SENATE FILE 549
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 509)
(SUCCESSOR TO SF 424)

(As Amended and Passed by the Senate March 14, 2023)

_____ = New Language by the Senate

A BILL FOR

An Act relating to captive insurance companies, and including applicability provisions.

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

Section 1. NEW SECTION. **432.1A Tax on premiums — captive insurance companies.**

1. *a.* Each captive company under chapter 521J shall pay on or before March 1 of each year a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive company during the immediately preceding calendar year, after deducting from the direct premiums the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

b. The tax due under paragraph "*a*" on direct premiums collected or contracted for by a captive company shall be calculated as follows:

(1) Seven-twentieths of one percent on the first twenty million dollars of direct premiums.

(2) One-quarter of one percent on each dollar of direct premiums after the first twenty million dollars collected under subparagraph (1).

2. *a.* Each captive company under chapter 521J shall pay on or before March 1 of each year a tax on assumed reinsurance premiums. A reinsurance tax shall not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection 1.

b. A reinsurance premium tax shall not be payable by a captive company in connection with the receipt by the captive company of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain the other insurer's business with the captive company.

c. The amount of reinsurance tax due from a captive company under paragraph "*a*" shall be calculated as follows:

(1) Two-tenths of one percent on the first twenty million dollars of assumed reinsurance premiums.

(2) One-eighth of one percent on the twenty million dollars of assumed reinsurance premiums collected after the first twenty million dollars of assumed reinsurance premiums collected under subparagraph (1).

(3) Five percent on each dollar of assumed reinsurance premiums collected after the twenty millions dollars collected under subparagraph (1) and the twenty million dollars collected under subparagraph (2).

3. *a.* (1) Except as provided in subparagraphs (2) and (3), if the aggregate taxes as calculated under subsections 1 and 2 that are payable by a captive company are less than five thousand dollars for any one tax year, the captive company shall pay five thousand dollars in tax for that tax year.

(2) If a captive company is subject to the minimum tax under subparagraph (1) in the calendar year in which the company is first granted a certificate of authority under section 521J.2, the tax shall be prorated as follows:

(a) If a certificate of authority is first granted in the first quarter of the calendar year, the tax shall be five thousand dollars.

(b) If a certificate of authority is first granted in the second quarter of the calendar year, the tax shall be three thousand seven hundred fifty dollars.

(c) If a certificate of authority is first granted in the third quarter of the calendar year, the tax shall be two thousand five hundred dollars.

(d) If a certificate of authority is first granted in the fourth quarter of the calendar year, the tax shall be one thousand five hundred dollars.

(3) If a captive company that is subject to the minimum tax under subparagraph (1) surrenders the company's certificate of authority in the year that the captive company is subject to the minimum tax, the tax shall be prorated on a quarterly basis as follows:

(a) If the certificate of authority is surrendered in

the first quarter of the calendar year, the tax shall be one thousand dollars.

(b) If the certificate of authority is surrendered in the second quarter of the calendar year, the tax shall be two thousand five hundred dollars.

(c) If the certificate of authority is surrendered in the third quarter of the calendar year, the tax shall be three thousand seven hundred fifty dollars.

(d) If the certificate of authority is surrendered in the fourth quarter of the calendar year, the tax shall be five thousand dollars.

b. Each protected cell in a protected cell captive company shall be considered separately in determining the aggregate tax to be paid by the protected cell captive company. If the protected cell captive company insures any risks in addition to the protected cells, the determination of the aggregate tax shall, in addition to the protected cells, also include the premium on all insured risks.

c. Each series of members of a limited liability company formed as a special purpose captive company shall be considered separately under this section, except that the minimum tax as described in paragraph *"a"* shall be considered in the aggregate.

4. Under this section, a captive company, other than a protected cell captive company, shall not be required to pay aggregate taxes that exceed one hundred thousand dollars in any one tax year.

5. Two or more captive companies under common ownership and control shall be taxed as a single captive company. For the purposes of this subsection, *"common ownership and control"* means either of the following:

a. In the case of a stock corporation, the direct or indirect ownership of eighty percent or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders.

b. In the case of a mutual insurer, the direct or indirect

ownership of eighty percent or more of the surplus, and the voting power of two or more insurers, by the same member or members.

6. Only the branch business of a branch captive company shall be subject to taxation under this section.

7. The tax provided for in this section shall be calculated on an annual basis notwithstanding a policy or a contract of insurance, or a contract of reinsurance, that is issued on a multiyear basis. In the case of a multiyear policy or a multiyear contract, the premium shall be prorated for the purpose of calculating the appropriate tax.

Sec. 2. Section 507C.3, Code 2023, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Captive companies under chapter 521J.

Sec. 3. NEW SECTION. **521J.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. *"Affiliated company"* means a company that is in the same corporate system as a parent, an industrial insured, or a member based on common ownership, control, operation, or management.

2. *"Association"* means a legal entity comprised of sole proprietorships or of business entities that has been in continuous existence for a minimum of one consecutive year, unless the one-year requirement is waived by the commissioner, and all of the members collectively, or the legal entity itself, meets either of the following requirements:

a. Owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive company incorporated as a stock insurer; or has complete voting control over an association captive company incorporated as a mutual insurer; or constitutes all of the subscribers of an association captive company formed as a reciprocal insurer.

b. Owns, controls, or holds with power to vote all of the outstanding ownership interests of an association captive

company organized as a limited liability company.

3. *"Association captive company"* means an insurance company that insures risks of the association's members and the risks of the association's affiliated companies of members.

4. *"Branch business"* means any insurance business transacted by a branch captive company in this state.

5. *"Branch captive company"* means a foreign captive company authorized by the commissioner by rule to transact the business of insurance in this state through a business entity with a principal place of business in this state.

6. *"Branch operations"* means any business operations of a branch captive company.

7. *"Business entity"* means a corporation, a limited liability company, or other legal entity formed by an organizational document. *"Business entity"* does not include a sole proprietor.

8. *"Captive company"* means any pure insurance company, association captive company, protected cell captive company, special purpose captive company, or industrial insured captive company formed or authorized under this chapter.

9. *"Captive reinsurance company"* means a captive insurance company in this state, as authorized by the commissioner by rule, that reinsures the risk ceded by any other insurer.

10. *"Captive risk retention group"* means a captive insurance risk retention group formed under this chapter and that is subject to chapter 515E.

11. *"Cash equivalent"* means any short-term, highly liquid investment with an original maturity of three months or less that is all of the following:

a. Readily convertible to known amounts of cash.

b. Close enough to maturity that the investment presents insignificant risk of change in value if interest rates fluctuate.

12. *"Commissioner"* means the commissioner of insurance.

13. *"Controlled unaffiliated business entity"* means a

business entity or sole proprietorship that meets all of the following requirements:

a. The business entity or sole proprietorship is not in a parent's corporate system that consists of the parent and any affiliated companies.

b. The business entity or sole proprietorship has an existing, controlling contractual relationship with the parent or an affiliated company.

c. The business entity's or sole proprietorship's risks are managed by a pure captive insurance company.

14. *"Excess workers' compensation insurance"* means, for an employer that has insured or self-insured the employer's workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per-incident or aggregate limit as established by the commissioner by rule.

15. *"Foreign captive company"* means a captive insurance company formed under the laws of a jurisdiction other than this state.

16. *"Industrial insured"* means an insured that meets all of the following requirements:

a. The insured procures the insurance of any risk by use of the services of a full-time employee acting as an insurance manager or buyer.

b. The insured's aggregate annual premiums for insurance on all risks are at least twenty-five thousand dollars.

c. The insured employs a minimum of twenty-five full-time employees.

17. *"Industrial insured captive company"* means an insurance company that insures the risks of the industrial insureds that is comprised of the industrial insured group and the industrial insured group's affiliated companies.

18. *"Industrial insured group"* means a group that meets either of the following requirements:

a. The group collectively owns, controls, or holds with the power to vote all of the outstanding voting securities of

an industrial insured captive company incorporated as a stock insurer; or has complete voting control over an industrial insured captive company incorporated as a mutual insurer.

b. The group is a captive risk retention group.

19. *"Member"* means a sole proprietorship or a business entity that belongs to an association.

20. *"Mutual insurer"* means a business entity that does not have capital stock, and that has a governing body elected by the insurer's policyholders.

21. *"Organizational document"* means articles of incorporation, articles of organization, a subscribers' agreement, a charter, or any other document that can legally establish a business entity in this state.

22. *"Parent"* means a sole proprietorship, a business entity, or an individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting securities of a captive company.

23. *"Participant"* means a sole proprietorship or a business entity and any affiliates that are insured by a protected cell captive company and whose losses are limited by a participant contract.

24. *"Participant contract"* means a contract by which a protected cell captive company insures the risks of a participant and limits the losses of each participant in the contract to the participant's share of the assets of one or more protected cells as identified in the participant contract.

25. *"Protected cell"* means a separate account established by a protected cell captive company formed or authorized under this chapter, in which an identified pool of assets and liabilities are segregated and insulated, as provided in section 521J.17, from the remainder of the protected cell captive company's assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive company with respect to the participants.

26. "*Protected cell assets*" means all assets, contract rights, and general intangibles identified and attributable to a specific protected cell of a protected cell captive company.

27. "*Protected cell captive company*" means a captive company that meets all of the following requirements:

a. The minimum legally required capital and surplus of the company is provided by one or more sponsors.

b. The company is formed or authorized under this chapter.

c. The company insures the risks of separate participants through participant contracts.

d. The company funds the company's liability to each participant through one or more protected cells, and segregates the assets of each protected cell from the assets of other protected cells, and from the assets of the protected cell captive company's general account.

e. The company is incorporated or formed as a limited liability company.

28. "*Protected cell liabilities*" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell captive company.

29. "*Public records*" means the same as defined in section 22.1.

30. "*Pure captive company*" means an insurance company that insures the risks of the company's parent and the parent's affiliated companies, and the risks of controlled unaffiliated business entities.

31. "*Series of members*" means a group or collection of members of a limited liability company who share interests and who have separate rights, powers, or duties with respect to property, obligations, or profits and losses associated with property or obligations and who are specified in the articles of organization or operating agreement of the limited liability company, or that are specified by one or more members or managers of the limited liability company or other persons as provided in the articles of organization or operating

agreement.

32. *"Sole proprietorship"* means an individual who does business in a noncorporate form.

33. *"Special purpose captive company"* means a captive company that is formed or authorized under this chapter that does not meet the definition of any other type of captive company as defined in this section, or that is formed by, on behalf of, or for the benefit of a political subdivision of this state.

34. *"Sponsor"* means an entity that meets the requirements of sections 521J.17 and 521J.18, and that is approved by the commissioner to do all of the following:

a. Provide all or part of the capital and surplus required of a protected cell captive company by applicable law.

b. Organize and operate a protected cell captive company.

Sec. 4. NEW SECTION. **521J.2 Certificate of authority.**

1. If permitted by its organizational document, a captive company may apply to the commissioner for a certificate of authority to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, health insurance, or a group health plan, with the following exceptions:

a. A pure captive company shall not insure any risks other than those of the company's parent and affiliated companies, and of the company's controlled unaffiliated business entities.

b. An industrial insured captive company shall only insure risks of the industrial insured company, comprised of the industrial insured group and the industrial insured group's affiliated companies.

c. An association captive company shall not insure any risks other than those of the members or affiliated companies of members.

d. A special purpose captive company shall not provide insurance or reinsurance for risks unless approved by the commissioner.

e. A captive company or a branch captive company shall not do any of the following:

(1) Provide personal lines of insurance, including but not limited to motor vehicle insurance, homeowner's insurance, or any component of motor vehicle insurance or homeowner's insurance.

(2) Accept or cede reinsurance except as established by the commissioner by rule.

(3) Provide health insurance coverage or a group health plan unless the captive company or the branch captive company is providing the health insurance coverage or the group health plan only for the parent company and the parent company's affiliated companies.

(4) Write workers' compensation insurance on a direct basis.

f. A protected cell captive company shall not insure any risks other than those of the protected cell captive company's participants.

2. A captive company shall not write any insurance business unless the captive company complies with all of the following:

a. The captive company first obtains a certificate of authority from the commissioner.

b. The captive company's board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one annual meeting in this state.

c. The captive company maintains its principal place of business in this state.

d. The captive company designates a registered agent to accept service of process, files the name and contact information and any subsequent changes regarding the registered agent with the commissioner, and agrees that if the registered agent cannot be found with reasonable diligence, the commissioner may act as an agent of the captive company with respect to any action or proceeding and may be served in

accordance with section 505.30.

3. *a.* Prior to receiving a certificate of authority, a captive company formed as a business entity shall do all of the following:

(1) File with the commissioner a certified copy of the business entity's organizational documents, a statement under oath of an officer of the business entity showing the business entity's financial condition, and any other statement or document required by the commissioner as established by rule.

(2) Submit a description of coverages, deductibles, coverage limits, and rates to the commissioner for approval.

(3) Provide a statement to the commissioner that describes all of the following:

(a) The character, reputation, and financial standing of the organizers of the business entity.

(b) The character, reputation, financial responsibility, insurance experience, and business qualifications of all officers, directors, and managing members of the business entity.

(c) Any other information required by the commissioner as established by rule.

b. If there is a subsequent material change in the information provided to the commissioner under paragraph "*a*", the captive company shall submit appropriate supporting documentation to the commissioner for approval. The captive company shall not offer any additional lines of insurance until on or after the date on which the commissioner approves the supporting documentation. The captive company shall inform the commissioner of any change in rates within thirty calendar days of the captive company's adoption of a change in rate.

c. In addition to the information required under paragraphs "*a*" and "*b*", each applicant captive company shall file with the commissioner evidence of all of the following:

(1) The amount and liquidity of the captive company's assets relative to the risks to be assumed by the captive company.

(2) The adequacy of the expertise, experience, and character of the persons who will manage the captive company.

(3) The overall soundness of the captive company's plan of operation.

(4) The adequacy of the loss prevention program of the captive company's parent, members, or industrial insureds, as applicable.

(5) Any other factors deemed relevant as established by the commissioner by rule to ascertain if the proposed captive company will be able to meet the company's policy obligations.

d. In addition to the information required under paragraph *"a"*, each applicant that is a protected cell captive company shall file with the commissioner all of the following:

(1) A business plan that demonstrates at a level of detail deemed sufficient by the commissioner how the applicant will account for the loss and expense experience of each protected cell, and how the applicant will report the loss and expense experience to the commissioner.

(2) A statement that acknowledges that all financial records of the protected cell captive company, including records pertaining to any protected cells, shall be made available, upon request, for inspection or examination by the commissioner or the commissioner's designated agent.

(3) A copy of each participant contract.

(4) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

e. In addition to the requirements of paragraph *"a"*, a captive company formed as a reciprocal insurer shall file with the commissioner a certified copy of the power of attorney of the reciprocal insurer's attorney-in-fact, a certified copy of the reciprocal insurer's subscribers' agreement, a statement under oath of the reciprocal insurer's attorney-in-fact that shows the reciprocal insurer's financial condition, and any other statements or documents required by the commissioner as established by rule.

f. All documents and information submitted pursuant to this subsection shall be confidential and shall not be made public without the advance written consent of the submitting company, with the following exceptions:

(1) The documents and information shall be discoverable by a party in a civil action or in a contested case to which the captive company that submitted the information is a party upon a showing by the party seeking to discover the information that the information sought is relevant to, and necessary for, the furtherance of the action or case; the information sought is unavailable from other nonconfidential sources; and a subpoena issued by a judicial or an administrative officer has been submitted to the commissioner.

(2) The commissioner may, in the commissioner's discretion, disclose the documents and information to a public official having jurisdiction over the regulation of insurance in another state, or to a public official of the federal government, provided that the public official agrees in writing to maintain the confidentiality of the information, and that the laws of the state in which the public official serves require that the information remain confidential.

4. *a.* Each captive company, individual series of members of a limited liability company, and protected cell shall pay to the commissioner a nonrefundable fee of two hundred dollars for the examination, investigation, and processing of its application for a certificate of authority. The commissioner shall be authorized to retain legal, financial, and examination services from outside the department as necessary for review of the application, the reasonable cost of which may be charged to the applicant.

b. (1) Chapter 507 shall apply to examinations conducted under this chapter.

(2) Each captive insurance company, each individual series of members of a limited liability company, and each protected cell shall pay an initial registration fee, and an annual

renewal registration fee, of three hundred dollars.

5. If the commissioner is satisfied with the documents and statements that an applicant captive company has filed in compliance with this chapter, and the applicable provisions of Title XII, subtitle 1, the commissioner may grant a certificate of authority to the captive company that permits the company to do the business of insurance in this state. The certificate of authority may be renewed if the applicant is in compliance with this chapter and the certificate must be renewed annually.

Sec. 5. NEW SECTION. **521J.3 Captive companies — names.**

A captive company shall not adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name already registered in this state.

Sec. 6. NEW SECTION. **521J.4 Minimum capital and surplus requirements.**

1. The commissioner shall not issue a certificate of authority to a captive company unless the captive company possesses and maintains unimpaired paid-in capital and surplus that meets the following requirements:

a. Is not less than two hundred fifty thousand dollars for a pure captive company.

b. Is not less than five hundred thousand dollars for an industrial insured captive company, including a captive risk retention group.

c. Is not less than five hundred thousand dollars for an association captive company.

d. Is an amount as determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured, for a special purpose captive company.

e. Is not less than five hundred thousand dollars for a protected cell captive company. If, however, the protected cell captive company does not assume any risks, the risks

insured by the protected cells are homogenous, and if there are not more than ten cells, the commissioner may reduce the amount to an amount not less than two hundred fifty thousand dollars.

f. Is not less than the applicable amount of capital and surplus required in paragraphs "*a*" through "*e*", as determined based upon the organizational form of the foreign captive company, for a branch captive company. The minimum capital and surplus shall be jointly held by the commissioner and the branch captive company in a bank of the federal reserve system as approved by the commissioner by rule.

g. Is not less than fifty percent of the capital required for that type of captive company for a captive reinsurance company.

2. The commissioner may require additional capital and surplus for a captive company under subsection 1 based upon the type, volume, and nature of the insurance business transacted by the captive company.

3. The capital and surplus required under subsection 1 and subsection 2, if applicable, shall be in the form of cash, cash equivalent, or an irrevocable letter of credit on a form as prescribed by the commissioner by rule and as issued by a bank chartered by the state of Iowa, a member bank of the federal reserve system, or a bank chartered by another state if approved by the commissioner.

Sec. 7. NEW SECTION. **521J.5 Captive companies — formation.**

1. A captive company must be formed or organized as a business entity as provided under this chapter.

2. An association captive company, or an industrial insured captive company, shall be formed or organized in one of the following ways:

a. Incorporated as a stock insurer with the stock insurer's capital divided into shares and held by the stockholders.

b. Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of the mutual insurer's association or associations.

c. Organized as a reciprocal insurer as permitted by the commissioner by rule.

d. Organized as a manager-managed limited liability company.

3. A captive company incorporated or organized in this state shall be incorporated or organized by at least one incorporator or organizer who is a resident of this state.

4. The capital stock of a captive company incorporated as a stock insurer may be authorized with no par value.

5. *a.* At least one of the members of the board of directors of a captive company shall be a resident of this state. A captive risk retention group shall have a minimum of five directors.

b. A captive company formed as a limited liability company shall have at least one manager who is a resident of the state. A captive risk retention group formed as a limited liability company shall not be required to have a manager who is a resident of this state; however, the company shall maintain a board of directors of which at least one board member shall be a resident of this state.

c. A reciprocal insurer shall have at least one member of the subscribers' advisory committee who is a resident of this state. A captive risk retention group formed as a reciprocal insurer shall have a minimum of five members of the subscribers' advisory committee who are residents of this state.

6. *a.* A captive company formed as a corporation or another business entity shall have the privileges of, and shall be subject to, state laws governing corporations or other business entities, and the applicable provisions of this chapter.

b. In the event of a conflict between a state law governing corporations or other business entities and this chapter, this chapter shall control.

7. *a.* A subscribers' agreement, or other organizing document of a captive company formed as a reciprocal insurer, shall authorize a quorum of a subscribers' advisory committee

to consist of at least one-third of the number of members on the advisory committee.

b. In addition to this chapter, a captive risk retention group shall be subject to chapter 515E. In the event of a conflict between chapter 515E and this chapter, this chapter shall prevail.

8. Except as provided in section 521J.11, applicable provisions of chapter 508B shall apply to a merger, consolidation, conversion, mutualization, or voluntary dissolution by a captive company.

9. *a.* A foreign captive company must apply to the secretary of state for a certificate of authority for the foreign captive company's branch captive company to transact business in this state.

b. A branch captive company established under this chapter to write, in this state, only insurance or reinsurance of the employee benefit business of the branch captive company's parent and affiliated companies shall be subject to the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq.

c. A branch captive company shall not do any insurance business in this state unless the branch captive company maintains the principal place of business for the company's branch operations in this state.

Sec. 8. NEW SECTION. **521J.6 Dividends.**

1. A captive company shall not pay a dividend out of, or other distribution with respect to, the minimum capital or surplus required under section 521J.4 without the prior written approval of the commissioner.

2. The commissioner's approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon retention, at the time of each payment, of capital surplus in excess of the amounts specified by, or determined in accordance with, a formula as approved by the commissioner by rule.

Sec. 9. NEW SECTION. **521J.7 Reports.**

1. A captive company shall be required to file an annual report with the commissioner under the following circumstances:

a. Except as provided in paragraph *"b"*, on or before April 1 of each year, each captive company and each captive risk retention group shall submit to the commissioner a report on the company's financial condition, in a form and manner as prescribed by the commissioner by rule, and as verified by oath of two of the company's or group's executive officers.

b. A captive company, other than a captive risk retention group, may apply to the commissioner to file the report required under paragraph *"a"* on a fiscal year-end basis. If the commissioner grants the captive company an alternative reporting date, the company shall comply with all of the following requirements:

(1) Subject to subparagraph (2), the report shall be filed no later than ninety calendar days after the close of the company's fiscal year.

(2) A report covering the immediately preceding calendar year shall be filed with the commissioner prior to April 1 of each year to provide sufficient information to support the captive company's premium tax return under section 432.1A.

c. Each captive company shall use generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, for the company's report. The report may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if acceptable to the commissioner.

d. On or before April 1 of each year, each branch captive company shall submit to the commissioner a copy of all reports required to be filed under the laws of the branch captive company's domiciliary jurisdiction, and as verified by oath of two of the branch captive company's executive officers. If the commissioner is satisfied that the annual report filed by the

foreign branch captive company in the company's domiciliary jurisdiction provides adequate information concerning the financial condition of the branch captive company, the commissioner may waive the requirement for completion of the branch captive insurance company's annual statement for business written in the foreign jurisdiction.

2. All reports filed pursuant to this section shall be considered confidential and shall not be a public record under chapter 22.

Sec. 10. NEW SECTION. **521J.8 Examinations.**

1. *a.* Except for captive risk retention groups as provided under paragraph "*b*", the commissioner may examine the affairs, transactions, accounts, records, and assets of each captive company as the commissioner deems necessary.

b. The commissioner shall examine the affairs, transactions, accounts, records, and assets of each captive risk retention group as the commissioner deems necessary, but no less frequently than every three calendar years.

2. A report produced pursuant to the examination of a captive risk retention group under this section shall be a public record.

3. Except as provided in subsection 4, this section shall apply to all business written by a captive company.

4. A branch captive company examination shall only be conducted on the branch business and branch operations if the branch captive company has satisfied the requirements of section 521J.7, subsection 1, paragraph "*d*", to the satisfaction of the commissioner.

5. As a condition of authorization of a branch captive company, the foreign captive company shall grant authority to the commissioner for examination of the affairs of the foreign captive company in the foreign captive company's domiciliary jurisdiction.

6. The applicable provisions of chapter 507 shall apply to examinations conducted under this chapter.

Sec. 11. NEW SECTION. **521J.9 Suspension or revocation.**

1. A captive company's certificate of authority to conduct the business of insurance in this state may be suspended by the commissioner for any of the following reasons:

a. Insolvency or impairment of capital or surplus.

b. Failure to meet and maintain the minimum capital and surplus requirements under section 521J.4.

c. Refusal or failure to submit an annual report pursuant to section 521J.7, or to submit any other report or statement required by law or by lawful order of the commissioner.

d. Failure to comply with the captive company's own charter, bylaws, or other organizational document.

e. Failure to submit to an examination as required under section 521J.8.

f. Use of methods that render the captive company's operation detrimental, or the company's condition unsound, with respect to the public or to the company's policyholders.

g. Failure to pay tax on premiums as required under chapter 432.1A.

h. Failure to comply with applicable laws of this state.

2. *a.* If the commissioner finds upon examination, hearing, or other review that a captive company has committed an act specified in subsection 1, the commissioner may suspend or revoke the company's certificate of authority if the commissioner deems it in the best interest of the public or of the policyholders of the captive company.

b. If the commissioner does not revoke a captive company's certificate of authority during a suspension imposed by the commissioner under paragraph "*a*", the company's certificate of authority may be reinstated if the commissioner finds that the cause of the suspension has been rectified.

Sec. 12. NEW SECTION. **521J.10 Excess workers' compensation insurance.**

1. A captive company may provide excess workers' compensation insurance to the captive company's parent and

affiliated companies unless the laws of the state that has jurisdiction over the transaction prohibits the captive company from providing excess workers' compensation insurance.

2. A captive company may reinsure workers' compensation of a qualified self-insured plan of the captive company's parent and affiliated companies.

Sec. 13. NEW SECTION. **521J.11 Captive mergers.**

1. A merger between captive stock insurers, or a merger between captive mutual insurers, shall meet the requirements of chapter 521 and section 521J.5, as applicable. The commissioner may, at the commissioner's discretion, provide notice to the public of a proposed merger prior to approval or disapproval of a merger.

2. An association captive company, or an industrial insured group formed as a stock insurer or as a mutual insurer, may be converted to or merged with a reciprocal insurer under this section.

3. A plan for conversion or merger shall meet all of the following requirements:

a. (1) The plan shall be fair and equitable to the shareholders in the case of a stock insurer, or to the policyholders in the case of a mutual insurer.

(2) The plan shall provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer, or of the policyholder interests of any nonconsenting policyholder of a mutual insurer.

b. A plan for conversion to a reciprocal insurer must be approved by the commissioner. The commissioner shall not approve a plan unless the plan meets all of the following requirements:

(1) The plan provides for a hearing upon notice to the insurer, directors, officers, and stockholders or policyholders who have the right to appear at the hearing, unless the commissioner waives or modifies the requirements for the hearing.

(2) (a) In the case of a stock insurer, the plan provides for the conversion of the existing stockholder interests into subscriber interests in the resulting reciprocal insurer proportionate to the existing stockholder interests, and is approved by a majority of the shareholders who are entitled to vote and who are represented at a regular or special meeting at which a quorum is present either in person or by proxy.

(b) In the case of a mutual insurer, the plan provides for the conversion of the existing policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to the existing policyholder interests, and is approved by a majority of the voting interests of the policyholders who are represented at a regular or special meeting at which a quorum is present either in person or by proxy.

(3) The plan meets the applicable requirements of section 521J.5.

c. If the commissioner approves a plan of conversion, the certificate of authority for the converting insurer shall be amended to state that the converting insurer is a reciprocal insurer. The conversion shall be effective and the corporate existence of the converting entity shall cease to exist on the date on which the amended certificate of authority is issued to the attorney-in-fact for the reciprocal insurer. The resulting reciprocal insurer shall file the articles of merger or the articles of conversion with the secretary of state.

Sec. 14. NEW SECTION. **521J.12 Captive insurance regulatory and supervision account.**

1. A captive insurance regulatory and supervision account is established in the state general fund under the control of the division and moneys in the account shall be used to provide the financial means for the division to administer this chapter, and for the reimbursement of reasonable expenses incurred by the division to promote captive insurance in this state.

2. All fees, assessments, fines, and administrative penalties collected under this chapter shall be deposited in the captive insurance regulatory and supervision account.

3. All payments from the captive insurance regulatory and supervision account that are made for the maintenance of staff and associated expenses, including necessary contractual services, shall only be disbursed from the state treasury upon a warrant issued by the commissioner, after receipt by the commissioner of proper documentation regarding services rendered and expenses incurred.

4. The balance in the captive insurance regulatory and supervision account at the end of each fiscal year shall revert to the general fund.

Sec. 15. NEW SECTION. **521J.13 Legal investments.**

1. *a.* Industrial insured captive companies, association captive companies, and captive risk retention groups shall comply with investment requirements as established by the commissioner by rule. The commissioner may approve the use of alternative reliable methods of valuation and rating.

b. If a captive company's admitted assets total less than five million dollars, the commissioner may approve an investment of up to twenty percent of the captive company's admitted assets in rated credit instruments in any one investment that meets the requirements as established by the commissioner by rule.

2. A pure captive company, or a protected cell captive company, shall not be subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the pure captive company.

3. Any captive company may make loans to any of the captive company's affiliates with prior written approval of the commissioner, and each loan must be evidenced by a note in a form as approved by the commissioner by rule. Loans made from minimum capital and surplus funds required by section 521J.4

are prohibited.

Sec. 16. NEW SECTION. **521J.14 Reinsurance.**

1. Subject to the prior approval of the commissioner, a captive company may provide reinsurance on risks ceded by any other insurer.

2. Any captive company may take credit for reserves on risks, or portions of risks, ceded to reinsurers as provided under chapter 521B.

Sec. 17. NEW SECTION. **521J.15 Rating organizations.**

A captive company shall not be required to join a rating organization.

Sec. 18. NEW SECTION. **521J.16 Compulsory organizations.**

A captive company shall not join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state; and a captive company, a captive company's insureds, a captive company's parent, any company affiliated with a captive company, and any member of an association shall not receive any benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive company.

Sec. 19. NEW SECTION. **521J.17 Protected cell captive companies.**

1. One or more sponsors may form a protected cell captive company.

2. A protected cell captive company formed or authorized under this chapter shall be subject to all of the following requirements:

a. (1) A protected cell captive company may establish one or more protected cells subject to the prior written approval of the commissioner of a plan of operation submitted by the protected cell captive company for each protected cell. The plan of operation shall include but is not limited to the specific business objectives and investment guidelines of the protected cell.

(2) Upon the commissioner's approval of the protected cell

captive company's plan of operation, the company, in accordance with the approved plan of operation, may attribute insurance obligations with respect to its insurance business to the protected cell.

(3) A protected cell captive company shall transfer all assets attributable to a protected cell to one or more separately established and separately identified protected cell accounts bearing the name or designation of that protected cell. Each protected cell shall have a distinct name or designation that must include the words "protected cell". Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of the specific protected cell.

(4) Each protected cell must be incorporated. An incorporated protected cell may be organized and operated in any form of business organization as authorized by the commissioner by rule. Each protected cell of a protected cell captive company shall be treated as a captive insurance company under this chapter, except that the limit on maximum yearly aggregate taxes paid under section 432.1A, subsection 4, shall not apply. Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive company, each protected cell of the protected cell captive company must have the same directors, secretary, and registered office as the protected cell captive company.

b. All attributions of assets and liabilities between a protected cell and the protected cell captive company's general account shall be in accordance with the plan of operation and the participant contracts as approved by the commissioner. No other attribution of assets and liabilities shall be made by a protected cell captive company between the protected cell captive company's general account and the company's protected cells. Any attribution of assets and liabilities between the general account and a protected cell shall be in cash or in readily marketable securities with established market values.

c. The establishment of a protected cell shall create, with respect to that protected cell, a legal person separate from the protected cell captive company. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, shall be owned by the protected cell and the protected cell captive company shall not be a trustee, or hold itself out to be a trustee, with respect to the protected cell assets of that protected cell account. A protected cell captive company may allow for a security interest to attach to protected cell assets or to a protected cell account if the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

d. A protected cell captive company may contract with or arrange for an investment adviser, commodity trading adviser, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are paid from the protected cell assets of that protected cell, and not from the protected cell assets of other protected cells or the assets of the protected cell captive company's general account.

e. (1) A protected cell captive company shall establish the administrative and accounting procedures necessary to properly identify each protected cell of the protected cell captive company, and the protected cell assets and protected cell liabilities attributable to each protected cell. The directors of a protected cell captive company shall do all of the following:

(a) Maintain the assets and liabilities of protected cells separately, and separately identifiable, from the assets and liabilities of the protected cell captive company's general account.

(b) Maintain protected cell assets and protected cell liabilities attributable to one protected cell separate, and separately identifiable, from protected cell assets and

protected cell liabilities attributable to another protected cell.

(2) If a protected cell captive company fails to comply with subparagraph (1), the remedy of tracing shall be applicable to protected cell assets commingled with protected cell assets of other protected cells, or commingled with the assets of the protected cell captive company's general account. The remedy of tracing shall not be the exclusive remedy.

f. When establishing a protected cell, a protected cell captive company shall attribute assets with a value at least equal to the reserves attributed to that protected cell to the protected cell.

3. Each protected cell shall be accounted for separately on the books and records of the protected cell captive company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or as required by the commissioner by rule.

4. The assets of a protected cell shall not be chargeable with liabilities arising from any other insurance business of the protected cell captive company.

5. A sale, exchange, or other transfer of assets shall not be made by a protected cell captive company among any of the company's protected cells without the consent of the participants of each affected protected cell.

6. A sale, exchange, transfer of assets, dividend, or distribution shall not be made from a protected cell to a sponsor or to a participant without the commissioner's prior written approval, which shall not be given if the sale, exchange, transfer, dividend, or distribution will result in the insolvency or impairment of the protected cell.

7. A protected cell captive company shall annually file with the commissioner any financial reports required by the commissioner as established by rule, and shall include, without

limitation, accounting statements detailing the finances of each protected cell.

8. A protected cell captive company shall notify the commissioner in writing within twenty business days from the date that a protected cell has become impaired or insolvent, or is otherwise unable to meet its claim or expense obligations.

9. A participant contract shall not take effect without the commissioner's prior written approval.

10. An addition of any new protected cell, or the withdrawal of any participant of an existing protected cell, shall constitute a change in the business plan of the protected cell captive company and the change shall not become effective without the prior written approval of the commissioner.

11. With respect to each protected cell, business written by a protected cell captive company shall be fronted by an insurance company authorized under the laws of any state, or as approved by the commissioner.

12. If a protected cell captive company's business is reinsured, with respect to each protected cell, the protected cell captive company shall comply with at least one of the following requirements:

a. The business shall be reinsured by a reinsurer authorized or approved by the commissioner.

b. The business shall be secured by a trust fund that is located in the United States for the benefit of policyholders and claimants, and which is funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and that is subject to all of the following:

(1) The amount of security provided by the trust fund shall not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell.

(2) The commissioner may require the protected cell captive company to increase the funding of any trust.

(3) If the form of security in the trust is a letter of credit, the letter of credit shall be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if the bank is approved by the commissioner.

(4) The commissioner shall approve the form and terms of the trust and trust instrument.

Sec. 20. NEW SECTION. **521J.18 Sponsors — qualifications.**

A sponsor of a protected cell captive company must be an insurer authorized under the laws of any state, a reinsurer authorized under the laws of any state, a captive insurance company formed or authorized under this chapter, an insurance producer licensed in this state and approved by the commissioner, or any other person approved by the commissioner.

Sec. 21. NEW SECTION. **521J.19 Delinquency.**

If delinquency proceedings are initiated against a protected cell captive company, the assets of a protected cell shall not be used to pay any expenses other than those attributable to the protected cell, and the capital and surplus of the protected cell captive company shall be available at all times to pay expenses of, or claims against, the protected cell captive company.

Sec. 22. NEW SECTION. **521J.20 Participants.**

Individuals, business entities, and sponsors may be a participant in a protected cell captive company. A participant shall not be required to be a shareholder of a protected cell captive company or of the protected cell captive company's affiliate.

Sec. 23. NEW SECTION. **521J.21 Investments — combined assets.**

The assets of two or more protected cells may be combined for the purpose of investment by a protected cell captive company, and combining the protected cells' assets shall not

be construed as defeating the segregation of the assets for accounting or any other purpose.

Sec. 24. NEW SECTION. **521J.22 Dormant captive companies.**

1. As used in this section, *"dormant captive company"* means a captive company, other than a captive risk retention group, that meets all of the following:

a. The captive company has ceased transacting the business of insurance, including the issuance of insurance policies.

b. The captive company does not have any remaining liabilities associated with its insurance business transactions or insurance policies issued prior to the captive company's filing of an application for a certificate of dormancy under subsection 2.

2. Any captive company that is domiciled in this state and that complies with this section may apply to the commissioner for a certificate of dormancy. A certificate of dormancy shall be subject to expiration on or after five calendar years from the date that the certificate is issued, and the commissioner shall not renew a certificate of dormancy.

3. *a.* A captive company that has been issued a certificate of dormancy shall comply with all of the following:

(1) The dormant captive company shall possess and maintain unimpaired, paid-in capital and surplus of not less than twenty-five thousand dollars.

(2) Within ninety calendar days of the dormant captive company's fiscal year end, the company shall annually submit to the commissioner a report on the company's financial condition, verified by oath of two of the company's executive officers, in the form and manner as established by the commissioner by rule.

(3) The dormant captive company shall pay a one thousand dollar dormancy tax, due annually on or before March 1, if for any portion of the immediately preceding calendar year the captive company held a certificate of dormancy. Each series of members and each protected cell shall be considered separate for purposes of paying the annual dormancy tax under

a certificate of dormancy. A dormant captive company is not otherwise liable for any annual renewal as provided in section 521J.2, subsection 4, paragraph "*b*", subparagraph (2).

b. A dormant captive insurance company that has been issued a certificate of dormancy shall not be subject to or liable for the payment of tax under section 432.1A, or be subject to examination under section 521J.8, from the date the certificate is issued through the date the certificate expires.

4. Prior to a dormant captive company issuing an insurance policy, the dormant captive company shall apply to the commissioner for approval to surrender the company's certificate of dormancy and to resume conducting the business of insurance.

5. A dormant captive company's certificate of dormancy shall be revoked if the company violates this section.

Sec. 25. NEW SECTION. **521J.23 Workers' compensation — compliance with state and federal laws.**

This chapter shall not be construed to exempt a captive company, a captive company's parent, or a captive company's affiliated companies from compliance with applicable state and federal laws governing workers' compensation insurance.

Sec. 26. NEW SECTION. **521J.24 Rules.**

The commissioner shall adopt rules pursuant to chapter 17A to implement and administer the provisions of this chapter.

Sec. 27. FUTURE REPEAL. Chapter 521G, Code 2023, is repealed effective January 1, 2025.

Sec. 28. APPLICABILITY. The following applies January 1, 2025, to protected cell captive companies formed, authorized, or continued on or after that date:

The section of this Act enacting section 521J.17.