

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 121**

Introduced By: Banking, Commerce and Insurance Committee; Pahls, 31,  
Chairperson; Carlson, 38; Christensen, 44; Gay, 14;  
Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4

Read first time: January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1       FOR AN ACT relating to insurance; to amend section 77-908,  
2               Revised Statutes Cumulative Supplement, 2006; to adopt the  
3               Captive Insurers Act; to provide for a tax on captive  
4               insurers; and to repeal the original section.  
5       Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 17 of this act shall be known and  
2 may be cited as the Captive Insurers Act.

3           Sec. 2. The purposes of the Captive Insurers Act are to set  
4 forth the procedures for organizing and regulating the operations of  
5 captive insurers within the State of Nebraska and to encourage  
6 integrity, financial solvency, and stability of captive insurers for  
7 the purpose of promoting the development of Nebraska businesses.

8           Sec. 3. For purposes of the Captive Insurers Act:

9           (1) Affiliated entity means any entity that directly or  
10 indirectly controls, is controlled by, or is under common control with  
11 a captive insurer;

12           (2) Captive insurer means a domestic insurer authorized  
13 under the act to provide insurance and reinsurance to its parent, any  
14 affiliated entity, or both. Such insurance and reinsurance shall be  
15 limited to the risks, hazards, and liabilities of its parent and  
16 affiliated entities;

17           (3) Control means the power to direct or cause the  
18 direction of the management and policies of an entity through  
19 ownership of voting securities;

20           (4) Director means the Director of Insurance; and

21           (5) Parent means an entity that directly or indirectly  
22 owns, controls, or holds, with power to vote, more than fifty percent  
23 of the outstanding voting securities or other ownership interest of a  
24 captive insurer.

25           Sec. 4. No captive insurer shall adopt the name of any  
26 existing insurer or any name that may be misleading to the public.

27           Sec. 5. (1) No person shall transact the business of

1 insurance as a captive insurer without first applying for and  
2 obtaining from the director a certificate of authority. An applicant  
3 shall submit a nonrefundable application fee of five hundred dollars  
4 with a plan of operation which includes:

5 (a) Articles of incorporation and bylaws or other documents  
6 of organization;

7 (b) Pro forma financial statements for two years;

8 (c) The source and nature of initial and ongoing capital;

9 (d) A feasibility study which discloses the types and  
10 adequacy of the insurance programs of the captive insurer, the  
11 identity of the parent and affiliated entities benefiting from such  
12 insurance program, and the relationships to the captive insurer as  
13 well as all projected expenses, contracts, and a holding company  
14 system chart identifying the ownership and relationship of the parent  
15 and affiliated entities;

16 (e) Copies of all insurance and reinsurance agreements of  
17 the captive insurer as well as disclosure of all transactions material  
18 to the insurance operations;

19 (f) Financial condition of the parent and, if requested by  
20 the director, any affiliated entities, benefiting from the captive  
21 insurance program;

22 (g) A management overview including competence, experience,  
23 and integrity of those controlling the insurance operations;

24 (h) A statement submitting to the jurisdiction of the  
25 director; and

26 (i) An explanation of how the operation of the captive  
27 insurer promotes the development of a Nebraska business.

1           (2) If the plan of operation is accepted and approved by  
2 the director, the articles and other documents of organization shall  
3 be filed in the office of the Secretary of State. A copy of the  
4 articles or other documents of organization, certified by the  
5 Secretary of State, shall be filed with the director. Amendments to  
6 organizational documents shall be deemed a change to the plan of  
7 operation and shall be filed with and approved by the director before  
8 they are submitted to the Secretary of State.

9           (3) The director may refuse to issue a certificate of  
10 authority until he or she is reasonably satisfied that the plan of  
11 operation contains sufficient indication of a successful insurance  
12 operation and that the captive insurer will be able to meet expected  
13 or ongoing policy obligations.

14           (4) A captive insurer shall obtain prior written approval  
15 of any subsequent amendments to any components of the original plan of  
16 operation. The director shall deem that any captive insurer that has  
17 failed to disclose a transaction or a series of transactions that  
18 would circumvent the Captive Insurers Act to be in hazardous  
19 financial condition with respect to the public or its policyholders  
20 and subject to suspension or revocation of the certificate of  
21 authority of the captive insurer.

22           (5) A captive insurer may transact any line or lines of  
23 insurance specified in subdivisions (5), (7), (8), (9), (10), and (18)  
24 of section 44-201. A captive insurer shall not transact directors and  
25 officers insurance or motor vehicle liability insurance.

26           (6) Every captive insurer shall provide to the director  
27 books and records in the state as to enable the financial examination

1 of the captive insurer by the director.

2 Sec. 6. A board of directors or other governing body  
3 consisting of not less than three individuals shall manage the  
4 business of each captive insurer. The organizational documents or  
5 bylaws shall provide for the terms, meetings, and elections of the  
6 directors and officers of the governing body. No individual may serve  
7 as a director or officer who has been convicted of fraud involving  
8 any financial institution or of a felony involving misuse of funds.

9 Sec. 7. The certificate of authority issued to a captive  
10 insurer shall expire on June 30 of each year. The director shall renew  
11 the certificate of authority upon payment of an annual renewal fee of  
12 five hundred dollars and all other required fees and the filing of  
13 all required reports.

14 Sec. 8. (1) Every captive insurer with a certificate of  
15 authority to transact business in this state pursuant to the Captive  
16 Insurers Act shall file with the director a report, signed and sworn  
17 to by its chief officers, of its financial condition as of the end of  
18 each fiscal year. The report shall be in a form prescribed by the  
19 director and contain such information as the director deems necessary  
20 for the purpose of ascertaining whether the captive insurer can  
21 continue to meet its policy obligations to its parent, affiliated  
22 entities, and claimants. The report shall be filed within sixty days  
23 following the end of the captive insurer's fiscal year. The director  
24 may require that the report include the information required by  
25 section 44-322, including any instructions, procedures, and  
26 guidelines consistent with the act.

27 (2) The director may prescribe the format and frequency of

1 other reports to be filed, which may include, but not be limited to,  
2 summary loss reports, quarterly financial statements, audited annual  
3 financial statements, holding company statements, biographical  
4 information on officers and directors, and other professional  
5 reports.

6           Sec. 9. (1) No captive insurer shall be permitted to  
7 transact any business in this state unless it maintains total capital  
8 and surplus in the amount of at least one hundred thousand dollars in  
9 such form as is acceptable to the director.

10           (2) Upon a written finding by the director that the  
11 approved plan of operation or the operational results of the captive  
12 insurer require either additional capital or a larger surplus than  
13 required by this section, the director may require that additional  
14 capital or surplus, or both, be obtained. Additional capital or  
15 surplus may be tendered in the form of an irrevocable evergreen  
16 letter of credit acceptable to the director.

17           (3) Any letter of credit provided to satisfy the  
18 requirements of the Captive Insurers Act shall be:

19           (a) Jointly held under the control of the director and the  
20 captive insurer for the benefit of claimants;

21           (b) Issued or confirmed by an institution that is insured  
22 by the Federal Deposit Insurance Corporation;

23           (c) The sole property of such captive insurer; and

24           (d) Free and clear of any claim or encumbrance.

25           Sec. 10. The director may examine the financial condition,  
26 affairs, and management of any applicant or captive insurer pursuant  
27 to the Insurers Examination Act.

1           Sec. 11. (1) Captive insurers shall be subject to the types  
2 and nature of investments as set forth in the Insurers Investment Act,  
3 but not subject to any limitations contained in such act as to  
4 invested amounts, except that the director may prohibit or limit any  
5 investment that threatens the solvency or liquidity of any such  
6 company or if such investments are not made in accordance with the  
7 approved plan of operation.

8           (2) No captive insurer may make a loan to or an investment  
9 in its parent or affiliated entities without prior written approval of  
10 the director and any such transaction shall be evidenced by  
11 documentation approved by the director. Loans of minimum capital and  
12 surplus funds are prohibited.

13           Sec. 12. (1) Except as otherwise provided in subsection (2)  
14 of this section, any captive insurer authorized to do business in this  
15 state may take credit for reserves on risks ceded to a reinsurer  
16 pursuant to the provisions of sections 44-416.05 to 44-416.10 and any  
17 rules and regulations adopted and promulgated under such sections.

18           (2) Notwithstanding the provisions of subsection (1) of  
19 this section, any captive insurer may cede risks to a reinsurer not  
20 meeting the standards of sections 44-416.05 to 44-416.10 and may take  
21 reserve credits if the captive insurer receives prior written  
22 approval from the director.

23           Sec. 13. A captive insurer shall not be a member of the  
24 Nebraska Property and Liability Insurance Guaranty Association or the  
25 Nebraska Life and Health Insurance Guaranty Association. The Nebraska  
26 Property and Liability Insurance Guaranty Association Act and the  
27 Nebraska Life and Health Insurance Guaranty Association Act shall not

1 be applicable to coverage offered by a captive insurer.

2 Sec. 14. The director shall approve any voluntary  
3 dissolution of the captive insurer if the director determines that all  
4 obligations of the captive insurer have been satisfied. The  
5 dissolution of a captive insurer shall not impair the right of any  
6 person to commence an action against the captive insurer for any  
7 liability previously incurred.

8 Sec. 15. (1) After notice and a hearing conducted pursuant  
9 to the Administrative Procedure Act, the director may suspend or  
10 revoke a certificate of authority or may impose an administrative  
11 fine not to exceed one thousand dollars per violation, or any  
12 combination of such actions, if the director finds the captive  
13 insurer:

14 (a) Engages in financial practices that make further  
15 transaction of business in this state hazardous or injurious to  
16 claimants or the public as defined by rule and regulation adopted and  
17 promulgated by the director;

18 (b) Within fifteen business days fails to respond to an  
19 inquiry of the director;

20 (c) Fails to pay any final judgment rendered against it in  
21 this state on any contractual obligation in a reasonable period of  
22 time;

23 (d) Conducts business fraudulently or has not met its  
24 contractual obligations in good faith; or

25 (e) Violates any provision of the laws of this or any other  
26 state.

27 (2) In lieu of or in addition to the administrative fines



1 set forth in subsection (1) of this section, the director may issue a  
2 cease and desist order to a captive insurer if the captive insurer  
3 engages in any of the activities set forth in subsection (1) of this  
4 section.

5 Sec. 16. The director may adopt and promulgate rules and  
6 regulations to carry out the Captive Insurers Act.

7 Sec. 17. (1) The insurance laws of this state shall not  
8 apply to captive insurers except as permitted in the Captive  
9 Insurers Act.

10 (2) The following provisions of Chapter 44 apply to captive  
11 insurers:

12 (a) The Insurers Examination Act;

13 (b) Sections 44-101, 44-101.01, 44-102, 44-103, 44-114,  
14 44-116, 44-154, 44-205.01, 44-231, 44-301, 44-318, 44-320, 44-326, and  
15 44-360; and

16 (3) The Nebraska Insurers Supervision, Rehabilitation, and  
17 Liquidation Act. Such act shall only apply to a captive insurer that  
18 provides insurance and reinsurance to a parent or affiliated entity  
19 that is an insurer.

20 Sec. 18. Section 77-908, Revised Statutes Cumulative  
21 Supplement, 2006, is amended to read:

22 77-908. Every insurance company organized under the stock,  
23 mutual, assessment, or reciprocal plan, except fraternal benefit  
24 societies, which is transacting business in this state shall, on or  
25 before March 1 of each year, pay a tax to the director of one percent  
26 of the gross amount of direct writing premiums received by it during  
27 the preceding calendar year for business done in this state, except

1 that (1) for group sickness and accident insurance the rate of such  
2 tax shall be five-tenths of one percent, (2) for property and casualty  
3 insurance, excluding individual sickness and accident insurance, the  
4 rate of such tax shall be one percent, and (3) for capitation payments  
5 made in accordance with the Medical Assistance Act, the rate of tax  
6 shall be five percent. A captive insurer authorized under the Captive  
7 Insurers Act that is transacting business in this state shall, on or  
8 before March 1 of each year, pay to the director a tax of one percent  
9 of the gross amount of direct writing premiums received by such  
10 insurer during the preceding calendar year for business transacted in  
11 the state. The taxable premiums shall include premiums paid on the  
12 lives of persons residing in this state and premiums paid for risks  
13 located in this state whether the insurance was written in this state  
14 or not, including that portion of a group premium paid which  
15 represents the premium for insurance on Nebraska residents or risks  
16 located in Nebraska included within the group when the number of lives  
17 in the group exceeds five hundred. The tax shall also apply to  
18 premiums received by domestic companies for insurance written on  
19 individuals residing outside this state or risks located outside this  
20 state if no comparable tax is paid by the direct writing domestic  
21 company to any other appropriate taxing authority. Companies whose  
22 scheme of operation contemplates the return of a portion of premiums  
23 to policyholders, without such policyholders being claimants under the  
24 terms of their policies, may deduct such return premiums or dividends  
25 from their gross premiums for the purpose of tax calculations. Any  
26 such insurance company shall receive a credit on the tax imposed as  
27 provided in the Community Development Assistance Act and section

1 77-27,222.

2 Sec. 19. Original section 77-908, Revised Statutes

3 Cumulative Supplement, 2006, is repealed.