ENROLLED ORIGINAL

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To enact a new captive insurance company act to permit the chartering and operation of captive insurance companies in the District of Columbia; to provide for the licensing and regulation of captive insurers; to authorize the creation of segregated accounts; to establish minimum amounts of capital and surplus that must be maintained by a captive insurer; to establish the investments that captive insurers are permitted to make, governing reinsurance transactions; to provide for a premium tax; to establish minimum requirements for transacting business; to require the filing of an annual financial report; to authorize the Commissioner of the Department of Insurance, Securities, and Banking to perform financial examinations; to grant enforcement authority governing insolvency proceedings and redomestications of captive insurers; to exempt licensed captive insurers from certain taxes; to authorize the Commissioner to adopt regulations; to repeal the Captive Insurance Company Act of 2000 and to provide transition provisions; to amend the Insurance Regulatory Trust Fund Act of 1993 to establish an account within the Insurance Regulatory Trust Fund for the purpose of funding the expenses of the captive insurance activities of the Department in the discharge of all of its administrative, regulatory, and marketing functions under this act; and to amend the Risk Retention Act of 1993 to provide that a risk retention group shall be chartered as an association captive insurer and shall be subject to this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Captive Insurance Company Act of 2004".

Sec. 2. Definitions.

For the purposes of this act, the term:

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

(2) "Agency captive insurer" means a captive insurer that is owned by an insurance agency or brokerage and that only insures risks of policies that are placed by or through the agency or brokerage.

(3) "Alien captive insurer" means any non-U.S. insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a foreign country that imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in the jurisdiction.

(4) "Association" means a legal entity consisting of 2 or more individuals, corporations, partnerships, associations, or other forms of business organization.

(5) "Association captive insurer" means a captive insurer that only insures risks of the member organizations of an association and the affiliated companies of those members, including groups formed pursuant to the Product Liability Risk Retention Act of 1981, approved September 25, 1981 (95 Stat. 949; 15 U.S.C. § 3901 *et seq*.), and the employee benefit plans or trusts of such organizations or companies.

(6) "Branch business" means any insurance business transacted by a branch captive insurance company in the District.

(7) "Branch captive insurer" means any alien captive insurer licensed by the Commissioner to transact the business of insurance in the District through a business unit with a principal place of business in the District.

(8) "Branch operations" means any business operations of a branch captive insurer in the District.

(9) "Captive insurer" means any insurer that insures the risks of its parent or affiliated companies of its parent, any member organizations of an association and the affiliated companies of the member organizations, or any other policyholders or participants that have entered into a contractual relationship with the insurer for the purchase of insurance, including any pure captive insurer, association captive insurer, agency captive insurer, segregated account captive insurer, and rental captive insurer licensed pursuant to this act.

(10) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(11) "Common ownership and control" means:

(A) In the case of a stock insurer, the direct or indirect ownership of 51% or more of the voting stock of 2 or more corporations by the same member or members; and

(B) In the case of a mutual insurer, the direct or indirect ownership of 51% or more of the surplus and the voting power of 2 or more corporations by the same member or members.

(12) "Department" means the Department of Insurance, Securities, and Banking.

(13) "Excess workers' compensation insurance" means insurance in excess of the specified per-incident or aggregate limit, if any, established by:

(A) The Commissioner, if the insurance is being transacted in the District; or

(B) The chief regulatory officer for insurance in the jurisdiction in which the insurance is being transacted.

(14) "Member organization" means any individual, corporation, partnership, association, or other form of business organization that belongs to an association.

(15) "Mutual insurer" means an incorporated insurer without any issued and outstanding stock whose capital and surplus are owned by its policyholders.

(16) "Net direct premiums" means the direct premiums collected or contracted for on policies or contracts of insurance written by a captive insurer during the preceding calendar year, less the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(17) "Parent" means a corporation, partnership, association, or other form of business organization that directly or indirectly owns, controls, or holds power to vote more than 51% or more of the outstanding voting securities of a pure captive insurer.

(18) "Participant" means any individual or organization, and any affiliates thereof, that are insured by a segregated account captive insurer if the losses of the person are limited through a participant contract to the assets of a segregated account.

(19) "Participant contract" means a contract by which a segregated account captive insurer insures the risks of a participant and limits the losses of the participant to the assets of the segregated account.

(20) "Person" means any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, an association, joint stock company, trust, unincorporated organization, similar entity, or any combination of the foregoing.

(21) "Provisional certificate of authority" means a certificate of authority issued to a captive insurer that authorizes the captive insurer to engage in limited activities authorized by the Commissioner.

(22) "Pure captive insurer" means a captive insurer that only insures or reinsures risks of its parent and affiliated companies or controlled unaffiliated business. The parent of a pure captive insurer includes an employee benefit plan or trust.

(23) "Reciprocal insurer" includes an interinsurance exchange or a risk retention group as defined in section 2(12) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4101(12)).

(24) "Redomestication" means the transfer to the District of the insurance domicile of an authorized foreign or alien insurance company.

(25) "Rental captive insurer" means a captive insurer formed to enter into contractual agreements with policyholders or associations to offer some or all of the benefits of a program of captive insurance and that only insures risks of the policyholders or associations.

(26) "Segregated account" means a separate account established and maintained by any captive insurer:

(A) In which the minimum capital and surplus required by applicable law is provided by one or more persons;

(B) That is formed or licensed under the provisions of this act;

(C) That insures risks of separate participants through contract;

(D) That is comprised of one or more participants who are authorized to act on matters relating to the segregated account; and

(E) That segregates each participant's liability through one or more segregate accounts.

(27) "Stock insurer" means an incorporated insurer with issued and outstanding stock whose capital and surplus is owned by its stockholders.

Sec. 3. Authority to do business; prohibited activities.

(a) A captive insurer may be organized and operated in any form of business organization authorized by the Commissioner and may, pursuant to this act, transact any insurance or annuity business.

(b) Notwithstanding subsection (a) of this section, a captive insurer shall not:

(1) Directly provide personal motor vehicle or homeowners' insurance coverage, or any component thereof;

(2) Accept or cede reinsurance, except as otherwise provided in section 8;

(3) Insure any risks other than those of its parent and affiliated companies if it is a pure captive insurer;

(4) Insure any risks other than those of the member organizations of its association and the affiliated companies of the member organizations if it is an association captive insurer;

(5) Insure any risks other than those of the policies that are placed by or through the insurance agency or brokerage that owns the captive insurer if it is an agency captive insurer;

(6) Insure any risks other than those of the policyholders or associations that have entered into agreements with the rental captive insurer for the insurance of those risks if it is a rental captive insurer, and shall use a form approved by the Commissioner for these agreements;

(7) Provide excess workers' compensation insurance to its parent and affiliated companies if the transaction is prohibited by the laws of the state in which the insurance is transacted;

(8) Reinsure workers' compensation insurance provided pursuant to a program of self-funded insurance of its parent and affiliated companies unless:

(A) The parent or affiliated company which is providing the self-funded insurance is certified as a self-insured employer by the Commissioner, if the insurance is being transacted in the District; or

(B) The program of self-funded insurance is otherwise qualified pursuant to, or in compliance with, the laws of the state in which the insurance is transacted; or

(9) Write insurance or reinsurance for employee benefits that are subject to the provisions of the provisions of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 832; 29 U.S.C. § 1001 *et seq.*), for any entity except its parent and affiliated companies.

(c) Notwithstanding subsections (a) and (b) of this section, the Commissioner may authorize a captive insurer that is otherwise qualified to conduct business in the District to engage in any activity in any form permitted by a captive insurer in any other jurisdiction.

(d) A captive insurer shall file with the Commissioner a written request to engage in any activity under subsection (c) of this section. The Commissioner shall approve the request within 30 days after receiving the request, unless the Commissioner determines that the activity will be harmful to the captive insurer's policyholders.

(e) For the purposes of this act, a branch captive insurer shall be deemed to be a pure captive insurer with respect to operations in the District, unless otherwise permitted by the Commissioner.

Sec. 4. Organizational requirements for transacting business; incorporation.

(a) A captive insurer may be organized in the District in any form of authorized by the Commissioner.

(b) The articles of incorporation or organizational documents of a captive insurer shall satisfy the following minimum requirements:

(1) The capital stock of a captive insurer incorporated as a stock insurer shall be issued at not less than par value;

(2) The captive insurer shall not have less than 2 incorporators or organizers;

(3) The articles of association, articles of incorporation, articles of organization, charter, or bylaws of a captive insurer shall require a quorum of the board of directors that consists of more than 1/3 of the number of directors prescribed by the articles of association, articles of incorporation, articles of organization (or equivalent organizational document), charter, or bylaws; and

(4) Any additional provisions that the Commissioner considers necessary.

(c) The Commissioner may, at the request of the captive insurer, issue a certificate of good standing and charge a fee for each certificate in an amount to be established by the Commissioner.

(d) An attorney-in-fact of a reciprocal captive insurer may be organized in the District in any form of business, including as an individual, authorized by the Commissioner.

(e) A captive insurer organized in the District shall have the privileges of, and shall be subject to, the provisions of general corporation law set forth in the District of Columbia Business Corporation Act, effective September 10, 1992 (D.C. Law 9-144; D.C. Official Code § 29-101.01 *et seq.*), the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 265; D.C. Official Code § 29-301.01 *et seq.*), and the Limited Liability Company Act of 1994, effective July 23, 1994 (D.C. Law 10-138; D.C. Official Code § 29-1001 *et seq.*), and the applicable provisions contained in this act. If the provisions of this act conflict with the general provisions of the acts codified in Title 29 of the District of Columbia Official Code, the provisions of this act shall control.

(f) The Commissioner may regulate the manager of a captive insurer.

Sec. 5. Segregated accounts.

(a) A captive insurer may form one or more segregated accounts to insure risks of one or more participants.

(b) A captive insurer that maintains a segregated account shall, at the time of paying the annual fee, pay an additional annual fee in an amount to be established by the Commissioner for each segregated account.

(c) A captive insurer may create one or more segregated accounts to segregate its assets and liabilities from the assets and liabilities of its segregated accounts. The assets and liabilities of each segregated account shall be held separately from the assets and liabilities of all other segregated accounts.

(d) A captive insurer shall be a single legal entity and each segregated account of or within a captive insurer may be established as a separate legal entity, which shall constitute a legal entity separate from the captive insurer. Each segregated account shall be separately identified or designated as being a part of the captive insurer.

(e) A captive insurer may create and issue shares in one or more classes or series for one or more segregated accounts. The proceeds of the issue shall be included in the assets of the segregated account that issued the shares.

(f) The proceeds of the issue of shares, other than segregated account shares, shall be included in the captive insurer's general assets.

(g) A captive insurer may pay a dividend on segregated account shares of any class or series whether or not a dividend is declared on any other class or series of segregated account shares, or any other shares.

(h) Segregated account dividends may be paid on the segregated account shares from the segregated account assets. The dividends shall only be paid to the shareholders of the segregated account from which the segregated account shares were issued and otherwise in accordance with the rights of the shares.

(i) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a segregated

account or accounts shall be executed by the captive insurer for and on behalf of such segregated account or accounts, shall be identified, and, if in writing, shall indicate that the execution is in the name of, or by or for the account of, the segregated account or accounts.

(j) If a captive insurer is in breach of subsection (i) of this section:

(1) The directors of the captive insurer shall, notwithstanding any provisions to the contrary in the captive insurer's organizational documents or in any contract with the company or otherwise, incur personal liability for the liabilities of the captive insurer and the segregated account under this act, matter, deed, agreement, contract, instrument, or arrangement that was executed; and

(2) Unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the captive insurer shall have a right of indemnity:

(A) In the case of a matter on behalf of or attributable to a segregated account or accounts; against the assets of that account or accounts.

(B) In the case of a matter not on behalf of or attributable to any segregated account or accounts, against the general assets of the captive insurer.

(k) Notwithstanding the provisions of subsection (j)(1) of this section, a court may relieve a director of all or part of this personal liability thereunder if he or she satisfies the court that he or she should be relieved because:

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

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

(l) If , pursuant to the provisions of subsection (k) of this section, the court relieves a director of all or part of his or her personal liability under subsection (j)(1) of this section, the court may order that the liability in question shall instead be met from such of the segregated account or general assets of the account of the captive insurer as may be specified in the order.

(m) Any provision in the organizational documents of a captive insurer, or any other contractual provision under which the captive insurer may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (j)(2) of this section, shall be void.

(n) The assets of a captive insurer shall be either segregated account assets or general assets. The segregated account assets shall comprise the assets of the captive insurer held within or on behalf of the segregated accounts of the captive insurer. The general assets of a captive insurer shall comprise the assets of the captive insurer which are not segregated account assets.

(o) The assets of a segregated account are comprised of assets representing the capital stock and reserves attributable to the segregated account or all other assets attributable to or

held within the segregated account. For the purposes of this subsection, "reserves" includes retained earnings, capital surplus, and paid-in capital.

(p) The directors of a captive insurer shall establish and maintain, or cause to be established and maintained, procedures:

(1) To segregate, and keep segregated, account assets separate and separately identifiable from general assets;

(2) To segregate, and keep segregated, account assets of each segregated account separate and separately identifiable from segregated account assets of any other segregated account; and

(3) If relevant, to apportion or transfer assets and liabilities between segregated accounts, or between segregated accounts and general assets, of the segregated account captive insurer.

(q) Segregated account assets shall:

(1) Only be available and used to meet liabilities of the creditors with respect to that segregated account, and those creditors shall thereby be entitled to have recourse to the segregated account assets attributable to that segregated account; and

(2) Not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the captive insurer who are not creditors with respect to a particular segregated account, and those creditors shall not be entitled to have recourse to the protected segregated account assets.

(r) If a liability of a captive insurer to a person arises from a matter, or is otherwise imposed, with respect to a particular segregated account, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to:

(1) First, the segregated account assets attributable to the segregated account; and

(2) Second, the captive insurer's general assets, to the extent that the segregated account assets attributable to the segregated account, are insufficient to satisfy the liability, and to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this act.

(s) If a liability of a captive insurer to a person arises otherwise than from a matter in respect of a particular segregated account or accounts, or is imposed otherwise than in respect of a particular segregated account or accounts, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to the captive insurer's general assets.

(t) Liabilities of a captive insurer not attributable to any of its segregated accounts shall be discharged from the account captive insurer's general assets. Income, receipts, and other property or rights of or acquired by a captive insurer not otherwise attributable to any segregated account shall be attributed to the captive insurer's general assets to the extent that the captive insurer's general assets exceed any minimum capital amounts lawfully required by this act.

(u)(1) Each segregated account shall be accounted for separately on the books and records of the captive insurer to reflect the financial condition and results of operations of the segregated account, including net income or loss, dividends, or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Commissioner.

(2) No sale, exchange, or other transfer of assets shall be made by the captive insurer between or among any of its segregated accounts without the written consent of the segregated accounts and the Commissioner.

(3) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a segregated account to any person without the Commissioner's prior written approval and the approval shall not be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment with respect to the segregated account.

(4) Each segregated account captive insurer shall annually file with the Commissioner such financial reports as the Commissioner shall require, which shall include financial statements detailing the financial experience of each segregated account.

(5) Each captive insurer shall notify the Commissioner within 10 business days of any segregated account that is insolvent or otherwise unable to meet its claims or expense obligations.

(6) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new segregated account or the withdrawal of any participant from any existing segregated account shall constitute a change in the strategic business plan of that segregated account requiring the Commissioner's prior written approval.

(v) Any person or legal entity may be a participant in a segregated account formed or licensed under this act.

(w) A participant in a segregated account need not be a shareholder insured within the segregated account or by the captive insurer or any affiliate thereof.

Sec. 6. Liquidation and rehabilitation of segregated accounts.

(a) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a captive insurer, the liquidator:

(1) Shall deal with the company’s assets only in accordance with the procedures set forth in subsection (c)(6) of this section; and

(2) In the discharge of the claims of creditors of the captive insurer, shall apply the captive insurer’s assets to those entitled to have recourse thereto under the provisions of section 5.

(b)(1) A petition for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer may be made by:

(A) The segregated account captive insurer;

(B) The majority of the directors of the segregated account captive insurer;

(C) Any creditor of the segregated account; or

(D) The Commissioner.

(2) Notice of a petition to the court for a liquidation or rehabilitation order with respect to a segregated account of a captive insurer shall be served upon:

(A) The captive insurer;

(B) The Commissioner; and

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

(c)(1) Subject to the provisions of this section, the court may make a liquidation or rehabilitation order with respect to a segregated account if, in relation to a captive insurer, the court is satisfied that the:

(A) Segregated account assets attributable to a particular segregated account of the captive insurer, and in those cases where creditors of the captive insurer with respect to that segregated account are entitled to have recourse to the captive insurer's general assets, are or are likely to be insufficient to discharge the claims of creditors with respect to that segregated account; and

(B) Making of an order under this section would achieve the purposes set forth in paragraph (3) of this subsection.

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

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

(A) The orderly closing or rehabilitation of the business of, or attributable to, the segregated account; and

(B) The distribution of the segregated account assets, or assets attributable to the segregated account, to those having recourse thereto.

(d) The liquidator or rehabilitator of a segregated account:

(1) Shall have all the functions and powers of the directors responsible for the business and segregated account assets of, or attributable to, the segregated account;

(2) May at any time apply to the court for directions as to the extent or exercise of any function or power, for the liquidation or rehabilitation order to be discharged or varied, or for an order as to any matter occurring during the course of the liquidation or rehabilitation; and

(3) In exercising his functions and powers, shall be deemed to act as the agent of the captive insurer and shall not incur personal liability except to the extent that he acts fraudulently, recklessly, negligently, or in bad faith.

(e) Upon the filing of a petition for, and during the period of operation of, a liquidation or rehabilitation order:

(1) No proceedings shall be instituted or continued by or against the captive insurer or segregated account in respect of which the liquidation or rehabilitation order was made; and

(2) No steps shall be taken to enforce any security or in the execution of legal process in respect of the business or segregated account assets of or attributable to the segregated account in respect of which the liquidation or rehabilitation order was made, except by leave of the court.

(f)(1) During the period of operation of a liquidation or rehabilitation order:

(A) The functions and powers of the directors shall cease with respect to the business of, or attributable to, the segregated account or segregated account assets for which the order was made; and

(B) The liquidator or rehabilitator of the segregated account shall be entitled to be present at all meetings of the captive insurer or segregated account and to vote at such meetings as if he or she were a director of the captive insurer.

(2) Unless there are no creditors that are entitled to have recourse to the captive insurer's general assets, the liquidator's or rehabilitator's voting authority includes matters concerning the captive insurer's general assets.

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

(2) The Court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order or adjourn the proceeding.

(3) Upon the Court issuing an order discharging a liquidation or rehabilitation order for a segregated account 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 captive insurer, with respect to that segregated account, shall be full satisfaction of the liabilities of the captive insurer to that creditor with respect to that segregated account, and the creditor's claims against the captive insurer with respect to that segregated account shall be thereby extinguished.

Sec. 7. Capital and surplus.

(a) In addition to any other capital required to be maintained pursuant to subsection (c) of this section, a captive insurer, authorized to do business in the District, shall at all times maintain a minimum unimpaired capital of $100,000.

(b) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the capital required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(c) The Commissioner may require a captive insurer, including each segregated account, to maintain additional unimpaired capital based on the type, volume, and nature of the insurance

business that is transacted by the captive insurer and may determine the amount of capital, if any, that may be in the form of an irrevocable letter of credit.

(d) A letter of credit used by a captive insurer or segregated account as evidence of capital required pursuant to this section shall:

(1) Be issued by a bank chartered in the District or by a branch of a bank located in the District if such bank is a member of the United States Federal Reserve System, or its deposits are insured by the Federal Deposit Insurance Corporation;

(2) Be issued on a form approved by the Commissioner; and

(3) Include a provision pursuant to which a letter of credit is automatically renewed each year.

(e) The Commissioner may approve an ongoing plan for the payment of dividends or other distributions by a captive insurer or segregated account if, at the time of each payment or distribution, the amount of capital and surplus retained by the captive insurer or segregated account is in excess of the amounts required by the Commissioner. The Commissioner shall adopt by rule:

(1) A specific amount that a captive insurer or segregated account must have in excess capital and surplus for the approval of an ongoing plan for the payment of dividends or other distributions; or

(2) A formula pursuant to which the specific amount of required excess capital and surplus may be calculated.

(f) A captive insurer shall not be issued a certificate of authority, and shall not hold a certificate of authority, unless the captive insurer has and maintains, in addition to any other surplus required to be maintained pursuant to subsection (h) of this section, an unencumbered surplus of:

(1) For a pure captive insurer, not less than $150,000;

(2) For an association captive insurer incorporated as a stock insurer, not less than $300,000;

(3) For an agency captive insurer, not less than $300,000;

(4) For a rental captive insurer, not less than $300,000;

(5) For an association captive insurer incorporated as a mutual insurer or reciprocal insurer, not less than $500,000; and

(6) For each segregated account, not less than an amount to be established by the Commissioner.

(g) Except as otherwise provided by the Commissioner pursuant to subsection (c) of this section, the surplus required to be maintained pursuant to this section shall be in the form of cash or an irrevocable letter of credit.

(h) The Commissioner may prescribe additional requirements relating to surplus based on the type, volume, and nature of the insurance business that is transacted by a captive insurer

or segregated account and requirements regarding which surplus, if any, may be in the form of an irrevocable letter of credit.

(i) A letter of credit used by a captive insurer or a segregated account as evidence of surplus required pursuant to this section shall meet the same requirements as a letter of credit issued for paid-in capital found subsection (d) of this section.

(j) The parent of a branch captive insurer shall be subject to the jurisdiction of the United States District Court for the District of Columbia for all matters involving the branch captive insurer.

(k) Except as otherwise provided in this section, a captive insurer or segregated account shall pay dividends out of, or make any other distribution from, its capital or surplus, or both, in accordance with the provisions set forth in subsection (e) of this section. A captive insurer or segregated account shall not pay dividends out of, or make any other distribution out of, its capital or surplus or both, in violation of this section unless the captive insurer or segregated account has obtained the prior written approval of the Commissioner to make the a payment or distribution.

Sec. 8. Investments.

(a) A captive insurer shall file with the Commissioner a schedule of its proposed investments, and any material changes thereto, which the Commissioner may approve if he or she determines that the investments do not threaten the solvency or liquidity of the captive insurer. The Commissioner shall not unreasonably disapprove the investments.

(b) A captive insurer or segregated account may make a loan to its parent or affiliated company if the loan:

(1) Is first approved in writing by the Commissioner;

(2) Is evidenced by a note that is in a form that is approved by the Commissioner; and

(3) Does not include any money that has been set aside as capital or surplus as required by section 7(a) or (f).

Sec. 9. Reinsurance.

(a) A captive insurer or segregated account may provide reinsurance on risks ceded by any other insurer, captive insurer, or segregated account.

(b) A captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to reinsurers in compliance with the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*). Prior approval of the Commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official

Code § 31-501 *et seq.*), except for business written by an alien captive insurer outside of the United States.

(c) In addition to reinsurers authorized under the provisions of the Law of Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*), a captive insurer or segregated account may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has been authorized by the Commissioner. The Commissioner may require any other documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in the Commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurer or segregated account and for the protection and consequent benefit of the public at large.

(d) For all purposes of this act, insurance written by a captive insurer or segregated account of any workers' compensation qualified self-insured plan of its parent or affiliates shall be deemed to be reinsurance.

Sec. 10. Application requirements.

(a) A captive insurer shall apply to the Commissioner for a certificate of authority. If one or more segregated accounts are established as separate legal entities, each segregated account shall apply for a certificate of authority. The application shall include:

(1) A proposed copy of the organizational documents of the captive insurer if the captive insurer has not been organized, or a certified copy of the organizational documents and evidence of good standing if the captive insurer has been organized;

(2) A pro forma financial statement for the captive insurer that has been prepared by a certified public accountant; and

(3) Any other statements or documents that the Commissioner requires to be filed with the application.

(b) A captive insurer shall include in its application for a certificate of authority evidence of:

(1) The amount of liquidity of its assets relative to the risks to be assumed by the captive insurer;

(2) The expertise, experience, and character of the persons who will manage the captive insurer;

(3) The overall soundness of the plan of operation of the captive insurer;

(4) The adequacy of the programs that the captive insurer is providing for loss prevention by its parent or member organizations, as applicable;

(5) Minimum capital and surplus requirements as set forth in section 6(a) and (f); and

(6) Such other information considered to be relevant by the Commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.

(c) An application by a captive insurer or segregated account for a certificate of authority shall include a nonrefundable application fee to be determined by the Commissioner. The Commissioner may require the applicant to retain independent legal, financial, and examination services from outside the Department to review and make recommendations regarding the applicant's qualifications, and to submit those reports and recommendations to the Commissioner for his or her review. The cost of those services shall be paid by the applicant.

(d) If the Commissioner determines that the documents and statements filed by the captive insurer or segregated account of a captive insurer are complete and satisfy the requirements for a certificate of authority, the Commissioner shall issue a certificate of authority to the captive insurer or segregated account within 30 days. Each certificate shall be renewed each year not later than the 30th day of April succeeding the date of its issuance. The Commissioner may impose an administrative fine or penalty on a captive insurer or segregated account that fails to renew its certificate of authority before August 1. The Commissioner may suspend or revoke the certificate of authority of a captive insurer or segregated account that fails to renew its certificate of authority on or after August 1.

(e) A captive insurer shall pay a fee to be established by the Commissioner for the issuance of a certificate of authority and an annual fee to be established by the Commissioner for the renewal of its certificate of authority. A captive insurer may be required to pay a fee for one or more segregated accounts.

(f) A captive insurer shall include its strategic business plan with its application for the issuance of its certificate of authority. If the captive insurer intends to make any material or substantive changes to its strategic business plan, the captive insurer shall file a copy of the amended strategic business plan with the Commissioner for prior written approval.

Sec. 11. Name.

A captive insurer shall not use or adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other insurer licensed in the District.

Sec. 12. Requirements for transacting business.

(a) A captive insurer shall not transact business in the District unless the captive insurer and, if applicable, each segregated account of a captive insurer, first obtains a certificate of authority from the Commissioner.

(b) In determining whether to grant the approval required in subsection (a) of this section, the Commissioner shall consider:

(1) The character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) The character, reputation, financial responsibility, experience relating to insurance, and business qualifications of the officers and directors (or equivalent managers if other than a corporation) of the captive insurer;

(3) The competence of any person who, pursuant to a contract with the captive insurer, will manage the affairs of the captive insurer;

(4) The competence, reputation, and experience of the legal counsel of the captive insurer relating to the regulation of insurance;

(5) If the captive insurer is a rental captive insurer, the competence, reputation and experience of the underwriter of the captive insurer;

(6) The strategic business plan of the insurer; and

(7) Such other aspects of the captive insurer as the Commissioner considers advisable.

(c) A captive insurer shall:

(1) Maintain an office in the District;

(2)(A) Appoint a person in the District of Columbia, consistent with the requirements of section 646(b) of the Life Insurance Act, approved March 3, 1901 (31 Stat 1209; D.C. Official Code § 31-202(b)), as the agent for service of process and to otherwise act on behalf of the captive insurer in the District.

(B) If the registered agent cannot be located with reasonable diligence for the purpose of serving notice or demand on the captive insurer, the notice or demand may be served on the Commissioner, who shall be deemed to be the agent for the captive insurer;

(3) Make adequate arrangements with a bank chartered in the District, or a branch of a bank located in the District if the bank is a member of the United States Federal Reserve System or its deposits are insured by the Federal Deposit Insurance Corporation;

(4) Employ or enter into a contract with an individual or business organization to manage the affairs of the captive insurer, which individual or business organization shall meet the standards of competence and experience satisfactory to the Commissioner;

(5) Employ or enter into a contract with a qualified, experienced, certified public accountant or a firm of certified public accountants, which accountant or firm shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner;

(6) Employ or enter into a contract with qualified, experienced actuaries to perform reviews and evaluations of the operations of the captive insurer; and

(7) Employ or enter into a contract with an attorney who is licensed to practice law in the District, which attorney shall meet the standards of competence and experience in matters concerning the regulation of insurance in the District, as determined by the Commissioner.

(d) The board of directors of a captive insurer shall meet at least one time each year in the District.

(e) Each a segregated account maintained by a captive insurer shall not have to comply with subsection (c) of this section unless the segregated account is organized as a separate legal entity.

(f) Notwithstanding subsection (a) of this section, a captive insurer that obtains a provisional certificate of authority may engage in limited activities as part of the initial organization and capitalization of the captive insurer.

Sec. 13. Tax on premiums collected.

(a) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:

(1) Two hundred fifty thousandths of one percent on the first $25 million of its net direct premiums;

(2) One hundred fifty thousandths of one percent on the next $25 million of its net direct premiums; and

(3) Fifty thousandths of one percent on each additional dollar of its net direct premiums.

(b)(1) Except as otherwise provided in this section, a captive insurer shall pay to the District, not later than March 2 of each year, a tax at the rate of:

(A) Two hundred twenty-five thousandths of one percent on the first $25 million of revenue from assumed reinsurance premiums;

(B) One hundred fifty thousandths of one percent on the next $25 million of revenue from assumed reinsurance premiums; and

(C) Twenty-five thousandths of one percent on each additional dollar of revenue from assumed reinsurance premiums.

(2) The tax on reinsurance premiums pursuant to this subsection shall not be levied on premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (a) of this section. A captive insurer shall not pay any reinsurance premium tax pursuant to this subsection on revenue related to the receipt of assets by the captive insurer in exchange for the assumption of loss reserves and other liabilities of another insurer that is under common ownership and control with the captive insurer, if the transaction is part of a plan to discontinue the operation of the other insurer and the intent of the parties to the transaction is to renew or maintain such business with the captive insurer.

(c) If the sum of the taxes to be paid by a captive insurer, other than a risk retention group licensed as an association captive insurer, calculated pursuant to subsections (a) and (b) of this section is less than $7,500 in any given year, the captive insurer shall pay a minimum tax of $7,500 for the year.

(d) If the sum of the taxes to be paid by a risk retention group, licensed as an association captive insurer, calculated pursuant to subsections (a) and (b) of this section is less than $10,000 in any given year, the captive insurer shall pay a minimum tax of $10,000 for the year.

(e) The total tax paid by a captive insurer shall not exceed $100,000 in any year.

(f) In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the branch captive insurer.

(g) In the case of annuity business, the tax provided for in this section shall not apply.

(h) Notwithstanding any specific statute to the contrary and except as otherwise provided in this subsection, the tax provided for by this section shall constitute all the taxes collectible pursuant to the laws of the District from a captive insurer, and no occupation tax or other taxes shall be levied or collected from a captive insurer by the District, except for real property taxes pursuant to Chapter 8 of Title 47 of the District of Columbia Official Code or personal property taxes pursuant to subchapter II of Chapter 15 of Title 47 of the District of Columbia Official Code.

(i) A captive insurer that is issued a certificate of authority during the last quarter of the calendar year may file a written request with the Commissioner for a reduction in the minimum premium tax obligation calculated pursuant to subsections (c) and (d) of this section. The Commissioner may grant the a request pursuant to an appropriate methodology adopted by rule.

(j) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies, contracts, insurance, or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax obligation under this section.

(k) One hundred percent of the revenues collected from the tax imposed pursuant to this section shall be credited to the account for the regulation and supervision of captive insurers created by section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)).

(l) In determining the amount of premium taxes payable under this section, any insurance contract entered into by a captive insurance company issued a certificate of authority pursuant to this act, regardless of the location of the risk or the domicile of the purchaser, shall be subject to the payment of premium taxes on that transaction to the District of Columbia; provided, that upon presentation of evidence that another jurisdiction has claimed, and the company has paid, premium taxes to that jurisdiction on the same transaction, the company may credit the amount paid to the other jurisdiction against premium taxes owed to the District of Columbia.

Sec. 14. Annual report.

(a) On or before March 2 of each year, a captive insurer shall submit to the Commissioner, on a form prescribed by the Commissioner by regulation, a report of its financial condition, as prepared by a certified public accountant. A captive insurer shall file a consolidated report on behalf of each of its segregated accounts. A captive insurer shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations thereof that have been approved or accepted by the Commissioner for the type of insurance and

kinds of insurers to be reported upon, as supplemented by additional information required by the Commissioner.

(b) A pure captive insurer may apply, in writing, for authorization to file its annual report based on a fiscal year that is consistent with the fiscal year of the parent company of the pure captive insurer. If an alternative date is granted:

(1) The annual report shall be due not later than 60 days after the end of each fiscal year; and

(2) The pure captive insurer shall file on or before March 2 of each year such forms as required by the Commissioner by regulation to provide sufficient detail to support its premium tax return filed pursuant to section 13.

Sec.15. Financial examination.

(a) The Commissioner, or his designee, may visit each captive insurer at such times as he or she considers necessary to thoroughly inspect and examine the affairs of the captive insurer or segregated account of a captive insurer to ascertain:

(1) The financial condition of the captive insurer;

(2) The ability of the captive insurer to fulfill its obligations; and

(3) Whether the captive insurer has complied with the provisions of this act and the regulations adopted pursuant thereto.

(b) The Commissioner may require a captive insurer to retain qualified independent legal, financial, and examination services from outside the Department to conduct the examination and make recommendations to the Commissioner. The cost of the examination shall be paid by the captive insurer.

(c) The provisions of the Law on Examinations Act of 1993, effective October 21, 1993 (D.C. Law 10-49; D.C. Official Code § 31-1401 *et seq.*), shall apply to examinations conducted pursuant to this section.

(d) For purposes of subsection (a) of this section, segregated accounts of a captive insurer shall not be separately examined unless the Commissioner has sufficient cause to examine one or more segregated accounts.

Sec. 16. Revocation, suspension, or fine.

(a) The Commissioner may revoke or suspend the certificate of authority to transact insurance business in the District of a captive insurer which:

(1) Has failed or refused to comply with any provision or requirement of this act;

(2) Is impaired in capital or surplus;

(3) Is insolvent;

(4) Is determined, pursuant to the Standards to Identify Insurance Companies Deemed to be in Hazardous Financial Condition Act of 1993, effective October 21, 1993 (D.C. Law 10-43; D.C. Official Code § 31-2101 *et seq.*), to be in such condition that further

transaction of business by the company will be hazardous to its policyholders, creditors, or the general public;

(5) Has failed or refused to submit any report or statement required by law or order of the Commissioner;

(6) Has failed or refused to comply with any provision of its charter or bylaws;

(7) Has used any method in transacting insurance business pursuant to this act which would be detrimental to the operation of the captive insurer or would make its condition unsound with respect to its policyholders or the general public; or

(8) Has failed otherwise to comply with the laws of the District or any jurisdiction.

(b) The Commissioner may also impose a fine not to exceed $5,000 for each violation by a captive insurer of any of the provisions found in subsection (a) of this section.

Sec. 17. Insolvency.

(a) A captive insurer shall not join or contribute financially to any risk-sharing plan, risk pool, or insurance insolvency guaranty fund in the District. A captive insurer or its insured, its parent or an affiliated company, or any member organization of its association shall not receive any benefit from the plan, pool, or fund for claims arising out of the operations of the captive insurer.

(b) The terms and conditions set forth in the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*), pertaining to insurer rehabilitation, insolvency, and receiverships, shall apply in full to captive insurance companies licensed under this act and shall apply to the segregated accounts of a captive insurer on an account basis. If there is a conflict between the provisions of this act and the Insurers Rehabilitation and Liquidation Act of 1993, effective October 15, 1993 (D.C. Law 10-35; D.C. Official Code § 31-1301 *et seq.*), the provisions of this act shall prevail.

Sec. 18. Redomestication.

(a) Any captive insurer which is licensed under laws of any jurisdiction may become a domestic captive insurer in the District by complying with all of the requirements of this act relative to the organization and licensing of a domestic insurer of the same type and by designating an office at a place within the District. The redomesticated captive insurer may transact business in the District and shall be subject to the authority and jurisdiction of the District.

(b) All insurance contracts which are in existence at the time any captive insurer transfers its insurance domicile to the District by merger, consolidation, or any other lawful method shall continue in full force and effect upon the transfer if the captive insurer is duly qualified to transact the same type of insurance business in the District.

(c) Every transferring insurer shall notify the Commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to application documents filed or required to be filed with the Commissioner.

(d) Any domestic captive insurer, upon the approval of the Commissioner, may transfer its domicile to any state in which it is licensed to transact business as a captive insurance company and, upon the transfer, shall cease to be a domestic insurer. The Commissioner shall approve any proposed transfer unless he or she determines the transfer is not in the best interest of the policyholders.

Sec. 19. Rating organization.

A captive insurer shall not required to join a rating organization.

Sec. 20. Captive insurance regulatory and supervision trust account.

All fees, fines, penalties, and assessments received by the Commissioner under this act shall be deposited in, and credited to, the account established by section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)), and expended in accordance with section 3(b-3) of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; to be codified at D.C. Official Code § 31-1202(b-3)).

Sec. 21. Judicial review; mandamus.

(a) Any captive insurer aggrieved by any act, determination, rule, regulation, order, or any other action taken by Commissioner pursuant to this act, and which was the subject of a contested case, may appeal to the District of Columbia Court of Appeals, in accordance with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

(b) The filing of an appeal pursuant to this section shall not stay the application of any rule, regulation, order, or other action of the Commissioner to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant the stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(c) Any captive insurer aggrieved by any failure of the Commissioner to act or make a determination required by this act may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Commissioner to act or make such determination forthwith.

Sec. 22. Regulations.

The Commissioner may issue rules and regulations relating to captive insurers as are necessary to enable him or her to carry out the provisions of this act.

Sec. 23. Applicable laws.

Except as provided in this act, no law relating to the insurance industry shall apply to captive insurers other than this act.

Sec. 24. Repeal and transition provisions.

(a) The Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), is repealed, subject to the provisions of this section.

(b) All existing fees set forth in the Captive Insurance Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), shall remain in effect under the corresponding provisions of the Captive Insurance Company Act of 2004, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3901 *et seq.*), and shall be applicable to segregated accounts, unless modified or repealed by rules promulgated by the Commissioner.

(c) All effective certificates of authority and all conditions imposed on the certificates of authority shall apply to the extent they would have applied under prior law.

(d) All captive insurers granted a certificate of authority as sponsored captive insurers under prior law shall comply with all of the provisions found in this act.

Amend § 31-1202

Sec. 25. Section 3 of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1202), is amended by adding a new subsection (b-3) to read as follows:

"(b-3)(1) There is established a separate account within the Insurance Regulatory Trust Fund for the purpose of funding the expenses of the Department of Insurance, Securities, and Banking in the discharge of all of its administrative, regulatory and marketing functions under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834). Except as otherwise provided in section 13(g), all fees, fines, penalties, assessments, and other funds received by the Commissioner under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), and regulations promulgated thereunder, shall be deposited in, and credited to, the account. The Mayor shall be responsible for the deposit and expenditure of these monies as provided by law. At the end of each fiscal year, any funds in the account shall revert to the General Fund of the District of Columbia.

"(2) Captive insurance companies conducting business in the District under the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), shall be exempt from the assessments imposed on insurers and health maintenance organizations under section 4.".

Amend § 31-4102

Sec. 26. Section 3(a)(1) of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; D.C. Official Code § 31-4102(a)(1)), is amended to read as follows:

"(a)(1) A risk retention group shall be chartered as an association captive insurer licensed pursuant to section 2 of the Captive Insurance Company Act of 2004, passed on 2nd reading on November 9, 2004 (Enrolled version of Bill 15-834), and licensed to write only liability insurance pursuant to this act, and shall comply with all of the laws, rules, and regulations, and requirements applicable to captive insurance companies chartered and licensed in the District and with section 4, to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of the District.".

Sec. 27. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 28. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia