

INSURANCE DIVISION[191]

Notice of Intended Action

**Proposing rulemaking related to captive companies
and providing an opportunity for public comment**

The Insurance Division hereby proposes to adopt a new Chapter 113, “Captive Companies,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 521J.26.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 521J.26.

Purpose and Summary

This proposed chapter establishes rules and procedures for implementation and administration of captive companies. The purpose of the proposed chapter is to set forth the financial, reporting, recordkeeping, and other requirements that the Iowa Insurance Commissioner deems necessary for the regulation of captive companies.

Fiscal Impact

The captive company program will incur costs associated with captive companies over the next five years in terms of personnel and implementation costs. The introduction of captive companies to the state of Iowa and the tax on premiums of captive insurance will increase General Fund revenue; however, the amount cannot be determined. The Division anticipates that there will be an annual request for additional staffing and resources necessary to fully implement the program.

Jobs Impact

The Division believes that Iowa Code chapter 521J and the proposed rulemaking will have a moderate impact on private sector jobs and employment opportunities within the insurance industry.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Division no later than 4:30 p.m. on March 20, 2024. Comments should be directed to:

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Fax: 515.654.6500
Email: angela.burke.boston@iid.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

March 20, 2024 10 to 11 a.m.	1963 Bell Avenue, Suite 100 Des Moines, Iowa
March 20, 2024 3 to 4 p.m.	1963 Bell Avenue, Suite 100 Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Angela Burke Boston via email at angela.burke.boston@iid.iowa.gov or by telephone at 515.654.6543 and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 191—Chapter 113:

CHAPTER 113
CAPTIVE COMPANIES

191—113.1(521J) Authority. This chapter is promulgated pursuant to the general rulemaking authority vested in the commissioner by Iowa Code section 521J.26.

191—113.2(521J) Purpose. The purpose of this chapter is to set forth the financial, reporting, recordkeeping, and other requirements that the commissioner deems necessary for the regulation of captive companies.

191—113.3(521J) Definitions. In addition to the definitions set forth in Iowa Code section 521J.1 and rule 191—1.1(502,505), the following definitions apply:

“*Captive manager*” means a person that is on the Iowa approved captive management firms list and, pursuant to a written contract with a captive company, provides and coordinates services including but not limited to accounting, statutory filings, signed annual statements and coordination of related services. The captive manager acts as an intermediary that facilitates and assists the captive company in meeting its statutory requirements under Iowa Code chapter 521J.

“*Work papers*” include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the captive company.

191—113.4(521J) Annual reporting requirements.

113.4(1) A captive company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Iowa Code section 521J.7(1). The report shall be verified by oath of at least two individuals who are executive officers of the captive company. The report shall be prepared using generally accepted accounting principles (GAAP). A hard copy shall be mailed and an electronic copy shall be filed consistent with directions from the commissioner.

113.4(2) All captive insurance companies are to use the Iowa Captive Company Annual Statement Form, except captive risk retention group insurers and special purpose captive companies, which shall use the National Association of Insurance Commissioners' (NAIC's) Annual and Quarterly Statements.

113.4(3) The Iowa Captive Company Annual Statement shall include a statement of a qualified actuary titled "statement of actuarial opinion" setting forth the opinion relating to loss and loss adjustment expense reserves.

113.4(4) A special purpose captive company domiciled in this state shall annually submit to the commissioner a material variances letter explaining any material differences between the captive company's actual results and its projections on file. For the purposes of this rule, "materiality" shall be defined as 10 percent of surplus as regards policyholders as of the prior year end.

191—113.5(521J) Risk limitation.

113.5(1) The commissioner may limit the net amount of risk a captive company retains for a single risk after considering the impact of the retention on the captive company's capital and surplus.

113.5(2) The commissioner may also prescribe and demand additional capital and surplus of any captive company if the commissioner determines that the captive company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive company.

191—113.6(521J) Annual audit.

113.6(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 1 for the preceding year. Financial statements furnished under this rule shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

113.6(2) The annual audit report shall be considered part of the captive company's annual report of financial condition, except with respect to the date by which it must be filed with the commissioner.

113.6(3) The annual audit shall consist of the following:

a. Opinion of independent certified public accountant.

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

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

(3) The opinion must be addressed to the captive company on stationery of the accountant showing the address of issuance, bear original manual signatures or be executed in conformance with Iowa Code chapter 554D and be dated.

b. Report of evaluation of internal controls.

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

(2) The review shall be conducted in accordance with generally accepted auditing standards, and the report shall be filed with the commissioner.

c. Accountant's letter. The accountant shall furnish to the captive company, for inclusion in the filing of the audited annual report, a letter stating the following:

(1) The accountant is independent with respect to the captive company and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board;

(2) The general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(3) The accountant understands that the audited annual report and the opinions will be filed in compliance with this rule;

(4) The accountant consents to the requirements of rule 191—113.12(521J);

(5) The accountant consents and agrees to make the work papers as described in rule 191—113.3(521J) available for review by the commissioner, designee, or appointed agent; and

(6) The accountant is properly licensed by an appropriate state licensing authority.

d. Financial statements. The following financial statements are required:

(1) Balance sheet;

(2) Statement of gain or loss from operations;

(3) Statement of changes in financial position;

(4) Statement of cash flow;

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

(6) Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles and shall include:

1. Reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

2. Summary of ownership and relationship of the captive company and all affiliated corporations or companies insured by the captive; and

3. Narrative explanation of all material transactions with the captive company. For purposes of this provision, no transaction shall be deemed material unless it involves 3 percent or more of a captive company's admitted assets as of the prior year end.

191—113.7(521J) Annual certification of loss reserves and loss expense reserves.

113.7(1) All companies shall submit an annual statement of actuarial opinion by a qualified actuary, evaluating the company's loss reserves and loss expense reserves or life and health policy and claim reserves. The statement of actuarial opinion shall conform to the Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries, the standards of the Casualty Actuarial Society, or the standards of the Society of Actuaries, as applicable, and such additional standards as the commissioner deems appropriate.

113.7(2) The individual who prepares the statement of actuarial opinion shall be approved by the commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, a member in good standing of the Society of Actuaries, or an individual who has demonstrated competence to the commissioner.

113.7(3) The annual statement of actuarial opinion shall be considered part of the company's annual report of financial condition, except with respect to the date by which it must be filed with the commissioner.

113.7(4) With the exception of risk retention groups and special purpose financial insurance companies, all companies shall file such statement of actuarial opinion with the commissioner on or before June 30 for the year ending December 31 immediately preceding. Companies that have received approval to report on other than a calendar year basis shall file such opinion within 180 days after the end of their fiscal year.

113.7(5) A risk retention group domiciled in this state shall file such statement of actuarial opinion with the commissioner on or before March 1 and an actuarial opinion summary on or before March 15 for the year ending December 31 immediately preceding, written by the company's appointed actuary evaluating the company's loss reserves and loss expense reserves. The appointed actuary must be appointed by the board of directors, or its equivalent, or by a committee of the board, by December 31 of the calendar year for which the opinion is rendered. The appointed actuary must report to the board of directors each year on the items within the scope of the statement of actuarial opinion. The statement of actuarial opinion and the supporting actuarial report must be made available to the board of directors. The minutes of the board of directors should indicate that the appointed actuary has presented such information to the board of directors and that the statement of actuarial opinion and the supporting actuarial report were made available. The statement of actuarial opinion and the actuarial opinion summary shall be in the format of and contain the information required by the NAIC's Property and Casualty Annual Statement Instructions.

A special purpose financial insurance company domiciled in this state shall file such statement of actuarial opinion on or before June 30 for the year ending December 31 immediately preceding. The statement of actuarial opinion shall be in the format of and contain the information required by the NAIC's Life, Accident and Health Annual Statement Instructions or Property and Casualty Annual Statement Instructions, as applicable.

191—113.8(521J) Designation of independent certified public accountant.

113.8(1) Captive companies, after becoming subject to this rule, shall within 90 days report to the commissioner in writing the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this rule.

113.8(2) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

113.8(3) A captive company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within 90 days after the appointment is terminated and shall, within the same period, report the name and address of the certified public accountant that is subsequently retained.

191—113.9(521J) Consolidated or combined audits. A company may make written application to the commissioner for approval to submit a consolidated annual audit in lieu of separate annual audits if the company is part of a group of entities that consolidates its annual audit. In such cases, a consolidating or combining worksheet shall be prepared with the annual audit as follows:

113.9(1) Amounts for each captive company subject to this subrule shall be stated separately.

113.9(2) Noninsurance operations may be shown on the worksheet on a combined or individual basis.

113.9(3) Explanations of consolidating and eliminating entries shall be included.

113.9(4) A reconciliation shall be included of any differences between the amounts shown in the individual captive company columns of the worksheet and comparable amounts shown on the annual reports of such captive companies.

191—113.10(521J) Notification of adverse financial condition. A captive company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the captive company in writing of any determination by the independent certified public accountant that the captive company has materially misstated its financial condition in its report to the commissioner. The captive company shall furnish such notification to the commissioner within five business days of receipt.

191—113.11(521J) Additional deposit requirement.

113.11(1) Whenever the commissioner deems that the financial condition of a captive company warrants additional security, the commissioner may require the captive company to deposit, in trust for the captive company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the state of Iowa or a member bank of the Federal Reserve System with the commissioner.

113.11(2) The commissioner shall return the deposit or letter of credit of a captive company if the captive company ceases to do any business only after being satisfied that all obligations of the captive company have been discharged.

113.11(3) A captive company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

191—113.12(521J) Availability and maintenance of work papers of the independent certified public accountant.

113.12(1) Each captive company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the captive company available for review by the commissioner or the commissioner's appointed agent. The captive company shall require that the accountant retain the audit work papers for a period of not less than seven years after the report period.

113.12(2) The review by the commissioner shall be considered an examination or investigation by the commissioner and all work papers obtained shall be confidential records. The captive company shall require that the independent certified public accountant provide photocopies of the work papers to the commissioner. The commissioner may retain any photocopies of work papers.

191—113.13(521J) Organizational examination. In addition to the processing of the application, an organizational investigation or examination may be performed before an applicant captive company is licensed. Such examination or investigation shall consist of a general review of the applicant captive company's corporate records, including articles of incorporation, charters, bylaws, and minute books; feasibility study demonstrating the feasibility of the business plan of the captive company; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

191—113.14(521J) Reinsurance.

113.14(1) A captive company authorized to do business in this state may take credit for reserves on risk ceded to a reinsurer subject to the following requirements:

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

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

113.14(2) Reinsurance contracts shall be executed in writing setting forth the terms, provisions and conditions governing the reinsurance.

113.14(3) Copies of all reinsurance treaties and contracts will be filed and approved by the commissioner.

113.14(4) Reinsurance requirements for captive risk retention groups.

a. Permitted reinsurance.

(1) Captive risk retention groups shall not receive financial statement credit if all policies are ceded through 100 percent reinsurance arrangements, or any lesser percentage as determined in the sole discretion of the commissioner; and

(2) Credit for reinsurance will be permitted if the reinsurer complies with Iowa Code chapter 521B; or

(3) Credit for reinsurance will be permitted if the reinsurer maintains an A- or higher A.M. Best rating, or other comparable rating from a nationally recognized statistical rating organization; the reinsurer maintains minimum capital and surplus in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements; and the reinsurer is licensed and domiciled in a jurisdiction acceptable to the commissioner; or

(4) Credit for reinsurance may be permitted if the reinsurer satisfies each of the following requirements and any other requirements deemed necessary by the commissioner:

1. The captive risk retention group shall file annually, on or before June 1, the reinsurer's audited financial statements, which shall be analyzed by the commissioner to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;

2. The reinsurer shall demonstrate to the satisfaction of the commissioner that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than three to one;

3. If the reinsurer is an affiliate of the captive risk retention group, the reinsurer shall not write third-party business without obtaining prior written approval from the commissioner. A reinsurer is affiliated, for the purpose of this subparagraph, with a risk retention group if more than 50 percent of the

equity interests in such reinsurer are owned, directly or indirectly, by one or more of the members of the captive risk retention group;

4. The reinsurer shall not use cell arrangements without obtaining prior written approval from the commissioner;

5. The reinsurer shall be licensed and domiciled in a jurisdiction acceptable to the commissioner; and

6. The reinsurer shall submit to the examination authority of the commissioner.

b. The commissioner shall either require a reinsurer not domiciled in the United States to include language in the reinsurance agreement that states that in the event of the reinsurer's failure to perform its obligations under the terms of its reinsurance agreement, it shall submit to the jurisdiction of any court of competent jurisdiction in the United States, or shall require compliance with paragraph 113.14(4) "c."

c. For credit for reinsurance and solvency regulatory purposes, the commissioner may require an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported claims.

d. Upon application, the commissioner may waive either of the reinsurance requirements in subparagraph 113.14(4) "a"(2) or numbered paragraph 113.14(4) "a"(4) "6" in circumstances where the captive risk retention group or reinsurer can demonstrate to the satisfaction of the commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the captive risk retention group and its policyholders. Any such waiver should be included in the plan of operation, or any subsequent revision or amendment of the plan, pursuant to Section 3902(d)(1) of the Federal Liability Risk Retention Act of 1986, and the plan must be submitted by the risk retention group licensed as a captive to the commissioner of its state of domicile and each state in which the risk retention group licensed as a captive intends to do business or is currently registered. Any such waiver of a subrule 113.14(4) requirement constitutes a change in the risk retention group's plan of operation in each of those states.

e. Upon application, the commissioner may waive the requirement that a reinsurance arrangement must satisfy either paragraph 113.14(4) "b" or "c" in circumstances where the captive risk retention group or reinsurer can demonstrate to the satisfaction of the commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the captive risk retention group and its policyholders. Any such waiver should be disclosed in Note 1 of the risk retention group's annual statutory financial statement.

f. Each approved captive manager or captive risk retention group shall assess the reinsurance programs of the risk retention groups licensed as captives under their management, and within 90 days of [the effective date of this rulemaking], submit a written report to the commissioner indicating whether such risk retention groups licensed as captives are compliant with these rules. All captive risk retention groups failing to submit the report in a timely manner shall be examined, at the captive risk retention group's expense, to determine compliance with these rules.

g. Captive risk retention groups that require additional time to comply with these rules shall be permitted to take credit for reinsurance for risks ceded to reinsurers not in compliance with these rules for a period not to exceed 12 months from [the effective date of this rulemaking] and contingent upon satisfactory demonstration to the commissioner that such delay of implementation will not cause a hazardous financial condition or potential harm to its member policyholders.

191—113.15(521J) Service providers. No person shall act, in or from this state, as a captive manager, broker, producer, salesman, or reinsurance intermediary for captive business without authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

191—113.16(521J) Directors.

113.16(1) Every captive company shall report any change in its executive officers or directors to the commissioner within 30 days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

113.16(2) No director, officer or employee of a captive company shall, except on behalf of the captive company, accept, or be the beneficiary of, any fee, brokerage, gift or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the captive company. Such person may receive reasonable compensation for necessary services rendered to the captive company in the person's usual private, professional or business capacity.

113.16(3) Any profit or gain received by or on behalf of any person in violation of this rule shall inure to and be recoverable by the captive company.

191—113.17(521J) Conflict of interest.

113.17(1) Each captive company licensed in Iowa is required to adopt a conflict of interest statement for officers, directors, and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from their duty to further the interests of the captive company that the individual represents, but this shall not preclude a person from being a director or officer in more than one insurance company.

113.17(2) Each officer, director and key employee shall file a yearly disclosure with the board of directors.

191—113.18(521J) Acquisition of control of or merger with domestic captive company. No person shall make a tender offer for, or enter into any agreement to exchange securities for, or seek to acquire, or acquire in the open market or otherwise, any interest in a domestic captive company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company as defined in Iowa Code section 521A.1(3), and no person shall enter into an agreement to merge with or otherwise to acquire control of a captive company, without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic captive company, the commissioner shall consider all the facts and circumstances surrounding the application and the criteria for establishment of a captive company set out in this rule.

191—113.19(521J) Suspension or revocation. The commissioner may, by order, suspend or revoke the license of a captive company or place the same on probation on the following grounds:

113.19(1) The captive company has not commenced business according to its plan of operation within two years of being licensed;

113.19(2) The captive company has ceased to write business;

113.19(3) The captive company so requests; or

113.19(4) Any reason provided in Iowa Code section 521J.9(1).

191—113.20(521J) Change of information in initial application.

113.20(1) Any material change in a captive company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

113.20(2) Any change in any other information filed with the initial application must be filed with the commissioner within 60 days after the change but does not require prior approval.

113.20(3) The captive company shall immediately notify the commissioner upon making changes in board members or officers of the captive company.

191—113.21(521J) Application and forms.

113.21(1) Any person who wants to form a captive company shall make application to the commissioner for authority to conduct a captive company using the Application to Form a Captive Company.

113.21(2) One complete copy of the application, including forms, attachments, exhibits, and all other papers and documents filed as a part thereof, shall be filed electronically with the commissioner through the division's captive website, iid.iowa.gov/captive. Accompanying fees may be made by personal delivery or mail addressed to the Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315, Attention: Captive Insurance Administrator.

113.21(3) The application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.

113.21(4) A captive company must include with its application a feasibility study demonstrating the feasibility of its business plan.

113.21(5) Forms for filing with the division are available on the division's website at iid.iowa.gov/captive or by mailing a written request to the Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315.

These rules are intended to implement Iowa Code chapter 521J.