

304.49-060 Formation of captive insurers -- Applicability of KRS Chapters 271B, 273, and 275 -- Conditions for issuing certificate of authority -- Applicability of KRS Chapter 271B and Subtitles 27 and 45 -- Conflicts -- Owners and parent companies.

- (1) A captive insurer shall be formed as a:
 - (a) Stock insurer with its capital divided into shares and held by the stockholders;
 - (b) Mutual insurer without capital stock in accordance with Subtitle 24 of this chapter;
 - (c) Reciprocal insurer in accordance with Subtitle 27 of this chapter;
 - (d) Limited liability company pursuant to KRS Chapter 275;
 - (e) Business corporation pursuant to KRS Chapter 271B;
 - (f) Nonstock, nonprofit corporation pursuant to KRS Chapter 273; or
 - (g) Partnership, limited partnership, statutory business trust, or other legal person or entity other than a natural person in his or her individual capacity, with the approval of the commissioner upon a showing of demonstrated need.
- (2) A captive insurer formed as a corporation, limited liability company, or nonstock, nonprofit corporation shall have the privileges and be subject to the provisions of KRS Chapter 271B, 273, or 275 and the provisions of this subtitle. If there is a conflict between the provisions of KRS Chapter 271B, 273, or 275 and the provisions of this subtitle, the provisions of this subtitle shall control.
- (3) A captive insurer organized as a corporation may issue classes of shares and series of shares within a class pursuant to KRS Chapter 271B.
- (4) Captive insurance companies formed as corporations under the provisions of this subtitle shall have the privileges and be subject to the provisions of KRS Chapter 271B and the applicable provisions contained in this subtitle. The provisions of this chapter shall control if there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described in Subtitles 24 and 37 of this chapter, except that:
 - (a) The commissioner may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and
 - (b) The commissioner may waive or modify the requirements for public notice and hearing in accordance with administrative regulations which may be promulgated by the commissioner addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the hearing.
- (5) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. secs. 3901 et seq., as amended.
- (6) A captive insurer incorporated or organized in Kentucky shall have at least one (1)

incorporator or organizer.

- (7) In the case of a captive insurer, the commissioner shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the commissioner shall consider:
 - (a) The character, reputation, financial standing, and purposes of the incorporators or organizers;
 - (b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and
 - (c) Any other aspects the commissioner deems advisable.
- (8) The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.
- (9) Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.
- (10) In addition to the provisions of subsection (9) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.
- (11) The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.
- (12) The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.
- (13) Each owner of an agency captive insurer shall be licensed as an insurance producer.
- (14) The parent of a pure captive insurer may include an employee benefit plan, employee stock ownership plan, or any legal or business trust approved by the commissioner.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1610, effective July 15, 2010; and ch. 91, sec. 4, effective July 15, 2010. -- Amended 2006 Ky. Acts ch. 252, Pt. XXXIV, sec. 8, effective April 25, 2006. -- Created 2000 Ky. Acts ch. 434, sec. 6, effective July 14, 2000.

Legislative Research Commission Note (7/15/2010). References to the "executive

director" of insurance in subsections (1), (4), and (14) of this section, as amended by 2010 Ky. Acts ch. 91, sec. 4, have been changed in codification to the "commissioner" of insurance to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Order 2009-535 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. These changes were made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 24, sec. 1938.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 91. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 91, which was last enacted by the General Assembly, prevails under KRS 446.250.