

### **304.49-010 Definitions for KRS 304.49-010 to 304.49-230.**

As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

- (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, 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 one (1) or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners;
- (3) "Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, special purpose captive insurer, agency captive insurer, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230. For purposes of KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the commissioner;
- (4) "Consortium" means any bona fide legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities, the member organizations of which collectively, or which does itself:
  - (a) Own, control, or hold with power to vote all of the outstanding voting securities or member interests of a consortium captive insurer incorporated as a stock insurer; or
  - (b) Have complete voting control over a consortium captive insurer organized as a mutual insurer; or
  - (c) The member organizations of which collectively constitute all of the subscribers of a consortium captive insurer formed as a reciprocal insurer;
- (5) "Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and that also may insure the risks of affiliated companies of the member organizations and the risks associated with the consortium itself;
- (6) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the commissioner;
- (7) "Industrial insured" means an insured as defined in KRS 304.11-020(2);
- (8) "Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies;
- (9) "Industrial insured group" means any group that meets either of the following criteria:
  - (a) Any group of industrial insureds that collectively:
    1. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer incorporated as a stock insurer;
    2. Have complete voting control over an industrial insured captive

insurer incorporated as a mutual insurer; or

3. Constitute all of the subscribers of an industrial insured captive insurer formed as a reciprocal insurer; or
- (b) Any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or other limited liability association;
- (10) "Member organization" means any individual, corporation, partnership, association, or other entity that belongs to a consortium;
- (11) "Parent" means a corporation, partnership, individual, or other entity that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurer;
- (12) "Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business;
- (13) "Controlled unaffiliated business" means any person:
  - (a) That is not in the corporate system of a parent and its affiliated companies in the case of a pure captive, or that is not in the corporate system or an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company;
  - (b) That has an existing contractual relationship with a parent or affiliated companies in the case of a pure captive, or with an industrial insured or one (1) of its affiliated companies in the case of an industrial insured captive insurance company; and
  - (c) Whose risk management function related to the covered risk of loss is controlled by an affiliate of a pure captive insurer or an industrial insured captive insurance company, as applicable, providing coverage or reinsurance;
- (14) "Foreign captive insurer" means any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, captive insurers formed under the laws of any jurisdiction other than a state of the United States shall be treated as a foreign captive insurer unless the context requires otherwise;
- (15) "Branch business" means any insurance business transacted by a branch captive insurer in Kentucky;
- (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the commissioner to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky;
- (17) "Branch operations" means any business operations of a branch captive insurer in Kentucky;
- (18) "Participant" means an entity as defined in KRS 304.49-210, and any affiliates thereof, that are insured by a sponsored captive insurer, where the losses of the participant are limited through a participant contract to the assets of a

protected cell;

- (19) "Participant contract" means a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of a protected cell;
- (20) "Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant;
- (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010;
- (22) "Special purpose captive insurer" means any person that is licensed under this chapter and designated as a special purpose captive insurer by the commissioner. A person may be designated as a special purpose captive insurer if it is established for one (1) specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction;
- (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer; and
- (24) "Sponsored captive insurer" means any captive insurer:
  - (a) In which the minimum capital and surplus required by applicable law is provided by one (1) or more sponsors;
  - (b) That is formed or issued a certificate of authority under the provisions of this subtitle;
  - (c) That insures the risks of separate participants through contract; and
  - (d) That segregates each participant's liability through one (1) or more protected cells.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1606, effective July 15, 2010; and ch. 91, sec. 1, effective July 15, 2010. -- Amended 2006 Ky. Acts ch. 252, Pt. XXXIV, sec. 5, effective April 25, 2006. -- Created 2000 Ky. Acts ch. 434, sec. 1, effective July 14, 2000.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts chs. 24 and 91, which do not appear to be in conflict and have been codified together.