

304.49-020 Certificate required for captive insurer -- Qualifications -- Restrictions on doing business -- Required documentation -- Confidentiality -- Fee.

- (1) Any captive insurer, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the commissioner for a certificate of authority to engage in any and all kinds of insurance defined in Subtitle 5 of this chapter; provided, however, that:
 - (a) No pure captive insurer may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;
 - (b) No consortium captive insurer may insure any risks other than those of the member organizations of its consortium and their affiliated companies;
 - (c) No industrial insured captive insurer may insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;
 - (d) No captive insurer may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;
 - (e) No captive insurer may accept or cede reinsurance except as provided in KRS 304.49-110;
 - (f) No captive insurer that is issued an initial certificate of authority on or after July 1, 2006, shall directly provide workers' compensation insurance; however, any captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurer may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies;
 - (g) Any captive insurer which insures risks described in KRS 304.5-020 and 304.5-040 shall comply with all applicable state laws;
 - (h) No branch captive insurer may write any business in Kentucky except insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended; and
 - (i) No sponsored captive insurer may insure any risks other than those of its participants.
- (2) No captive insurer shall do any insurance business in Kentucky unless:
 - (a) It first obtains from the commissioner a certificate of authority authorizing it to do insurance business in Kentucky;
 - (b) Its board of directors, or in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one (1) meeting each year in Kentucky; and
 - (c) It maintains its principal place of business in Kentucky or, in the case of a branch captive insurer, maintains the principal place of business for its branch operations in Kentucky.
- (3) Before receiving a certificate of authority, a captive insurer formed as a corporation shall file with the commissioner a certified copy of its charter and bylaws, a

statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner;

- (4) Before receiving a certificate of authority, a captive insurer formed as a reciprocal insurer shall:
 - (a) File with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and
 - (b) Submit to the commissioner a sample of the coverages, deductibles, coverage limits, and rates, together with any additional information required by the commissioner. In the event of any subsequent material change in any item in the samples, the reciprocal captive insurer shall submit to the commissioner for approval an appropriate revision. The reciprocal captive insurer shall not offer any coverage until the forms are approved by the commissioner. The reciprocal captive insurer shall not use any initial rate until it is approved by the commissioner and shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of the change.
- (5) In addition to the information required by subsection (3) or (4) of this section, each applicant captive insurer shall file with the commissioner evidence of the following:
 - (a) The amount and liquidity of its assets relative to the risks to be assumed;
 - (b) The adequacy of the expertise, experience, and character of the person or persons who will manage it;
 - (c) The overall soundness of its plan of operation;
 - (d) The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and
 - (e) Any other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.
- (6) In addition to the information required by subsections (3), (4), and (5) of this section, each applicant-sponsored captive insurer shall file with the commissioner the following:
 - (a) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;
 - (b) A statement acknowledging that all financial records of the sponsored captive insurer, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner;
 - (c) All contracts or sample contracts between the sponsored captive insurer and any participants; and
 - (d) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

- (7) All portions of license applications reasonably designated confidential by the applicant, and all examination reports, preliminary examination reports, working papers, recorded information, other documents, and any copies of any of the foregoing, produced or obtained by or submitted or disclosed to the commissioner related to an examination pursuant to this subtitle shall, unless the prior written consent of the captive insurer to which it pertains has been obtained, be given confidential treatment, and shall not be subject to civil subpoena, made public by the commissioner, or provided or disclosed to any other person at any time except to:
- (a) The insurance department of any state, country, or alien jurisdiction; or
 - (b) To a law enforcement official or agency of the Commonwealth of Kentucky, any other state, or alien jurisdiction, as long as the official or agency agrees in writing to hold it confidential and in a manner consistent with this section.
- (8) Each captive insurer shall pay to the commissioner a nonrefundable fee as stated in KRS 304.4-010 for examining, investigating, and processing its application for certificate of authority. The commissioner is authorized to retain legal, financial, and examination services from outside the department to assist in examining and investigating the applicant, the reasonable cost of which may be charged against the applicant. In addition, each captive insurer shall pay a certificate of authority fee for the year of registration and a renewal fee for each year thereafter.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1607, effective July 15, 2010. --
Amended 2006 Ky. Acts ch. 252, Pt. XXXIV, sec. 6, effective April 25, 2006. --
Created 2000 Ky. Acts ch. 434, sec. 2, effective July 14, 2000.