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Sequence Number: 11-19-12
 Rule ID(s): 5338
 File Date: 11/30/12
 Effective Date: 2/28/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-41	Tennessee Captive Insurance Companies
Rule Number	Rule Title
0780-01-41-.01	Purpose and Authority.
0780-01-41-.02	Annual Reporting Requirements.
0780-01-41-.03	Audits.
0780-01-41-.04	Deposit Requirement.
0780-01-41-.05	Organizational Exam.
0780-01-41-.06	Insurance Managers and Intermediaries.
0780-01-41-.07	Directors.
0780-01-41-.08	Conflict of Interest.
0780-01-41-.09	Revocation or Suspension of Captive License.
0780-01-41-.10	Acquisition of Control of or Merger with Domestic Company.
0780-01-41-.11	Change of Business.
0780-01-41-.12	Designation of a Captive Manager.
0780-01-41-.13	Regulation for Captive Insurance Companies Issuing Annuities.
0780-01-41-.14	Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.
0780-01-41-.15	Severability Provision.

Chapter 0780-01-41
 Tennessee Captive Insurance Companies

Amendments

Chapter 0780-1-41 Tennessee Captive Insurance Companies is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

Chapter 0780-01-41 Tennessee Captive Insurance Companies

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0780-01-41-.01 Purpose and Authority.

The purpose of this Chapter is to set forth the financial and reporting requirements that the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Revised Tennessee Captive Insurance Act, Title 56, Chapter 13 of the Tennessee Code Annotated, (the "Act"). Reference in this Chapter to "company" shall mean captive insurance company or companies, unless otherwise specified. Terms of this Chapter employ definitions found in the Act as the context may require.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, T.C.A. § 56-13-108, -115 and 121.

0780-01-41-.02 Annual Reporting Requirements.

- (1) Prior to March 1, each association captive insurance company doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that report prescribed by the commissioner as "Captive Annual Statement: Association Captive."
- (2) Prior to March 15, all other captive insurance companies doing business in this state, except for Branch Captive insurance companies and Special Purpose Financial Captive insurance companies, shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the commissioner as "Captive Annual Statement: Pure or Industrial Insured." The current version of the report is found on the website of the Tennessee Department of Commerce and Insurance, Insurance Division, Captives section. The report shall be that required by T.C.A. § 56-13-108. Branch Captive insurance companies shall file the "Captive Annual Statement: Pure or Industrial Insured" in accordance with T.C.A. § 56-13-305. Special Purpose Financial Captive insurance companies shall report in accordance with all applicable laws in Title 56, Chapter 13, Part 4.
- (3) An alternative reporting date at fiscal year-end may be granted by the commissioner upon written request by a pure captive insurance company or an industrial insured captive insurance company. If such request is granted the report is due one hundred and eighty (180) days after

the fiscal year end per T.C.A. § 56-13-108.

- (4) In the case of an alternative reporting date of the annual report, the full premium tax due should be submitted to the Department by the March deadlines. In order to provide sufficient detail to support the premium tax return, the company shall file, prior to March 15 of each year for each calendar year end, pages 1, 2, 3, and 5 of the annual statement, verified by oath of two (2) of its executive officers per T.C.A. § 56-13-108.
- (5) If, in accordance with Paragraph (4) above, the submitted premium tax is less than eighty percent (80%) of the premium tax due as calculated from the annual report filed at the end of the extension period, the commissioner may impose monetary penalties on said company in an amount up to one thousand dollars (\$1,000).
- (6) Financial Statements

Statements required shall be as follows:

1. Balance sheet reporting assets, liabilities, capital and surplus;
2. Statement of gain or loss from operations;
3. Statement of changes in capital and surplus;
4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus);
5. The notes to financial statements shall be those required by generally accepted accounting principles;
6. A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and,
7. A narrative explanation of all material transactions and balances with the company.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-114, 56-13-115, 56-13-120, 56-13-121, 56-13-305 and 56-13-416.

0780-01-41-.03 Audits.

- (1) Each captive insurance company shall be examined at least once every three years by the commissioner. The three year period may be extended to a five (5) year period provided that the company is subject to a comprehensive annual audit. The comprehensive audit shall be conducted by an independent certified public accountant authorized by the commissioner, and shall file such audited financial report with the commissioner on or before June 30th of each year or 180 days after the end of the fiscal year. The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.
- (2) Designation of Independent Certified Public Accountant.

Companies, after becoming subject to this regulation, shall within ninety days report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this regulation. The certified public accountant that is retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner. The independent certified public accountant retained to conduct the annual audit shall apply, on a form adopted by the commissioner, for approval by the commissioner.
- (3) Notification of Adverse Financial Condition.

A company shall require the certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required in Tenn. Code Ann. § 56-13-108. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

- (4) Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.
- (a) Each company shall require the independent certified public accountant to make available for review by the commissioner or the commissioner's appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.
 - (b) The aforementioned review by the commissioner shall be considered examinations and all working papers obtained during the course of such examinations shall be confidential. The company shall require that the independent certified public accountant provide photocopies or equivalent copy of any of the working papers which the Department considers relevant. Such working papers may be retained by the Department.
 - (c) "Work Papers" or "Working Papers" as referred to in this rule include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their examination of the company.
 - (d) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:
 - (1) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
 - (2) Premium volume of the insurer; or
 - (3) Number of jurisdictions in which the insurer transacts business.
- (5) The annual audit shall consist of the following:
- (a) Opinion of Independent Certified Public Accountant

Financial statements furnished pursuant to this rule shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants or statutory accounting principles in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in effect for the period covered by the report. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance shall bear original manual signatures and shall be dated.
 - (b) Report of Evaluation of Internal Controls

Every company that has annual direct written and assumed premiums of five hundred

million dollars (\$500,000,000) or more shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards or statutory accounting principles and the report shall be filed with the commissioner. An exemption from this evaluation may be granted on a case by case basis upon written request to the Commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

1. That the accountant is independent with respect to the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.
2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.
3. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this Chapter with the Tennessee Department of Commerce and Insurance.
4. That the accountant consents to the requirements of Rule 0780-01-41-.03(4) of this Chapter and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee or the commissioner's appointed agent, the work papers as defined therein.
5. That the accountant is properly licensed by an appropriate state licensing authority and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial Statements as required under Rule 0780-01-41-.02, Annual Reporting Requirements.

(e) Certification of Loss Reserves and Loss Expense Reserves

The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves. The individual who certifies as to the adequacy of reserves shall apply, on a form adopted by the commissioner, for approval by the commissioner, and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his or her competence in loss reserve evaluation to the commissioner. Certification shall be in such form as the commissioner deems appropriate.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.04 Deposit Requirement.

- (1) Whenever the commissioner deems that the financial condition of the company warrants additional security, the commissioner may require a company to deposit cash or securities approved by the commissioner in addition to statutory prescribed amounts. The deposit shall be in the form of cash or an irrevocable letter of credit issued by a bank acceptable to the commissioner.

- (2) The company may receive interest or dividends from said deposit; however the company may not exchange the deposits for others of equal value without the approval of the commissioner.
- (3) If such company discontinues business, the commissioner shall release any claim to such deposit only after being satisfied that all obligations of the company have been discharged.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.05 Organizational Examination.

In addition to the processing of the application, an organizational examination shall be performed before an applicant is licensed. Such examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-103, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.06 Insurance Managers and Intermediaries.

No person shall, in or from within this state, act as a managing general agent, producer, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.07 Directors.

- (1) Every company shall report to the commissioner within thirty days after any change in its executive officers or directors, including in its report a biographical affidavit.
- (2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.08 Conflict of Interest.

- (1) Each company chartered in this state is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from their duty to further the interests of the company they represent but this shall not preclude such person from being a director or officer in more than one insurance company.
- (2) Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.09 Revocation or Suspension of Captive License.

The commissioner may, subject to the provisions of this rule, by order suspend or revoke the license of

the company for any of the following:

- (1) At the request of the company; or
- (2) For any reason provided in T.C.A. § 56-13-110.

Before the commissioner rescinds the license of a company under (1) or (2), the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty days after receipt of notice. The commissioner shall take into consideration any objection received by the commissioner within that period and, if the commissioner decides to cancel the license, cause the order of cancellation to be served on the company.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-110, 56-13-115 and 56-13-121.

0780-01-41-.10 Acquisition of Control of or Merger with Domestic Company.

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-107, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.11 Change of Business.

- (1) Any material change in a company's business plan that was filed with the commissioner at the time of the initial application and any subsequent amendment of the plan requires prior approval of the commissioner.
- (2) Any change in any other information filed with the application must be filed with the commissioner within 60 days but does not require prior approval.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.12 Designation of a Captive Manager.

Companies, before becoming licensed shall report to the commissioner in writing, the name and address of the designated captive manager retained to manage the company. The captive manager shall apply, on a form adopted by the commissioner, for approval by the commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.13 Regulation for Captive Insurance Companies Issuing Annuities.

- (1) This Rule 0780-01-41-.13 establishes reserve requirements, separate accounts and the form of the annual statement required of any captive insurance company that issues annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions

of Title 56, Chapter 13 of the Tennessee Code Annotated issuing annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).

- (3) Any captive insurance company that issues contracts that provide variable benefits shall establish separate accounts. Such accounts shall be subject to the requirements of T.C.A. § 56-3-501.
- (4) A captive insurance company that issues annuity contracts shall maintain reserves that are actuarially sufficient to support the liabilities provided by the contracts.
- (5) A captive insurance company that issues annuity contracts shall submit its annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-3-501, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.14 Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.

- (1) This Rule 0780-01-41-.14 establishes reserve requirements and the form of the annual report required of a captive insurance company that reinsures life insurance policies, including term, universal and variable life policies, and related guarantees and riders (collectively, "Life Insurance Policies").
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of Title 56, Chapter 13 of the Tennessee Code Annotated that reinsures Life Insurance Policies, with respect to fiscal years ending on and after December 31, 2013.
- (3) A captive insurance company described in rule 0780-01-41-.14(2) shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring Life Insurance Policies.
- (4) For purposes of the annual report required by Tenn. Code Ann. § 56-13-108(b):
 - (a) A captive insurance company described in rule 0780-01-41-.14(2) that uses statutory accounting principles (i.e., the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner of Commerce and Insurance) shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report; and
 - (b) A captive insurance company described in rule 0780-01-41-.14(2) that uses generally accepted accounting principles, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner, shall submit the annual report in the form approved by the Commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-94-.15 Severability Provision.

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this Chapter are declared severable.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

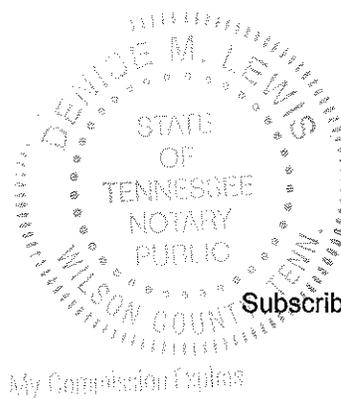
Board Member	Aye	No	Abstain	Absent	Signature (if required)
n/a	n/a	n/a	n/a	n/a	n/a

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on 11/26/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/15/12

Rulemaking Hearing(s) Conducted on: (add more dates). 10/04/12



Date: 11-26-12

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 11-26-12

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
11-29-12
 Date

Department of State Use Only

Filed with the Department of State on: 11/30/12

Effective on: 2/28/13

Tre Hargett
 Tre Hargett
 Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment 1

0780-01-41-.01

It was commented that Rule 0780-01-41-.01 should explicitly identify the statutory authority exercised by the commissioner in promulgating these rules. The statutory authority is found in T.C.A. §§ 56-13-115 and 56-13-121. This suggestion is consistent with the Department's rules regarding its authority over standard insurance companies. Furthermore it was commented that the word "specified" should be changed to "indicated" in Rule 0780-01-41-.01 because the use of the word "company" in the rules do not consistently mean "captive insurance company" as defined by the statute.

Agency Response to Comment 1

Statutory authority given to the Commissioner to promulgate these rules and regulations is set forth in 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, T.C.A. § 56-13-108, -115 and 121. This is explicitly stated at the end of each numbered rule. Furthermore the substitution of the word "indicated" for the current use of "specified" is unnecessary because the use of the word "company" throughout the rules does consistently mean "captive insurance company".

Comment 2

0780-01-41-.02

It was commented that Rule 0780-01-41-.02(1) imposes, by reference, financial reporting requirements of a standard insurance company onto an association captive insurance company. Specifically, Rule 0780-01-41-.02(1) requires that the association captive's annual report "be that report required by T.C.A. §§ 56-1-501 and 56-44-102 and Tenn. Comp. R. & Reg. § 0780-01-37." Those statutes and rule apply to standard insurance companies, not to captive insurance companies. Furthermore, it was commented that the requirements under those laws and rule go beyond what the commissioner intends for the annual report of an association captive. The commenter understands that the goal of this rule is to require an association captive annual report to be an audited financial report. The commenter suggested that Rule 0780-01-41-.02(1) set forth explicitly this requirement of the commissioner for the association captive annual report.

It was commented that the only annual report that a captive must file is a report of its financial condition pursuant to T.C.A. § 56-13-108. Pursuant to T.C.A. § 56-13-108(b), the report must be filed by March 15 for pure or industrial insured captives. For all other captives, it must be filed by March 1. Id. In contradiction to the statute, Rule .02 allows all captives, except association captives, to file by March 15. The commenter further suggests that the financial statement requirements be reflected under Rule .02 and that the heading reflect that it is for the report of financial condition.

Agency Response to Comment 2

The Department agrees that the rule as originally drafted created some discrepancy on the reporting requirements for association captive insurance companies. The Department has amended the language in Rule 0780-01-41-.02(1) to require association captive insurance companies to file the annual report on such form as developed by the Department. Furthermore, the Department disagrees with the commenter as to any perceived contradiction in the reporting requirement dates. Such language will be left as originally drafted.

Comment 3

0780-01-41-.03

It was commented that Rule 0780-01-41-.03(3)(d) be moved to create a section (6) under Rule 0780-01-41-.02.

Agency Response to Comment 3

The Department agrees with the suggested reordering of Rule 0780-01-41-.03(3)(d) and will amend the Rule draft to reflect the comment.

Comment 4

0780-01-41-.03

It was commented that this Rule relates to a comprehensive annual audit report required only if a captive seeks extension of its examination period. Otherwise, a captive insurance company is not required to make any other annual report other than the report of financial condition. A captive is subject to an examination of its financial condition at least every three (3) years. T.C.A. § 56-13-109. A standard insurance company is subject to a review of its financial condition every five (5) years by the commissioner. T.C.A. § 56-1-408. Unlike standard insurance companies, except with regard to a risk retention group captive, the only instance where the Act intends a captive to be subject to an audit is when it seeks to extend its three-year examination by the commissioner to five years. See T.C.A. § 56-3-109; and see T.C.A. § 56-13-102(21) (relating to risk retention group captives). The Act provides that "[t]he commissioner may extend such three-year period to five (5) years; provided, that the captive insurance company is subject to a comprehensive annual audit by independent auditors approved by the commissioner during such five-year period." T.C.A. § 56-13-109(a). Therefore, under the Act, the commissioner may extend the three-year review to five years so long as a comprehensive annual audit of the captive is conducted within the five-year period.

Agency Response to Comment 4

The Department agrees, in accordance with the statute, a captive insurance company is subject to an examination at least once every three years, provided however that the Commissioner may extend that period to five years if the captive insurance company is subject to an annual audit. The commenter interprets that if the extension is given then the captive insurance company will only be subject to one audit during the five year period. The Department disagrees with this interpretation. T.C.A. § 56-13-109(b) states that "the commissioner may extend such three year period to five (5) years; provided that the captive insurance company is subject to a comprehensive annual audit by independent auditors approved by the commissioner during such five year period." The statute's use of the word "annual" indicates that in order to receive the examination extension the captive insurance company must be annually audited.

Comment 5

0780-01-41-.03

It was commented that Section (2) of Rule 0780-01-41-.03 allowing captive insurance companies with less than one million two hundred thousand dollars (\$1,200,000) in written premiums to make a request to be exempted from the annual audit be stricken from the rules.

Agency Response to Comment 5

The Department agrees with the comment and will strike Paragraph (2) of Rule 0780-01-41-.03 from the proposed rules.

Comment 6

0780-01-41-.03

It was commented that Rule 0780-01-41-.03(3)(b) requires a report of evaluation of internal controls to be included in this comprehensive annual audit report. The commenter believes that this requirement is overly burdensome and should not be included in the rules. The commenter referenced that the rules for a standard insurance company require a report of evaluation of internal controls in the limited circumstance for a company that has premiums of \$500,000,000 or more as referenced in Rule 0780-01-65-.17. The commenter suggests that the report of evaluation of internal controls not be required or, in the alternative, that it be limited to a captive with premiums of \$500,000,000 or more.

Agency Response to Comment 6

The Department agrees with the comment and will require only those companies with annual direct written and assumed premiums of five hundred million dollars (\$500,000,000) or more to file a report of evaluation of internal controls.

Comment 7

0780-01-41-.03

It was commented that the requirements relating to the comprehensive annual audit report should be reflected under Rule 0780-01-41-.03, rather than exist under separate rules. Therefore, consistent with the Act and for clarification, the Association suggests the following rules be reflected under this Rule 0780-01-41-.03 as they relate to the comprehensive audit report under this regulation: 0780-01-41-.04 (Certification of Loss Reserves and Loss Expense Reserves), 0780-01-41-.05 (Designation of Independent Certified Public Accountant), 0780-01-41-.06 (Notification of Adverse Financial Condition), and 0780-01-41-.07 (Availability and Maintenance of Working Papers of the Independent Certified Public Accountant). These changes would require renumbering of the remaining rules.

Agency Response to Comment 7

The Department agrees with the comment that the requirements relating to the comprehensive audit should be reflected under Rule 0780-01-41-.03 rather than under separate rules. The Rules Chapter will be revised accordingly.

Comment 8

0780-01-41-.09

The commenter suggested that Rule 0780-01-41-.09 reflect that the organizational examination may be performed before or after an applicant is licensed. The Act contemplates that a captive may be licensed before an examination. T.C.A. § 56-13-103(c) provides the requirements necessary to receive a captive license. The license requirements include the filing of organizational documents approved by the commissioner, evidence of liquidity, expertise, plan of operation, adequacy of loss prevention programs, and such other factors deemed relevant by the commissioner. A captive cannot transact business until it is licensed and meets other requirements, such as holding annual meetings and principal place of business in this state. T.C.A. § 56-13-103(d) provides that the captive will be certified as licensed and compliant with all of the requirements through an examination (i.e. the organization examination).

Agency Response to Comment 8

The Department disagrees with the comment. T.C.A. § 56-13-103(c)(1)(D) states that an applicant will be certified as compliant with the requirements necessary for licensure through an organizational exam. The applicant cannot be granted a license to conduct insurance business prior to the organizational examination in which the Commissioner deems the applicant compliant with the statute. In practice this organizational exam is being conducted during the application process and will be complete prior to the issuance of a certificate of authority.

Comment 9

0780-01-41-.10

It was commented that reinsurance as relates to captives is governed by title 56, the commenters do not believe that this Reinsurance Rule is necessary and therefore should be deleted. However, if the commissioner decides to promulgate rules on reinsurance for captives, the commenters made the following suggestions. The commenter suggested inserting language clarifying that, in the event of conflict, these rules control. Second, Rule 0708-01-41-.10(1) is confusing and appears to require 100% transfer of risk, therefore, the commenter suggests adding "ceded" to clarify that a portion of risk may be transferred. Third the commenter suggested that Rule 0780-01-41-.10 include the same requirements for captive reinsurance contracts that are required for standard reinsurance contracts with unlicensed or unaccredited reinsurers. See T.C.A. § 56-2-208.

Agency Response to Comment 9

The Department agrees with the commenter and recognizes that reinsurance is governed specifically under T.C.A. § 56-2-207 and § 56-2-208 would apply to captive insurance companies. Because the Reinsurance Rule

will be deleted from the Rule Draft the additional comments need no response.

Comment 10

It was commented that a new rule be promulgated to clarify that the self-insured securitization requirement is met through the capital and surplus requirements of the captive. T.C.A. § 56-13-103(8), states,

Except as provided in subdivision (a)(9) [regarding association captives and mutual captives], a captive insurance company may only issue policies of workers' compensation insurance to an insured or an affiliate who otherwise qualifies and maintains its qualifications as a self-insured under this title; provided, that, a captive insurance company may provide excess or stop-loss workers' compensation coverage for those insureds not qualifying as self-insureds. The commissioner shall have the discretion to waive the requirements of this subdivision according to guidelines established through the promulgation of rules or regulations.

Under the Worker's Compensation Law, specifically T.C.A. § 50-6-405(b), a self-insured is required to file security with the Department of not less than \$500,000 as negotiable securities, a surety bond, a certificate of deposit, or a letter of credit. Under the Act, a pure captive may meet its security requirements of \$250,000 via cash or a letter of credit. The commenter believes that the security requirement of the insured is met through the securitization requirement for the captive under T.C.A. § 56-13-103(8).

The commenter suggested the following language for a new rule under this Chapter:
0780-01-94-.16 Captive Issuing Policies of Workers' Compensation

For purposes of an insured qualifying as self-insured under T.C.A. § 56-13-103(8) regarding a captive issuing policies of workers' compensation, the security requirement of the insured is met through the capital and surplus requirement for the captive under the Revised Tennessee Captive Insurance Act, specifically T.C.A. § 56-13-105.

Agency Response to Comment 10

The Department declines to implement such a rule at this time. The Department does recognize that a letter of credit for the minimum capital and surplus, as required by T.C.A. § 56-13-105, may satisfy the security requirements of T.C.A. § 50-6-405(b) but this will be decided on a case by case basis.

Comment 11

It was commented that there may be additional written comments provided at a later time and the Department was asked to leave the record open for a certain length of time.

Agency Response to Comment 11

The Department agreed and left the record open for comments for one week until October 11, 2012.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the proposed rules in this notice of rulemaking hearing are such that they will have an economic impact on small business (business with fifty (50) or fewer employees). The proposed rules are anticipated to not have a significant economic impact affecting small businesses. The rules are being promulgated within the Commissioner's authority as granted in T.C.A. § 56-13-115 and are necessary for the Department to carry out the provisions in the captive insurance act of T.C.A. § 56-13-101 et seq. These rules provide clarity to captive insurance company owners and those persons working within the industry on the regulatory requirements set forth in the statute. The rules address such things as annual reporting requirements, audits, and the use of third party services providers. Persons within the industry will use these rules as guidelines and their implementation is important to make compliance easier to understand.

The outcome of the analysis set forth in T.C.A. § 4-5-403 is as follows:

- (1) The proposed rules will only apply to captive insurance companies as authorized by the Revised Tennessee Captive Insurance Act, Title 56, Chapter 13 of the Tennessee Code Annotated as described in Tenn. Comp. R. & Reg. § 0780-01-41-.01.
- (2) The proposed rules provide clarity to the reporting requirements set forth in the statutes. A captive insurance company will be subject to yearly reporting and periodic audits and/or examinations. The projected reporting, recordkeeping, and other associated costs to comply with the statute and proposed rules are not in excess of industry standards in securing the use of certified public accountants, captive insurance company managers, and other third party service providers.
- (3) The effect on small business is negligible. The proposed rules only affect captive insurance companies and those providing services associated with the captive insurance industry. The proposed rules will have no effect on consumers.
- (4) There are no alternative methods to make the rules less costly, less intrusive or less burdensome.
- (5) These rules are based on nearly identical rules established in Vermont and South Carolina.
- (6) Only captive insurance companies and those who provide services to the captive insurance industry as found in T.C.A. §§ 56-13-101 et seq. are subject to these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules are a new version and completely replace the current rules set forth in Tenn. Comp. R. & Reg. § 0780-01-41-.01 through -.02. These rules are promulgated under Title 56, Chapter 13 of the Tennessee Code Annotated which was comprehensively amended and expanded in 2011. The proposed rules set forth the financial and reporting requirements for the regulation of captive insurance companies operating in the State of Tennessee.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rule is promulgated pursuant to T.C.A. § 56-13-115 and § 56-13-121 and provisions of the captives law contemplating rules to implement them.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These proposed rules only apply to captive insurance companies and the service providers that work within the captive insurance industry as described in Tenn. Comp. R. & Reg. § 0780-01-41-.01.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Michael A. Corbett, Director of Captive Insurance Division, Tony Greer, Chief Counsel for Insurance

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Tony Greer, Chief Counsel for Insurance

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Eighth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, (615) 253-7847.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF INSURANCE

CHAPTER 0780-1-41
TENNESSEE CAPTIVE INSURANCE COMPANIES

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0780-1-41-.01	Purpose	Appendix A	Captive Insurance Company Irrevocable Letter of Credit
0780-1-41-.02	Required Form Letter of Credit		Letter of Credit

~~0780-1-41-.01 PURPOSE.~~

~~The purpose of this rule is to adopt a form letter of credit which may be used by captive insurance companies that wish to file such letters of credit in lieu of depositing cash or securities representing the capital required by T.C.A. § 56-13-116.~~

~~Authority: T.C.A. §§56-13-116 and 56-13-129. Administrative History: Original rule filed May 10, 1978; effective June 9, 1978. Repeal and new rule filed March 16, 2005; effective May 30, 2005.~~

~~0780-1-41-.02 REQUIRED FORM LETTER OF CREDIT.~~

~~A captive insurance company that wishes to file a letter of credit in lieu of depositing cash or securities with the commissioner in an amount representing the capital required by T.C.A. § 56-13-116 must use the form Captive Insurance Company Irrevocable Letter of Credit, hereby made a part of this Chapter as an appendix hereto, or a form that substantially complies with such form.~~

~~Authority: T.C.A. §§ 56-13-116 and 56-13-129. Administrative History: Original rule filed March 16, 2005; effective May 30, 2005.~~

APPENDIX A

CAPTIVE INSURANCE COMPANY

IRREVOCABLE LETTER OF CREDIT

<Name of Bank>

<City and State>

Letter of Credit No. _____

Commissioner of Commerce and Insurance

State of Tennessee

Date _____

Commissioner:

1. ~~We hereby establish our IRREVOCABLE LETTER OF CREDIT in your favor for the account of <Name of Tennessee Captive Insurance Company> up to the aggregate amount of \$1,000,000 available by your draft(s) drawn on us, at sight, bearing the above number of this IRREVOCABLE LETTER OF CREDIT. This IRREVOCABLE LETTER OF CREDIT shall expire at our Letter of Credit Department, <City & State>, at our close of business on <Date>, unless as hereinafter extended.~~
2. ~~This IRREVOCABLE LETTER OF CREDIT is issued pursuant to the provisions of T.C.A. §§ 56-13-101, et seq., as amended, The Tennessee Captive Insurance Company Act of 1978, and on behalf of the above mentioned Tennessee Captive Insurance Company which is applying for a Certificate of Authority to engage in the insurance business in the State of Tennessee as a captive insurance company.~~
3. ~~It is a condition of this IRREVOCABLE LETTER OF CREDIT that it shall be automatically extended for additional one (1) year periods unless at least ninety (90) calendar days prior to the then relevant expiration date we have advised you in writing that we elect not to extend. In that event, you may draw hereunder on or prior to the then relevant expiration date, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this IRREVOCABLE LETTER OF CREDIT.~~
4. ~~It is a further condition of this IRREVOCABLE LETTER OF CREDIT that each automatic extension shall be measured from the then relevant expiration date or relevant expiration date, even though such date be not a business day in <City & State> for this Bank. It is also a condition of this IRREVOCABLE LETTER OF CREDIT that, for the purpose of drawing hereunder, if the then relevant expiration date is a non-business day for our Bank, drawing may be made not later than our next immediately following business day.~~
5. ~~This IRREVOCABLE LETTER OF CREDIT sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument or agreement referred to herein or in which this IRREVOCABLE LETTER OF CREDIT is referred to or to which this IRREVOCABLE LETTER OF CREDIT relates and any such reference shall not be deemed to incorporate herein by reference to any note, document, instrument or agreement.~~

Each sight draft so drawn and presented shall be promptly honored by us if presented on or prior to the above stated expiration date or any extension thereof as above provided.

Chapter 0780-01-41

Tennessee Captive Insurance Companies

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0780-01-41-.01 Purpose and Authority.

The purpose of this Chapter is to set forth the financial and reporting requirements that the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Revised Tennessee Captive Insurance Act, Title 56, Chapter 13 of the Tennessee Code Annotated, (the "Act"). Reference in this Chapter to "company" shall mean captive insurance company or companies, unless otherwise specified. Terms of this Chapter employ definitions found in the Act as the context may require.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, T.C.A. § 56-13-108, -115 and 121.

0780-01-41-.02 Annual Reporting Requirements.

- (1) Prior to March 1, each association captive insurance company doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that report prescribed by the commissioner as "Captive Annual Statement: Association Captive."
- (2) Prior to March 15, all other captive insurance companies doing business in this state, except for Branch Captive insurance companies and Special Purpose Financial Captive insurance companies, shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the commissioner as "Captive Annual Statement: Pure or Industrial Insured." The current version of the report is found on the website of the Tennessee Department of Commerce and Insurance, Insurance Division, Captives section. The report shall be that required by T.C.A. § 56-13-108. Branch Captive insurance companies shall file the "Captive Annual Statement: Pure or Industrial Insured" in accordance with T.C.A. § 56-13-305. Special Purpose Financial Captive insurance companies shall report in accordance with all applicable laws in Title 56, Chapter 13, Part 4.
- (3) An alternative reporting date at fiscal year-end may be granted by the commissioner upon written request by a pure captive insurance company or an

industrial insured captive insurance company. If such request is granted the report is due one hundred and eighty (180) days after the fiscal year end per T.C.A. § 56-13-108.

- (4) In the case of an alternative reporting date of the annual report, the full premium tax due should be submitted to the Department by the March deadlines. In order to provide sufficient detail to support the premium tax return, the company shall file, prior to March 15 of each year for each calendar year end, pages 1, 2, 3, and 5 of the annual statement, verified by oath of two (2) of its executive officers per T.C.A. § 56-13-108.
- (5) If, in accordance with Paragraph (4) above, the submitted premium tax is less than eighty percent (80%) of the premium tax due as calculated from the annual report filed at the end of the extension period, the commissioner may impose monetary penalties on said company in an amount up to one thousand dollars (\$1,000).
- (6) Financial Statements

Statements required shall be as follows:

1. Balance sheet reporting assets, liabilities, capital and surplus;
2. Statement of gain or loss from operations;
3. Statement of changes in capital and surplus;
4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus);
5. The notes to financial statements shall be those required by generally accepted accounting principles;
6. A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and,
7. A narrative explanation of all material transactions and balances with the company.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-114, 56-13-115, 56-13-120, 56-13-121, 56-13-305 and 56-13-416.

0780-01-41-.03 Audits.

- (1) Each captive insurance company shall be examined at least once every three years by the commissioner. The three year period may be extended to a five (5) year period provided that the company is subject to a comprehensive annual audit. The comprehensive audit shall be conducted by an independent certified public accountant authorized by the commissioner, and shall file such audited financial report with the commissioner on or before June 30th of each year or 180 days after the end of the fiscal year. The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.
- (2) Designation of Independent Certified Public Accountant.

Companies, after becoming subject to this regulation, shall within ninety days report to the commissioner in writing, the name and address of the independent certified

public accountant retained to conduct the annual audit set forth in this regulation. The certified public accountant that is retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner. The independent certified public accountant retained to conduct the annual audit shall apply, on a form adopted by the commissioner, for approval by the commissioner.

(3) Notification of Adverse Financial Condition.

A company shall require the certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required in Tenn. Code Ann. § 56-13-108. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

(4) Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(a) Each company shall require the independent certified public accountant to make available for review by the commissioner or the commissioner's appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five years after the period reported upon.

(b) The aforementioned review by the commissioner shall be considered examinations and all working papers obtained during the course of such examinations shall be confidential. The company shall require that the independent certified public accountant provide photocopies or equivalent copy of any of the working papers which the Department considers relevant. Such working papers may be retained by the Department.

(c) "Work Papers" or "Working Papers" as referred to in this rule include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their examination of the company.

(d) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

(1) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(2) Premium volume of the insurer; or

(3) Number of jurisdictions in which the insurer transacts business.

(5) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

Financial statements furnished pursuant to this rule shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants or statutory accounting principles in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in effect for the period covered by the report. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

Every company that has annual direct written and assumed premiums of five hundred million dollars (\$500,000,000) or more shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards or statutory accounting principles and the report shall be filed with the commissioner. An exemption from this evaluation may be granted on a case by case basis upon written request to the Commissioner.

(c) Accountant's Letter

The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

1. That the accountant is independent with respect to the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.
2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.
3. That the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this Chapter with the Tennessee Department of Commerce and Insurance.
4. That the accountant consents to the requirements of Rule 0780-01-41-.03(4) of this Chapter and that the accountant consents and agrees to make available for review by the commissioner, the commissioner's designee or the commissioner's appointed agent, the work papers as defined therein.

5. That the accountant is properly licensed by an appropriate state licensing authority and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial Statements as required under Rule 0780-01-41-.02, Annual Reporting Requirements.

(e) Certification of Loss Reserves and Loss Expense Reserves

The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves. The individual who certifies as to the adequacy of reserves shall apply, on a form adopted by the commissioner, for approval by the commissioner, and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his or her competence in loss reserve evaluation to the commissioner. Certification shall be in such form as the commissioner deems appropriate.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.04 Deposit Requirement.

- (1) Whenever the commissioner deems that the financial condition of the company warrants additional security, the commissioner may require a company to deposit cash or securities approved by the commissioner in addition to statutory prescribed amounts. The deposit shall be in the form of cash or an irrevocable letter of credit issued by a bank acceptable to the commissioner.
- (2) The company may receive interest or dividends from said deposit; however the company may not exchange the deposits for others of equal value without the approval of the commissioner.
- (3) If such company discontinues business, the commissioner shall release any claim to such deposit only after being satisfied that all obligations of the company have been discharged.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.05 Organizational Examination.

In addition to the processing of the application, an organizational examination shall be performed before an applicant is licensed. Such examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-103, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.06 Insurance Managers and Intermediaries.

No person shall, in or from within this state, act as a managing general agent, producer, or

reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.07 Directors.

- (1) Every company shall report to the commissioner within thirty days after any change in its executive officers or directors, including in its report a biographical affidavit.
- (2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.08 Conflict of Interest.

- (1) Each company chartered in this state is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from their duty to further the interests of the company they represent but this shall not preclude such person from being a director or officer in more than one insurance company.
- (2) Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.09 Revocation or Suspension of Captive License.

The commissioner may, subject to the provisions of this rule, by order suspend or revoke the license of the company for any of the following:

- (1) At the request of the company; or
- (2) For any reason provided in T.C.A. § 56-13-110.

Before the commissioner rescinds the license of a company under (1) or (2), the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty days after receipt of notice. The commissioner shall take into consideration any objection received by the commissioner within that period and, if the commissioner decides to cancel the license, cause the order of cancellation to be served on the company.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-110, 56-13-115 and 56-13-121.

0780-01-41-.10 Acquisition of Control of or Merger with Domestic Company.

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-107, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.11 Change of Business.

- (1) Any material change in a company's business plan that was filed with the commissioner at the time of the initial application and any subsequent amendment of the plan requires prior approval of the commissioner.
- (2) Any change in any other information filed with the application must be filed with the commissioner within 60 days but does not require prior approval.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.12 Designation of a Captive Manager.

Companies, before becoming licensed shall report to the commissioner in writing, the name and address of the designated captive manager retained to manage the company. The captive manager shall apply, on a form adopted by the commissioner, for approval by the commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.13 Regulation for Captive Insurance Companies Issuing Annuities.

- (1) This Rule 0780-01-41-.13 establishes reserve requirements, separate accounts and the form of the annual statement required of any captive insurance company that issues annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of Title 56, Chapter 13 of the Tennessee Code Annotated issuing annuity contracts (which may have life or other benefits that constitute a subsidiary or incidental part of the entire contract).
- (3) Any captive insurance company that issues contracts that provide variable benefits shall establish separate accounts. Such accounts shall be subject to the requirements of T.C.A. § 56-3-501.
- (4) A captive insurance company that issues annuity contracts shall maintain reserves that are actuarially sufficient to support the liabilities provided by the contracts.

- (5) A captive insurance company that issues annuity contracts shall submit its annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-3-501, 56-13-108, 56-13-115 and 56-13-121.

0780-01-41-.14 Regulation for Captive Insurance Companies Reinsuring Life Insurance Policies.

- (1) This Rule 0780-01-41-.14 establishes reserve requirements and the form of the annual report required of a captive insurance company that reinsures life insurance policies, including term, universal and variable life policies, and related guarantees and riders (collectively, "Life Insurance Policies").
- (2) This Rule shall apply to any captive insurance company formed or licensed under the provisions of Title 56, Chapter 13 of the Tennessee Code Annotated that reinsures Life Insurance Policies, with respect to fiscal years ending on and after December 31, 2013.
- (3) A captive insurance company described in rule 0780-01-41-.14(2) shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring Life Insurance Policies.
- (4) For purposes of the annual report required by Tenn. Code Ann. § 56-13-108(b):
 - (a) A captive insurance company described in rule 0780-01-41-.14(2) that uses statutory accounting principles (i.e., the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner of Commerce and Insurance) shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report; and
 - (b) A captive insurance company described in rule 0780-01-41-.14(2) that uses generally accepted accounting principles, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner, shall submit the annual report in the form approved by the Commissioner.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.

0780-01-94-.15 Severability Provision.

If any Rule or portion of a Rule of this Chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of the Chapter or the applicability of the provision to other persons or circumstances shall not be affected. To this end, the provisions of this Chapter are declared severable.

Authority: 2011 Public Acts, Chapter 468, T.C.A. §§ 56-13-101 through 56-13-418, 56-13-108, 56-13-115 and 56-13-121.