insurance company's surplus as regards policy holders as of the 375

thirty-first day of December immediately preceding, or the net 376
income of the insurance company for the twelve-month period ending 377
the thirty-first day of December immediately preceding. 378

(2) Pro rata distributions of any class of the insurance 379
company's own securities shall not be considered an extraordinary 380
distribution under division (C)(1) of this section. 381

(D) Any dividend or distribution paid from a source other 382
than earned surplus shall be considered an extraordinary dividend 383
or extraordinary distribution. 384

(E) In no instance shall any extraordinary dividend or 385
distribution be permitted by a captive insurance company if such 386
dividend or distribution results in a decrease of the unimpaired, 387
total capital and surplus of the captive insurance company below 388
the limits prescribed in section 3964.05 of the Revised Code. 389

(F) For the purposes of this section, "earned surplus" means 390
an amount equal to an insurance company's unassigned funds as set 391
forth in its most recent financial statement submitted to the 392
superintendent, including net unrealized capital gains and losses 393
or revaluation of assets. 394

Sec. 3964.07. (A) A captive insurance company shall not be 395
required to make any annual report except as required by this 396
section. 397

(B)(1) The chief financial officer and at least one 398
additional executive officer of a captive insurance company, or a 399
majority of the directors of a captive insurance company annually, 400
on the first day of January, or within sixty days thereafter 401
prepare under oath and deposit in the office of the 402
superintendent, a statement showing the financial condition of the 403
captive insurance company on the thirty-first day of the December 404
next preceding. An actuarial opinion from a qualified actuary 405

regarding the adequacy of the company's required reserves to make 406
full provision for the company's liabilities, insured or 407
reinsured, shall be included in this statement. The qualified 408
actuary shall submit a memorandum to the superintendent detailing 409
the support for that opinion. 410

(2) All captive insurance companies shall have an annual 411
audit by an independent certified public accountant and shall file 412
an audited financial report with the superintendent on or before 413
the first day of June as a supplement to the annual statement 414
required under division (B)(1) of this section. 415

(C) Each captive insurance company shall report using 416
generally accepted accounting principles, unless the 417
superintendent requires, approves, or accepts the use of statutory 418
accounting principles or other comprehensive basis accounting, any 419
appropriate, necessary modifications or adaptations required or 420
approved or accepted by the superintendent for each type of 421
insurance or kind of insurance company that makes such a report, 422
and as supplemented by additional information required by the 423
superintendent. 424

(D) Captive insurance companies shall prepare, at a minimum, 425
internal quarterly financial statements. These statements shall be 426
made available upon request to the superintendent. 427

(E) The superintendent shall adopt by rule the prescribed 428
forms, instructions, and manuals by which captive insurance 429
companies shall make the reports required under this section, as 430
the superintendent considers necessary. 431

(F) Division (H) of section 3964.03 of the Revised Code shall 432
apply to each report filed under this section. 433

(G)(1) Special purpose financial captive insurance companies 434
are subject to sections 3903.81 to 3903.93 of the Revised Code. 435

(2)(a) Notwithstanding division (G)(1) of this section, the 436

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. 437
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(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: 444
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(i) Is consistent with current risk-based capital principles; 448

(ii) Takes into account all material risks and obligations, as well as the assets, of the special purpose financial captive insurance company. 449
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Sec. 3964.08. (A) Captive insurance companies shall be examined, evaluated, and monitored pursuant to section 3901.07 of the Revised Code. 452
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(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. 455
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(C) The superintendent may, in the superintendent's sole 466

discretion, share documents that are the subject of this section 467
with the chief deputy rehabilitator, the chief deputy liquidator, 468
other deputy rehabilitators and liquidators, and any other person 469
employed by, or acting on behalf of, the superintendent pursuant 470
to Chapter 3901. or 3903. of the Revised Code, with other local, 471
state, federal, and international regulatory and law enforcement 472
agencies, with local, state, and federal prosecutors, and with the 473
national association of insurance commissioners and its affiliates 474
and subsidiaries provided that the recipient agrees to maintain 475
the confidential or privileged status of the confidential or 476
privileged work paper and has authority to do so. 477

Sec. 3964.09. The superintendent may suspend or revoke the 478
license of a captive insurance company, in accordance with Chapter 479
119. of the Revised Code, for any of the following reasons: 480

(A) Insolvency or impairment of capital or surplus; 481

(B) Failure to meet the requirements of section 3964.05 of 482
the Revised Code; 483

(C) Refusal or failure to submit an annual report, as 484
required by section 3964.07 of the Revised Code, or any other 485
report or statement required by law or by lawful order of the 486
superintendent; 487

(D) Failure to comply with the provisions of its own 488
articles, bylaws, code of regulations, or other organizational 489
documents; 490

(E) Failure to submit to, or pay the cost of, examination, or 491
any legal obligation related to examination, as required by this 492
chapter; 493

(F) Use of practices that, although not otherwise 494
specifically prohibited by law, are determined by the 495
superintendent to render its operation detrimental or its 496

condition unsound with respect to the public or to its 497
policyholders; 498

(G) Failure to otherwise comply with the laws of this state. 499

Sec. 3964.10. (A) The board of directors of a captive 500
insurance company shall determine appropriate investments for the 501
company. With respect to all of the insurance company's 502
investments, the board of directors shall exercise the judgment 503
and care, under the circumstances then prevailing, that a person 504
of reasonable prudence, discretion, and intelligence might 505
exercise in the management of a like enterprise, that person not 506
having an intent to speculate, but having regard for the permanent 507
disposition of the person's funds, considering the probable income 508
as well as the probable safety of the person's capital. 509

(B)(1) Investments shall be of sufficient value, liquidity, 510
and diversity to assure the captive insurance company's ability to 511
meet its outstanding obligations, based on reasonable estimations 512
of new business production for current lines of business. A copy 513
of the investment policy adopted by the board of directors shall 514
be filed with the superintendent. 515

(2) If the superintendent determines that a board of 516
directors of a captive insurance company has failed to comply with 517
the requirements of division (B)(1) of this section, the company 518
shall be notified in writing that it is required to file a 519
schedule of its proposed investments with the superintendent. 520

(C)(1) No captive insurance company may make a loan to, or an 521
investment in, its parent company or affiliates without prior 522
written approval of the superintendent. 523

(2) Any such loan or investment shall be evidenced by 524
documentation approved by the superintendent. 525

(3) Loans that violate the minimum capital and surplus funds 526

requirements of section 3964.05 of the Revised Code are 527
prohibited. 528

Sec. 3964.11. No captive insurance company shall be required 529
to join a rating organization. 530

Sec. 3964.12. No captive insurance company shall be permitted 531
to join or contribute financially to any plan, pool, association, 532
or guaranty or insolvency fund in this state, nor shall any 533
captive insurance company, or any insured or affiliate thereof, 534
receive any benefit from any such plan, pool, association, or 535
guaranty or insolvency fund for claims arising out of the 536
operations of the captive insurance company. 537

Sec. 3964.13. (A)(1) Not later than the second day of March 538
of each year, a captive insurance company shall pay to the 539
superintendent of insurance a fee computed in accordance with both 540
of the following: 541

(a) 0.35 per cent on its net direct premiums; 542

(b) 0.15 per cent on revenue from assumed reinsurance 543
premiums. 544

(2) The annual minimum aggregate fee to be paid by a captive 545
insurance company calculated under this division shall be seven 546
thousand five hundred dollars. The annual maximum aggregate fee to 547
be paid by a captive insurance company calculated under this 548
division shall be two hundred fifty thousand dollars. 549

(B) The fee on reinsurance premiums set forth under division 550
(A)(1)(b) of this section shall not be levied on premiums for 551
risks or portions of risks that are subject to the fee under 552
division (A)(1)(a) of this section. 553

(C) A captive insurance company shall not pay any reinsurance 554
fee pursuant to division (A)(1)(b) of this section on revenue 555

related to the receipt of assets by the captive insurance company 556
in exchange for the assumption of loss reserves and other 557
liabilities of another insurance company that is under common 558
ownership and control with the captive insurance company, if the 559
transaction is part of a plan to discontinue the operation of the 560
other insurance company and the intent of the exchange is to renew 561
or maintain such business with the captive insurance company. 562

(D)(1) The fee imposed in division (A) of this section shall 563
be calculated on an annual basis, notwithstanding policies, 564
contracts, insurance, or contracts of reinsurance issued on a 565
multi-year basis. 566

(2) In the case of multi-year policies or contracts, the 567
premium shall be prorated for purposes of determining the fee 568
required under division (A) of this section. 569

(E) All fees collected under this section shall be deposited 570
into the state treasury to the credit of the captive insurance 571
regulation and supervision fund. 572

Sec. 3964.14. (A) Except as provided in this chapter, captive 573
insurance companies shall be governed by this chapter and are 574
exempt from all other provisions of the insurance laws of this 575
state. No insurance law of this state shall apply to captive 576
insurance companies unless captive insurance companies are 577
expressly designated as being subject to the law or, with respect 578
to a line of authority granted to a captive insurance company 579
pursuant to division (A)(10) of section 3964.02 of the Revised 580
Code, as required in the articles, bylaws, code of regulations, or 581
other organizational documents as approved by the superintendent. 582

(B) Except as otherwise provided in this chapter, sections 583
3903.01 to 3903.59 of the Revised Code shall apply to captive 584
insurance companies. 585

Sec. 3964.15. (A) There is hereby created in the state 586
treasury the captive insurance regulation and supervision fund, 587
which shall consist of all fees, fines, penalties, and assessments 588
received by the superintendent under this chapter. 589

(B) The superintendent may charge captive insurance companies 590
for any of the following expenses incurred in carrying out this 591
chapter: 592

(1) The entire compensation for each day, or portion thereof, 593
worked by all personnel, including those who are not employees of 594
the department of insurance, in any of the following capacities: 595

(a) The conduct of an examination, calculated at the rates 596
provided in the financial condition examiners' handbook published 597
by the national association of insurance commissioners; 598

(b) The review and analysis of a company's annual report 599
submitted pursuant to section 3964.07 of the Revised Code, and any 600
interim financial statements and examination reports or related 601
documents of captive insurance companies in this state; 602

(c) The ongoing evaluation and monitoring of the financial 603
affairs of captive insurance companies; 604

(d) The determination and review of the premium franchise fee 605
liability of a captive insurance company; 606

(e) The training and continuing education costs of examiners 607
and analysts. 608

(2) Travel and living expenses of all personnel, including 609
those who are not employees of the department of insurance, 610
directly engaged in the conduct of an examination calculated at 611
rates not to exceed the rates provided in the financial condition 612
examiners' handbook published by the national association of 613
insurance commissioners; 614

(3) All other incidental expenses incurred by or on behalf of 615

such personnel in the conduct of such examination; 616

(4) An allocated share of all expenses not described in 617
division (B)(1), (2), or (3) of this section, but that are 618
necessarily incurred in carrying out the duties of the 619
superintendent under this chapter, including the expenses of 620
direct overhead and support staff for the examiners and persons 621
appointed or employed pursuant to section 3964.08 of the Revised 622
Code. 623

(C) All amounts collected by the superintendent under 624
division (B) of this section shall be deposited into the state 625
treasury to the credit of the captive insurance regulation and 626
supervision fund. 627

(D) At the discretion of the superintendent, the expenses of 628
the captive insurance regulation and supervision fund may be 629
covered by the department of insurance operating fund created 630
under section 3901.021 of the Revised Code. 631

(E) As used in this section, "examination" means the 632
examination required under section 3964.08 of the Revised Code. 633

Sec. 3964.17. (A) As used in sections 3964.17 to 3964.1710 of 634
the Revised Code: 635

(1) "Protected cell" means an incorporated cell that is 636
organized pursuant to Chapter 1701., 1702., or 1705. of the 637
Revised Code and that has a separate legal identity from the 638
protected cell captive insurance company of which it is a part. 639

(2) "Protected cell captive insurance company" means a 640
captive insurance company that meets all of the following 641
requirements: 642

(a) Is formed and licensed under the provisions of this 643
chapter; 644

(b) Insures or reinsures the risks of separate participants 645

through a participant contract; 646

(c) Segregates each participant's liability into a protected cell. 647
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(3) "Participant" means an individual, company, corporation, partnership, limited liability company, and their affiliated entities that insure or reinsure with a protected cell. 649
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"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. 652
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(4) "Participant contract" means a contract by which a protected cell insures or reinsures the risks of a participant. 657
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(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. 659
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(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. 662
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(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. 665
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(C) The assets and liabilities of each protected cell shall be held separately from the assets and liabilities of all other protected cells. 669
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(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. 672
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(E) A protected cell captive insurance company shall, at the 675

time of paying the annual fee required under section 3964.13 of 676
the Revised Code, pay an additional annual fee for each protected 677
cell in an amount to be established by the superintendent. 678

(F) Each protected cell of a protected cell captive insurance 679
company shall be treated as a captive insurance company for 680
purposes of this chapter. 681

(G) Unless otherwise permitted by the articles of 682
incorporation, bylaws, code of regulations, or other 683
organizational document of a protected cell captive insurance 684
company, each protected cell of the protected cell captive 685
insurance company shall have the same directors, secretary, and 686
registered office as the protected cell captive insurance company. 687

(H) A protected cell captive insurance company may provide in 688
its articles of incorporation, bylaws, code of regulations, or 689
other organizational documents that a protected cell it creates 690
shall be wound up and dissolved upon any of the following: 691

(1) The bankruptcy, death, expulsion, insanity, resignation, 692
or retirement of any participant of the protected cell; 693

(2) The happening of some event that is not the expiration of 694
a fixed period of time; 695

(3) The expiration of a fixed period of time. 696

(I)(1) The articles of incorporation, bylaws, code of 697
regulations, or other organizational documents, of a protected 698
cell captive insurance company shall provide that a protected cell 699
shall not own shares or membership interests in the protected cell 700
captive insurance company of which it is a part. 701

(2) Such a document may provide that a protected cell may own 702
shares or membership interests in any other protected cell of the 703
protected cell captive insurance company of which it is a part. 704

(J) The name of a protected cell captive insurance company 705

shall include the words "protected cell captive" or the 706
abbreviation "PCC." 707

(K) A protected cell captive insurance company shall assign a 708
distinctive name to each of its protected cells that meets all of 709
the following: 710

(1) The name identifies the protected cell as being part of 711
the protected cell captive insurance company. 712

(2) The name distinguishes the protected cell from any other 713
protected cell of the protected cell captive insurance company. 714

(3) The name includes the words "protected cell" or the 715
abbreviation "PC." 716

(L) A protected cell may enter into an agreement with its 717
protected cell captive insurance company or with another protected 718
cell of the same protected cell captive insurance company. 719

(M)(1) The assets of a protected cell captive insurance 720
company shall be either cell assets or general assets. 721

(2) The cell assets comprise the assets of the protected cell 722
captive insurance company that are held within or on behalf of its 723
protected cells. 724

(3) The general assets of a protected cell captive insurance 725
company comprise the assets of the protected cell captive 726
insurance company that are not cell assets. 727

(N)(1) The liabilities of a protected cell captive insurance 728
company shall be either cell liabilities or general liabilities. 729

(2) The cell liabilities comprise the obligations of the 730
protected cell captive insurance company attributable to its 731
protected cells. 732

(3) The general liabilities of a protected cell captive 733
insurance company comprise the obligations of the protected cell 734
captive insurance company that are not cell liabilities. 735

(O) Each protected cell insurance company shall account 736
separately on its books and records for each of its protected 737
cells to reflect the financial condition and results of operations 738
of the protected cell, including net income or loss, dividends or 739
other distributions to participants, and such other factors as may 740
be provided by participant contracts or required by the 741
superintendent. 742

(P) Each protected cell captive insurance company shall 743
annually file with the superintendent such financial reports as 744
the superintendent requires, which shall include financial 745
statements detailing the financial experience of each protected 746
cell and a statement regarding the adequacy of reserves kept to 747
make full provision for the liabilities insured by each protected 748
cell. 749

(Q) An officer or manager of a protected cell captive 750
insurance company shall immediately notify the superintendent if 751
any protected cell of the protected cell captive insurance company 752
or the protected cell captive insurance company itself is trending 753
toward reserves that are inadequate, or if a protected cell or the 754
protected cell captive insurance company becomes insolvent or is 755
otherwise unable to meet its claims or other obligations. 756

(R) The duties of a director of a protected cell captive 757
insurance company under this chapter shall be in addition to, and 758
not in lieu of, those under other applicable law. 759

Sec. 3964.171. (A) A protected cell captive insurance company 760
may create and issue shares in one or more classes for one or more 761
protected cells. 762

(1) The proceeds of the issue of shares for a specific 763
protected cell shall be included in the assets of that protected 764
cell. 765

(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. 766
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(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. 769
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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. 775
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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. 779
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(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. 784
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(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. 787
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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. 790
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(B) The participants of a protected cell shall not, by virtue 795

of being such participants, be the owners of the protected cell 796
captive insurance company or participants or owners of any other 797
protected cell of the protected cell captive insurance company. 798

(C) No participant contract shall take effect without the 799
superintendent's prior written approval. 800

(D) The addition of a new protected cell, or the withdrawal 801
or other transfer of any participant from any existing protected 802
cell, shall constitute a change in the strategic business plan of 803
that protected cell captive insurance company, requiring the 804
superintendent's prior written approval. 805

(E) A protected cell captive insurance company shall, in 806
addition to keeping a register of its owners or participants, keep 807
a register of the participants of each of its protected cells. 808

Sec. 3964.174. (A) If a protected cell captive insurance 809
company enters into a transaction with respect to a particular 810
protected cell, or incurs a liability arising from an activity or 811
asset of a particular protected cell, a claim by any person in 812
connection with the transaction or liability extends only to the 813
cell assets of the protected cell. 814

(B) If a protected cell captive insurance company enters into 815
a transaction in its own right and not in respect of any of its 816
protected cells, incurs a liability arising from an activity in 817
its own right and not in respect of any of its protected cells, or 818
incurs a liability arising from an asset held in its own right and 819
not in respect of any of its protected cells, then a claim by any 820
person or a liability in connection with this type of transaction, 821
activity, or ownership shall extend only to the general assets of 822
the protected cell captive insurance company. 823

(C) Except as provided by divisions (D) and (E) of this 824
section, a protected cell captive insurance company shall not do 825

either of the following: 826

(1) Satisfy a liability attributable to a particular 827
protected cell of the protected cell captive insurance company 828
from the general assets of the protected cell captive insurance 829
company; 830

(2) Satisfy a liability, whether attributable to a particular 831
protected cell or not, from the cell assets of another protected 832
cell. 833

(D)(1) A protected cell captive insurance company may satisfy 834
any liability attributable to a particular protected cell from the 835
protected cell captive insurance company's general assets if both 836
of the following conditions are met: 837

(a) The articles of incorporation, bylaws, code of 838
regulations, or similar organization documents of the protected 839
cell captive insurance company allow the protected cell captive 840
insurance company to satisfy the liability. 841

(b) Satisfying the liability has been approved by two-thirds 842
of the participants of the protected cell or, if the protected 843
cell has more than one class of participants, two-thirds of each 844
class of participants, unless the organizational document of the 845
protected cell insurance company requires a greater percentage. 846

(2) Prior to a protected cell captive insurance company 847
satisfying any liability attributable to a particular protected 848
cell from the protected cell captive insurance company's general 849
assets, the directors who authorize the satisfaction of the 850
liability shall state as part of the authorization that, having 851
inquired into the affairs and prospects of the protected cell 852
captive insurance company, they have formed an opinion that 853
includes both of the following: 854

(a) Immediately following the date on which the liability is 855
proposed to be met by the general assets of the protected cell 856

captive insurance company, the protected cell captive insurance 857
company will be able to discharge its liabilities as they fall 858
due. 859

(b) Having regard to the prospects of the protected cell 860
captive insurance company, the intentions of the directors with 861
respect to the management of the protected cell captive insurance 862
company's business, and the amount and character of the financial 863
resources that will, in their view, be available to the protected 864
cell captive insurance company, the protected cell captive 865
insurance company will be able to continue its business and will 866
be able to discharge its liabilities as they fall due for a period 867
of one year immediately following the date on which the liability 868
is proposed to be satisfied by the general assets of the protected 869
cell captive insurance company or until the protected cell captive 870
insurance company is dissolved, whichever first occurs. 871

(E)(1) A protected cell captive insurance company may satisfy 872
any liability, whether attributable to a particular protected cell 873
or not, from the cell assets of another protected cell if it is 874
permitted to do so by the articles of incorporation, bylaws, code 875
of regulations, or other organizational document, as well as the 876
participant agreement, of the protected cell whose assets are 877
proposed to be used to satisfy the liability. 878

(2)(a) Prior to a protected cell captive insurance company 879
satisfying any liability from the assets of a protected cell that 880
is not responsible for the liability, the directors who authorize 881
the satisfaction shall make a full inquiry into the affairs and 882
prospects of the protected cell whose assets are proposed to be 883
used to satisfy the liability to determine that both of the 884
following are true: 885

(i) Immediately following the date on which the liability is 886
proposed to be met by the cell assets of the protected cell in 887
question, the protected cell will be able to discharge its 888

liabilities as they fall due. 889

(ii) Having regard to the prospects of the protected cell, 890
the intentions of the directors with respect to the management of 891
the protected cell's business, and the amount and character of the 892
financial resources that will in their view be available to the 893
protected cell in question, the protected cell will be able to 894
continue to carry on business and will be able to discharge its 895
liabilities as they become due or until the protected cell is 896
dissolved, whichever first occurs. 897

(b) If the criteria of division (E)(2)(a) of this section are 898
met, the directors shall make a written authorization stating the 899
outcome of their inquiry and shall submit the authorization to the 900
superintendent for approval prior to satisfying the liability. 901

(F) A director who makes a statement under division (D) or 902
(E) of this section without having reasonable grounds for the 903
opinion expressed in the statement violates this chapter and may 904
be removed by order of the superintendent. 905

Sec. 3964.175. If a protected cell captive insurance company 906
is liable for any penalty, under this chapter or otherwise, due to 907
an act or the failure to act of a protected cell or an officer or 908
director of a protected cell, then both of the following apply: 909

(A) The penalty shall only be met by the protected cell 910
captive insurance company from the cell assets of the protected 911
cell responsible. 912

(B) The penalty shall not be enforceable in any way against 913
any other assets of the protected cell captive insurance company 914
or assets of any other protected cell. 915

Sec. 3964.176. The directors of a protected cell captive 916
insurance company shall establish and maintain, or cause to be 917
established and maintained, procedures to do all of the following: 918

(A) Segregate cell assets and liabilities separate and separately identifiable from general assets and liabilities; 919
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(B) Segregate cell assets and liabilities of each protected cell separate and separately identifiable from cell assets and liabilities of any other protected cell; 921
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(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. 924
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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: 928
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(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. 932
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(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. 935
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(B) If a protected cell captive insurance company fails to comply with division (A) of this section, then both of the following shall apply: 941
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(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 944
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the contrary in the protected cell's organizational documents or 949
in any contract with the protected cell captive insurance company 950
or otherwise. 951

(2)(a) The directors of the protected cell captive insurance 952
company shall have a right of indemnity, in the case of a matter 953
on behalf of or attributable to a protected cell, against the 954
assets of the protected cell, unless the directors were 955
fraudulent, reckless, negligent, or acted in bad faith. 956

(b) The directors shall have a right of indemnity against the 957
general assets of the protected cell captive insurance company, in 958
the case of a matter not on behalf of or attributable to a 959
protected cell. 960

(C) Notwithstanding division (B)(1) of this section, a court 961
may relieve a director of all or part of the personal liability 962
required under division (B)(1) of this section if the director can 963
demonstrate either of the following to the satisfaction of the 964
court: 965

(1) The director was not aware of the circumstances giving 966
rise to the liability and therefore was not fraudulent, reckless, 967
or negligent and did not act in bad faith. 968

(2) The director expressly objected, and exercised the rights 969
available to the director, whether by way of voting power or 970
otherwise, to try to prevent the circumstances giving rise to the 971
liability. 972

(D) If, pursuant to division (C) of this section, a court 973
relieves a director of all or part of the director's personal 974
liability under division (B)(1) of this section, the court may 975
order that the liability in question instead be met from the 976
assets of the protected cell or the general assets of the 977
protected cell captive insurance company as the court finds 978
appropriate. 979

(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. 980
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(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. 988
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Sec. 3964.178. (A) A captive insurance company may amend its organizational document to become a protected cell captive insurance company. 991
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(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: 994
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(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; 997
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(2) All the creditors of the captive insurance company. 1001

(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. 1002
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(D) A protected cell captive insurance company may amend its organizational document to cease to be a protected cell captive insurance company. 1007
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(E) The amendment of an organizational document of a 1010
protected cell captive insurance company to cease to be a 1011
protected cell captive insurance company shall require approval by 1012
all of the following: 1013

(1) The superintendent; 1014

(2) Holders of two-thirds of the outstanding shares or 1015
ownership interests of the protected cell captive insurance 1016
company, unless a greater amount is required by the organizational 1017
document of the protected cell captive insurance company; 1018

(3) Two-thirds of the participants of each protected cell; 1019

(4) All the creditors of the protected cell captive insurance 1020
company and its protected cells. 1021

(F) Notwithstanding division (E)(4) of this section, if the 1022
consent of all the creditors of the captive insurance company and 1023
its protected cells cannot be obtained, the amendment may be 1024
approved by the superintendent upon being satisfied that no 1025
creditor will be materially prejudiced by the amendment. 1026

(G)(1) If a captive insurance company or protected cell 1027
captive insurance company seeks to change its status in accordance 1028
with this section, the captive insurance company or protected cell 1029
captive insurance company shall deliver both of the following to 1030
the superintendent: 1031

(a) A copy of the amendment to its name; 1032

(b) Evidence satisfactory to the superintendent that the 1033
requirements of division (B) or (E) of this section have been met. 1034

(2) If the documents required under division (G)(1) of this 1035
section are provided, the superintendent shall issue a license 1036
that is appropriate to the amended status of the company. 1037

(H) If a company changes its status in accordance with this 1038
section, the change of status shall take effect when the 1039

superintendent issues a new license. 1040

Sec. 3964.179. (A) A protected cell of a protected cell 1041
captive insurance company may be transferred to another protected 1042
cell captive insurance company. 1043

(B) The protected cell captive insurance companies between 1044
which a protected cell is being transferred shall enter into a 1045
written agreement that sets forth the terms of the transfer. 1046

(C) A transfer of a protected cell shall be approved by the 1047
superintendent when all of the following are met: 1048

(1) The board of directors of each protected cell captive 1049
insurance company involved in the transfer have approved the 1050
transfer. 1051

(2) The transfer agreement is approved by the superintendent 1052
as an arrangement in accordance with this chapter. 1053

(3) One of the following applies: 1054

(a) The transfer agreement is consented to by at least 1055
two-thirds of the participants of the protected cell being 1056
transferred and all the creditors, if any, of that protected cell. 1057

(b) If the agreement of all the creditors of the protected 1058
cell cannot be obtained, the superintendent may approve the 1059
transfer upon being satisfied that no creditor of the protected 1060
cell will be materially prejudiced by the transfer. 1061

(D) Within thirty days after a transfer agreement is approved 1062
by the superintendent, the protected cell captive insurance 1063
company to which the protected cell is being transferred shall 1064
deliver both of the following to the superintendent: 1065

(1) A copy of the executed transfer agreement; 1066

(2) A declaration signed by the directors of the protected 1067
cell captive insurance company transferring the protected cell 1068

stating that each director has reason to believe all of the 1069
following: 1070

(a) The protected cell being transferred is able to discharge 1071
its liabilities as they become due. 1072

(b) There are no creditors of the protected cell captive 1073
insurance company from which the protected cell is being 1074
transferred whose interests will be unfairly prejudiced by the 1075
transfer. 1076

(c) The transfer agreement has been approved in accordance 1077
with this chapter. 1078

(E) If a protected cell captive insurance company fails to 1079
deliver the documents required under division (D) of this section 1080
within the required thirty-day period, the superintendent may void 1081
the transfer. 1082

(F) The superintendent may void a transfer and order the 1083
removal of any director who makes a declaration under division 1084
(D)(2) of this section without having the grounds to do so. 1085

(G) Upon fulfillment of the requirements of division (D) of 1086
this section, the superintendent shall do all of the following: 1087

(1) Record the transfer of the protected cell; 1088

(2) Issue to the protected cell a new license; 1089

(3) Record that the protected cell has ceased to be a 1090
protected cell of the protected cell captive insurance company 1091
from which it was transferred. 1092

(H) Upon the issuance of the new license under this section 1093
all of the following shall apply: 1094

(1) The protected cell shall cease to be a protected cell of 1095
the protected cell captive insurance company from which it was 1096
transferred. 1097

(2) The protected cell becomes a protected cell of the 1098
protected cell captive insurance company to which it has been 1099
transferred. 1100

(3) All of the following shall apply: 1101

(a) All property and rights to which the protected cell was 1102
entitled immediately before the issue of the new license shall 1103
remain the property and rights of the protected cell. 1104

(b) All liabilities, contracts, debts, and other obligations 1105
to which the protected cell was subject immediately before the 1106
issue of the new license shall remain the liabilities, contracts, 1107
debts, and other obligations of the protected cell. 1108

(c) All actions and other legal proceedings that were pending 1109
by or against a protected cell immediately before the issue of the 1110
new license may be continued by or against the protected cell. 1111

(I) The operation of division (H) of this section shall not 1112
be regarded as any of the following: 1113

(1) A breach of contract or otherwise as a civil wrong; 1114

(2) A breach of any contractual provision prohibiting, 1115
restricting, or regulating the assignment or transfer of rights or 1116
liabilities; 1117

(3) Giving rise to any remedy by a party to a contract or 1118
other instrument as an event of default under any contract or 1119
other instrument or as causing or permitting the termination of 1120
any contract, other instrument, obligation, or relationship. 1121

(J) Except as provided in this section, a protected cell 1122
shall not be transferred if the transfer would be inconsistent 1123
with the articles of incorporation, bylaws, code of regulations, 1124
or similar organizational document of the protected cell, the 1125
protected cell captive insurance company transferring the 1126
protected cell, or the protected cell captive insurance company to 1127

which the protected cell is to be transferred. 1128

Sec. 3964.1710. (A) Any insurance company organized under 1129
Chapter 3925. of the Revised Code, and any captive insurance 1130
company that is not a protected cell captive insurance company, 1131
may become a protected cell of a protected cell captive insurance 1132
company, with the approval of the superintendent. 1133

(B)(1) A protected cell of a protected cell captive insurance 1134
company may apply to the superintendent to be incorporated as an 1135
insurance company, including a captive insurance company subject 1136
to the requirements of this chapter, independent from the 1137
protected cell captive insurance company of which it is currently 1138
a part. 1139

(2) If a protected cell is licensed as an independent 1140
insurance company, then all of the following apply: 1141

(a) All property and rights to which the protected cell was 1142
entitled immediately before its licensure as a new entity shall 1143
remain the property and rights of the new entity. 1144

(b) The protected cell shall remain subject to all criminal 1145
and civil liabilities and all contracts, debts, and other 1146
obligations to which the protected cell was subject immediately 1147
before its licensure as a new entity. 1148

(c) All contracts, debts, and other obligations of the 1149
protected cell shall remain the contracts, debts, and other 1150
obligations of the new entity. 1151

(d) All actions and other legal proceedings that, immediately 1152
before the licensure of the protected cell as a new entity, were 1153
pending by or against the protected cell may be continued by or 1154
against the new entity. 1155

(C) An application made under division (B) of this section 1156
shall be approved by two-thirds of the participants of the 1157

protected cell or, if the protected cell has more than one class 1158
of participants, two-thirds of each class of participant, unless 1159
the organizational document of the protected cell requires a 1160
greater percentage. 1161

(D)(1) If a protected cell makes an application under 1162
division (B) of this section, any participant of the protected 1163
cell who objects to the protected cell being incorporated as an 1164
independent insurance company may petition the superintendent for 1165
an order denying the application on the grounds that the 1166
incorporation, or the terms of the incorporation, unfairly 1167
prejudice the interests of the participant. 1168

(2) Such a petition shall be made within thirty days after an 1169
application has been made under division (B) of this section. 1170

(E) The operation of division (B)(2) of this section shall 1171
not be regarded as any of the following: 1172

(1) A breach of contract; 1173

(2) A breach of any contractual provision prohibiting, 1174
restricting, or regulating the assignment or transfer of rights or 1175
liabilities; 1176

(3) Giving rise to any remedy by a party to a contract or 1177
other instrument as an event of default under the contract or 1178
other instrument or as causing or permitting the termination of 1179
any contract, other instrument, obligation, or relationship. 1180

Sec. 3964.18. (A) If a protected cell captive insurance 1181
company with one or more protected cells is being liquidated, the 1182
protected cell captive insurance company may be considered to have 1183
no assets and no liabilities only if the protected cell captive 1184
insurance company continues to have no protected cells. 1185

(B) In the course of liquidating a protected cell captive 1186
insurance company, each protected cell shall be dealt with one of 1187

<u>the following ways:</u>	1188
<u>(1) Transfer to another protected cell captive insurance</u>	1189
<u>company;</u>	1190
<u>(2) Liquidation;</u>	1191
<u>(3) Continuation as a separate legal entity or protected cell</u>	1192
<u>under the law of another jurisdiction;</u>	1193
<u>(4) Incorporation, independent of the protected cell captive</u>	1194
<u>insurance company;</u>	1195
<u>(5) Merge with another insurance company.</u>	1196
<u>(C) If a protected cell captive insurance company is being</u>	1197
<u>liquidated, the liquidation shall not apply with respect to any</u>	1198
<u>protected cell of the protected cell captive insurance company.</u>	1199
<u>(D) If a protected cell of a protected cell captive insurance</u>	1200
<u>company is being liquidated, the liquidation shall not apply with</u>	1201
<u>respect to the protected cell captive insurance company or any</u>	1202
<u>other protected cell of the protected cell captive insurance</u>	1203
<u>company.</u>	1204
<u>(E) A court, upon application of a protected cell captive</u>	1205
<u>insurance company that is being liquidated, may determine, in</u>	1206
<u>accordance with this chapter, if a liability of the protected cell</u>	1207
<u>captive insurance company shall be satisfied by its general</u>	1208
<u>assets, by the cell assets of a specific protected cell of the</u>	1209
<u>protected cell captive insurance company, or by a combination of</u>	1210
<u>those assets.</u>	1211
<u>(F) Notwithstanding any statutory provision or rule of law to</u>	1212
<u>the contrary, in the disposition of a protected cell captive</u>	1213
<u>insurance company, the liquidator shall do both of the following:</u>	1214
<u>(1) Deal with the protected cell captive insurance company's</u>	1215
<u>assets only in accordance with the procedures set out in this</u>	1216
<u>section;</u>	1217

(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. 1218
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(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: 1222
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(a) The protected cell captive insurance company; 1225

(b) A majority of the directors of the protected cell captive insurance company; 1226
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(c) Any creditor of that protected cell; 1228

(d) The superintendent. 1229

(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: 1230
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(a) The protected cell captive insurance company; 1234

(b) The superintendent; 1235

(c) Such other persons as the court may direct. 1236

(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: 1237
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(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 1242
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<u>discharge the claims of creditors with respect to that protected</u>	1248
<u>cell.</u>	1249
<u>(b) An order would achieve the purposes set forth in division</u>	1250
<u>(H)(3) of this section.</u>	1251
<u>(2) A liquidation or rehabilitation order may be made with</u>	1252
<u>respect to one or more protected cells.</u>	1253
<u>(3) A liquidation or rehabilitation order shall direct that</u>	1254
<u>the business and cell assets of, or attributable to, a protected</u>	1255
<u>cell shall be managed by a liquidator or rehabilitator specified</u>	1256
<u>in the order for the purpose of accomplishing both of the</u>	1257
<u>following:</u>	1258
<u>(a) The orderly closing or rehabilitation of the business of,</u>	1259
<u>or attributable to, the protected cell;</u>	1260
<u>(b) The distribution of the cell assets, or assets</u>	1261
<u>attributable to the protected cell, to those having recourse</u>	1262
<u>thereto.</u>	1263
<u>(I) All of the following apply to the liquidator or</u>	1264
<u>rehabilitator of a protected cell:</u>	1265
<u>(1) The liquidator or rehabilitator shall have all the</u>	1266
<u>functions and powers of the directors responsible for the business</u>	1267
<u>and cell assets of, or attributable to, the protected cell.</u>	1268
<u>(2) The liquidator or rehabilitator may at any time apply to</u>	1269
<u>the court for any of the following:</u>	1270
<u>(a) Directions as to the extent or exercise of any function</u>	1271
<u>or power;</u>	1272
<u>(b) The liquidation or rehabilitation order to be discharged</u>	1273
<u>or varied;</u>	1274
<u>(c) Any other order as to any matter occurring during the</u>	1275
<u>course of the liquidation or rehabilitation.</u>	1276

(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. 1308

(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. 1309
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(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. 1314
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(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. 1319
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(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. 1324
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(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 1328
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arising out of the protected cell captive insurance company's 1339
administrative, regulatory, or marketing activities on behalf of 1340
the protected cell in question. 1341

Sec. 3964.19. (A) As used in sections 3964.19 to 3964.194 of 1342
the Revised Code: 1343

(1) "Counterparty" means a special purpose financial captive 1344
insurance company's parent or an affiliated entity that is an 1345
insurer domiciled in this state that cedes life insurance risks to 1346
the special purpose financial captive insurance company pursuant 1347
to a special purpose financial captive insurance company contract. 1348

(2) "Insolvency" or "insolvent" means that the special 1349
purpose financial captive insurance company is unable to pay its 1350
obligations when they are due, unless those obligations are the 1351
subject of a bona fide dispute. 1352

(3) "Insurance securitization" means a package of related 1353
risk transfer instruments, capital market offerings, and 1354
facilitating administrative agreements, for which a special 1355
purpose financial captive insurance company obtains proceeds, 1356
either directly or indirectly, through the issuance of securities, 1357
where the investment risk to the holders of the securities is 1358
contingent upon the obligations of the special purpose financial 1359
captive insurance company to the counterparty under the special 1360
purpose financial captive insurance company contract, in 1361
accordance with the transaction terms, and pursuant to this 1362
section. This includes situations where the securitization 1363
proceeds are held in trust to secure the obligations of the 1364
special purpose financial captive insurance company under one or 1365
more special purpose financial captive insurance company 1366
contracts. 1367

(4) "Organizational document" means the special purpose 1368
financial captive insurance company's articles of incorporation, 1369

bylaws, code of regulations, operating agreement, or other 1370
foundational documents that establish the special purpose 1371
financial captive insurance company as a legal entity. 1372

(5) "Securities" means debt obligations, equity investments, 1373
surplus certificates, surplus notes, funding agreements, 1374
derivatives, and other legal forms of financial instruments. 1375

(6) "Special purpose financial captive insurance company 1376
contract" means a contract between a special purpose financial 1377
captive insurance company and a counterparty pursuant to which the 1378
special purpose financial captive insurance company agrees to 1379
provide insurance or reinsurance protection to the counterparty 1380
for risks associated with the counterparty's insurance or 1381
reinsurance business, and includes a contract entered into under 1382
division (F) of this section. 1383

(7) "Special purpose financial captive insurance company 1384
securities" means the securities issued by a special purpose 1385
financial captive insurance company. 1386

(B) The requirements of this section shall not apply to a 1387
specific special purpose financial captive insurance company if 1388
the superintendent finds a specific requirement is inappropriate 1389
due to the nature of the risks to be insured by the special 1390
purpose financial captive insurance company and if the special 1391
purpose financial captive insurance company meets the criteria 1392
established by rules and regulations adopted and promulgated by 1393
the superintendent. 1394

(C)(1) A special purpose financial captive insurance company 1395
may not issue a contract for assumption of risk or indemnification 1396
of loss other than a special purpose financial captive insurance 1397
company contract. However, the special purpose financial captive 1398
insurance company may cede a risk assumed through a special 1399
purpose financial captive insurance company contract to a 1400

third-party reinsurer through the purchase of reinsurance or 1401
retrocession protection if approved by the superintendent. 1402

(2) A special purpose financial captive insurance company may 1403
enter into contracts and conduct other commercial activities 1404
related or incidental to and necessary to fulfill the purposes of 1405
special purpose financial captive insurance company contracts, 1406
insurance securitization, and this section. Those activities may 1407
include: 1408

(a) Entering into special purpose financial captive insurance 1409
company contracts; 1410

(b) Issuing securities of the special purpose financial 1411
captive insurance company in accordance with applicable securities 1412
law; 1413

(c) Complying with the terms of special purpose financial 1414
captive insurance company contracts or securities; 1415

(d) Entering into trust, swap, tax, administration, 1416
reimbursement, or fiscal agent transactions; 1417

(e) Complying with trust indenture, reinsurance, 1418
retrocession, and other agreements necessary or incidental to 1419
effectuate an insurance securitization in compliance with this 1420
section and in the plan of operation considered by the 1421
superintendent under division (F)(5) of section 3964.03 of the 1422
Revised Code. 1423

(D)(1) A special purpose financial captive insurance company 1424
may issue securities, subject to and in accordance with applicable 1425
law, its plan of operation considered by the superintendent under 1426
division (E) of section 3964.03 of the Revised Code, and its 1427
organizational documents. 1428

(2) A special purpose financial captive insurance company, in 1429
connection with the issuance of securities, may enter into and 1430

perform all of its obligations under any required contracts to 1431
facilitate the issuance of these securities. 1432

(3) The obligation to repay principal or interest, or both, 1433
on the securities issued by the special purpose financial captive 1434
insurance company shall reflect the risk associated with the 1435
obligations of the special purpose financial captive insurance 1436
company to the counterparty under the special purpose financial 1437
captive insurance company contract. 1438

(E)(1) A special purpose financial captive insurance company 1439
may enter into asset management agreements, including swap 1440
agreements, guaranteed investment contracts, or other transactions 1441
with the objective of reducing timing differences in the funding 1442
of upfront, or ongoing, transaction expenses, or managing asset, 1443
credit, prepayment, or interest rate risk of the investments of 1444
the special purpose financial captive insurance company to ensure 1445
that the investments are sufficient to assure payment or repayment 1446
of the securities, and related interest or principal payments, 1447
issued pursuant to a special purpose financial captive insurance 1448
company insurance securitization transaction or the obligations 1449
required under a special purpose financial captive insurance 1450
company contract or for any other purpose approved by the 1451
superintendent. 1452

(2) An asset management agreement shall not be entered into 1453
under this section by a special purpose financial captive 1454
insurance company unless it has been approved by the 1455
superintendent. 1456

(F)(1) If a special purpose financial captive insurance 1457
company has entered into a special purpose financial captive 1458
insurance company contract with a counterparty and the special 1459
purpose financial captive insurance company has conducted an 1460
insurance securitization that is made up, in part or in whole, of 1461
the risks of that contract, then the special purpose financial 1462

captive insurance company may enter into a second contract with 1463
the counterparty under which the counterparty is held liable for 1464
those losses or other obligations that were securitized. 1465

(2) Such obligations may be funded and secured with assets 1466
held in trust for the benefit of the counterparty pursuant to 1467
agreements contemplated by this section and invested in a manner 1468
that meet the criteria in sections 3907.14 and 3907.141 of the 1469
Revised Code. 1470

(G)(1) A special purpose financial captive insurance company 1471
may enter into agreements with affiliated companies and third 1472
parties and conduct business necessary to fulfill its obligations 1473
and administrative duties incidental to an insurance 1474
securitization and a special purpose financial captive insurance 1475
company contract entered into under division (F) of this section. 1476

(2) The agreements may include management and administrative 1477
services agreements and other allocation and cost sharing 1478
agreements, or swap and asset management agreements, or both, or 1479
agreements for other contemplated types of transactions provided 1480
in this section. 1481

(H) A special purpose financial captive insurance company 1482
contract entered into under division (F) of this section shall 1483
contain all of the following: 1484

(1) A requirement that the special purpose financial captive 1485
insurance company do either of the following: 1486

(a) Enter into a trust agreement specifying what recoverables 1487
or reserves, or both, the agreement is to cover and to establish a 1488
trust account for the benefit of the counterparty and the security 1489
holders; 1490

(b) Establish such other methods of security acceptable to 1491
the superintendent. 1492

(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; 1493
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(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; 1497
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(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: 1506
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(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; 1510
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(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. 1513
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(I) A special purpose financial captive insurance company contract entered into under division (F) of this section may 1522
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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. 1524
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(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: 1531
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(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. 1539
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(b) The agreement is in compliance with section 3901.64 of the Revised Code. 1542
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(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. 1544
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(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 1551
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such sections as to invested amounts. The superintendent may 1555
prohibit or limit any investment that threatens the solvency or 1556
liquidity of a special purpose financial captive insurance company 1557
or that is not made in accordance with the approved plan of 1558
operation. 1559

Sec. 3964.191. (A) Notwithstanding the provisions of sections 1560
3903.01 to 3903.59 of the Revised Code, the superintendent may 1561
apply to the court of common pleas of Franklin county for an order 1562
authorizing the superintendent to rehabilitate or liquidate a 1563
special purpose financial captive insurance company domiciled in 1564
this state on one or both of the following grounds: 1565

(1) There has been embezzlement, wrongful sequestration, 1566
dissipation, or diversion of the assets of the special purpose 1567
financial captive insurance company intended to be used to pay 1568
amounts owed to the counterparty or the holders of special purpose 1569
financial captive insurance company securities. 1570

(2) The special purpose financial captive insurance company 1571
is insolvent and the holders of a majority in outstanding 1572
principal amount of each class of special purpose financial 1573
captive insurance company securities request or consent to 1574
conservation, rehabilitation, or liquidation pursuant to the 1575
provisions of this section. 1576

(B) A court may not grant the relief provided by division (A) 1577
of this section unless, after notice and a hearing, the 1578
superintendent establishes that relief must be granted. 1579

(C) Notwithstanding any other applicable law or rule, upon 1580
any order of rehabilitation or liquidation of a special purpose 1581
financial captive insurance company, the receiver shall manage the 1582
assets and liabilities of the special purpose financial captive 1583
insurance company pursuant to the provisions of section 3964.193 1584
of the Revised Code. 1585

(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. 1586
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(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. 1594
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(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. 1603
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(G) Notwithstanding the provisions of any other applicable law or rule, both of the following shall apply: 1614
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(1) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive 1616
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insurance company of money or other property made pursuant to a 1618
special purpose financial captive insurance company contract. 1619

(2) A receiver of a special purpose financial captive 1620
insurance company may not void a nonfraudulent transfer by the 1621
special purpose financial captive insurance company of money or 1622
other property made to a counterparty pursuant to a special 1623
purpose financial captive insurance company contract or made to or 1624
for the benefit of any holder of a special purpose financial 1625
captive insurance company security on account of the special 1626
purpose financial captive insurance company security. 1627

(H) With the exception of the fulfillment of the obligations 1628
under a special purpose financial captive insurance company 1629
contract, and notwithstanding the provisions of any other 1630
applicable law or rule, the assets of a special purpose financial 1631
captive insurance company, including assets held in trust, shall 1632
not be consolidated with or included in the estate of a 1633
counterparty in any delinquency proceeding against the 1634
counterparty, pursuant to the provisions of this section, for any 1635
purpose, including distribution to creditors of the counterparty. 1636

Sec. 3964.193. (A) Except as otherwise provided in this 1637
section, documents and information submitted by a company pursuant 1638
to sections 3964.19 to 3964.194 of the Revised Code are not 1639
subject to section 149.43 of the Revised Code, and are 1640
confidential, and may not be disclosed by the superintendent or 1641
any employee of the department of insurance without the written 1642
consent of the company. 1643

(B) Such documents and information may be discoverable in a 1644
civil action in which the company filing the material is a party 1645
upon a finding by a court of competent jurisdiction that the 1646
information sought is relevant and necessary to the case, and the 1647
information sought is unavailable from other, nonconfidential 1648

sources. 1649

(C) The superintendent may, at the superintendent's sole 1650
discretion, share documents that are the subject of this section 1651
with the chief deputy rehabilitator, the chief deputy liquidator, 1652
other deputy rehabilitators and liquidators, and any other person 1653
employed by, or acting on behalf of, the superintendent pursuant 1654
to Chapter 3901. or 3903. of the Revised Code, with other local, 1655
state, federal, and international regulatory and law enforcement 1656
agencies, with local, state, and federal prosecutors, and with the 1657
national association of insurance commissioners and its affiliates 1658
and subsidiaries provided that the recipient agrees to maintain 1659
the confidential or privileged status of the confidential or 1660
privileged work paper and has authority to do so. 1661

Sec. 3964.194. (A) Notwithstanding any other section of the 1662
Revised Code, a counterparty may take credit for reinsurance ceded 1663
to a special purpose financial captive insurance company that is a 1664
subsidiary or affiliate of the counterparty, if assets valued 1665
using the basis of accounting applicable to the special purpose 1666
financial captive insurance company under division (E) of section 1667
3964.03 of the Revised Code at least equal to the reserves as 1668
determined under the basis elected under division (E) of section 1669
3964.03 of the Revised Code for the reinsurance are held directly 1670
by the ceding counterparty or in trust on behalf of the ceding 1671
counterparty, as security for payment of the obligations under the 1672
reinsurance contract with the reinsuring special purpose financial 1673
captive insurance company. 1674

(B) Such funds shall be held in compliance with the 1675
requirements of section 3901.63 of the Revised Code. 1676

(C) An Ohio domiciled counterparty in recording its 1677
investment in a special purpose financial captive insurance 1678
company domiciled in this state, shall value the investment using 1679

the special purpose financial captive insurance company's 1680
underlying audited statutory equity reflecting the reserves 1681
established pursuant to division (E) of section 3964.03 of the 1682
Revised Code. 1683

(D) Notwithstanding any other provision of the Revised Code 1684
that would otherwise apply, any change in surplus that may be 1685
recognized by any Ohio domiciled ceding counterparty pursuant to 1686
this chapter may be recognized in such ceding counterparty's 1687
calculation of its investment in a United States insurance 1688
subsidiary, controlled and affiliated entity investment, or any of 1689
its Ohio domiciled parents' calculations of their investment in a 1690
United States insurance subsidiary, controlled, and affiliated 1691
entities. 1692

Sec. 3964.20. A captive insurance company organized under the 1693
laws of another state or jurisdiction may become a domestic 1694
captive insurance company pursuant to section 3913.40 of the 1695
Revised Code after complying with all the requirements of this 1696
chapter relative to the organization and formation of a domestic 1697
captive insurance company. 1698

Sec. 3964.21. The superintendent may adopt rules in 1699
accordance with Chapter 119. of the Revised Code as are reasonably 1700
necessary for the implementation and operation of this chapter. 1701

Sec. 4123.351. (A) The administrator of workers' compensation 1702
shall require every self-insuring employer, including any 1703
self-insuring employer that is indemnified by a captive insurance 1704
company granted a certificate of authority under Chapter 3694. of 1705
the Revised Code, to pay a contribution, calculated under this 1706
section, to the self-insuring employers' guaranty fund established 1707
pursuant to this section. The fund shall provide for payment of 1708
compensation and benefits to employees of the self-insuring 1709

employer in order to cover any default in payment by that 1710
employer. 1711

(B) The bureau of workers' compensation shall operate the 1712
self-insuring employers' guaranty fund for self-insuring 1713
employers. The administrator annually shall establish the 1714
contributions due from self-insuring employers for the fund at 1715
rates as low as possible but such as will assure sufficient moneys 1716
to guarantee the payment of any claims against the fund. The 1717
bureau's operation of the fund is not subject to sections 3929.10 1718
to 3929.18 of the Revised Code or to regulation by the 1719
superintendent of insurance. 1720

(C) If a self-insuring employer defaults, the bureau shall 1721
recover the amounts paid as a result of the default from the 1722
self-insuring employers' guaranty fund. If a self-insuring 1723
employer defaults and is in compliance with this section for the 1724
payment of contributions to the fund, such self-insuring employer 1725
is entitled to the immunity conferred by section 4123.74 of the 1726
Revised Code for any claim arising during any period the employer 1727
is in compliance with this section. 1728

(D)(1) There is hereby established a self-insuring employers' 1729
guaranty fund, which shall be in the custody of the treasurer of 1730
state and which shall be separate from the other funds established 1731
and administered pursuant to this chapter. The fund shall consist 1732
of contributions and other payments made by self-insuring 1733
employers under this section. All investment earnings of the fund 1734
shall be credited to the fund. The bureau shall make disbursements 1735
from the fund pursuant to this section. 1736

(2) The administrator has the same powers to invest any of 1737
the surplus or reserve belonging to the fund as are delegated to 1738
the administrator under section 4123.44 of the Revised Code with 1739
respect to the state insurance fund. The administrator shall apply 1740
interest earned solely to the reduction of assessments for 1741

contributions from self-insuring employers and to the payments 1742
required due to defaults. 1743

(3) If the bureau of workers' compensation board of directors 1744
determines that reinsurance of the risks of the fund is necessary 1745
to assure solvency of the fund, the board may: 1746

(a) Enter into contracts for the purchase of reinsurance 1747
coverage of the risks of the fund with any company or agency 1748
authorized by law to issue contracts of reinsurance; 1749

(b) Require the administrator to pay the cost of reinsurance 1750
from the fund; 1751

(c) Include the costs of reinsurance as a liability and 1752
estimated liability of the fund. 1753

(E) The administrator, with the advice and consent of the 1754
board, may adopt rules pursuant to Chapter 119. of the Revised 1755
Code for the implementation of this section, including a rule, 1756
notwithstanding division (C) of this section, requiring 1757
self-insuring employers to provide security in addition to the 1758
contribution to the self-insuring employers' guaranty fund 1759
required by this section. The additional security required by the 1760
rule, as the administrator determines appropriate, shall be 1761
sufficient and adequate to provide for financial assurance to meet 1762
the obligations of self-insuring employers under this chapter and 1763
Chapter 4121. of the Revised Code. 1764

(F) The purchase of coverage under this section by 1765
self-insuring employers is valid notwithstanding the prohibitions 1766
contained in division (A) of section 4123.82 of the Revised Code 1767
and is in addition to the indemnity contracts that self-insuring 1768
employers may purchase pursuant to division (B) of section 4123.82 1769
of the Revised Code. 1770

(G) The administrator, on behalf of the self-insuring 1771
employers' guaranty fund, has the rights of reimbursement and 1772

subrogation and shall collect from a defaulting self-insuring 1773
employer or other liable person all amounts the administrator has 1774
paid or reasonably expects to pay from the fund on account of the 1775
defaulting self-insuring employer. 1776

(H) The assessments for contributions, the administration of 1777
the self-insuring employers' guaranty fund, the investment of the 1778
money in the fund, and the payment of liabilities incurred by the 1779
fund do not create any liability upon the state. 1780

Except for a gross abuse of discretion, neither the board, 1781
nor the individual members thereof, nor the administrator shall 1782
incur any obligation or liability respecting the assessments for 1783
contributions, the administration of the self-insuring employers' 1784
guaranty fund, the investment of the fund, or the payment of 1785
liabilities therefrom. 1786

Section 2. That existing section 4123.351 of the Revised Code 1787
is hereby repealed. 1788