

ASSEMBLY, No. 2360

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 25, 2010

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblywoman DENISE M. COYLE

District 16 (Morris and Somerset)

SYNOPSIS

Regulates captive insurers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/9/2010)

1 AN ACT regulating wholly-owned insurance subsidiaries and
2 supplementing Title 17 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in this act:

8 "Affiliated company" means a company in the same corporate
9 system as a parent, an industrial insured or a member organization
10 by virtue of common ownership, control, operation or management.

11 "Alien captive insurance company" means an insurance company
12 formed to write insurance business for its parents and affiliates and
13 licensed pursuant to the laws of a jurisdiction other than this State
14 which imposes statutory or regulatory standards in a form
15 acceptable to the commissioner on companies transacting the
16 business of insurance in that jurisdiction.

17 "Association" means a legal association of individuals,
18 corporations, limited liability companies, partnerships, associations
19 or other entities that has been in continuous existence for at least
20 one year, the member organizations of which or which does itself,
21 whether or not in conjunction with some or all of the member
22 organizations:

23 (1) own, control, or hold with power to vote all of the
24 outstanding voting securities of an association captive insurance
25 company incorporated as a stock insurer;

26 (2) have complete voting control over an association captive
27 insurance company incorporated as a mutual insurer; or

28 (3) constitute all of the subscribers of an association captive
29 insurance company formed as a reciprocal insurer.

30 "Association captive insurance company" means a company that
31 insures risks of the member organizations of the association and
32 their affiliated companies.

33 "Captive insurance company" means any pure captive insurance
34 company, association captive insurance company, sponsored
35 captive insurance company, industrial insured captive insurance
36 company or risk retention group formed or licensed under the
37 provisions of this act.

38 "Commissioner" means the Commissioner of Banking and
39 Insurance.

40 "Controlled unaffiliated business" means a company:

41 (1) that is not in the corporate system of a parent and any
42 affiliated companies;

43 (2) that has an existing contractual relationship with a parent or
44 affiliated company; and

45 (3) whose risks are managed by a pure captive insurance
46 company in accordance with section 16 of this act.

47 "Excess workers' compensation insurance" means, in the case of
48 an employer that has insured or self-insured its workers'

1 compensation risks in accordance with applicable State or federal
2 law, insurance in excess of a specified per incident or aggregate
3 limit established by the commissioner.

4 "Industrial insured" means an insured:

5 (1) who procures the insurance of a risk by use of the services of
6 a full time employee acting as an insurance manager or buyer;

7 (2) who has at least 25 full time employees; and

8 (3) whose aggregate annual premiums for insurance on all risks
9 total at least \$25,000.

10 "Industrial insured captive insurance company" means a
11 company that insures risks of the industrial insureds that comprise
12 the industrial insured group, and their affiliated companies.

13 "Industrial insured group" means a group of industrial insureds
14 that collectively:

15 (1) own, control, or hold with power to vote all of the
16 outstanding voting securities of an industrial insured captive
17 insurance company incorporated as a stock insurer;

18 (2) have complete voting control over an industrial insured
19 captive insurance company incorporated as a mutual insurer; or

20 (3) constitute all of the subscribers of an industrial insured
21 captive insurance company formed as a reciprocal insurer.

22 "Member organization" means an individual, corporation, limited
23 liability company, partnership, association or other entity that
24 belongs to an association.

25 "Mutual corporation" means a corporation organized without
26 stockholders and includes a nonprofit corporation with members.

27 "Parent" means a corporation, limited liability company,
28 partnership, other entity or individual that directly or indirectly
29 owns, controls or holds with power to vote more than 50 percent of
30 the outstanding voting:

31 (1) securities of a pure captive insurance company organized as
32 a stock corporation; or

33 (2) membership interests of a pure captive insurance company
34 organized as a nonprofit corporation.

35 "Protected cell" means a separate account established and
36 maintained by a sponsored captive insurance company for one
37 participant.

38 "Pure captive insurance company" means a company that insures
39 risks of its parent and affiliated companies or controlled unaffiliated
40 businesses.

41 "Risk retention group" means a captive insurance company
42 organized pursuant to the "New Jersey Risk Retention Act,"
43 P.L.1993, c.240 (C.17:47A-1 et seq.), as a stock or mutual
44 corporation, a reciprocal or other limited liability entity.

45 "Sponsor" means an entity that meets the requirements of
46 sections 18 and 19 of this act and that the commissioner has
47 approved to provide all or part of the capital and surplus required by
48 applicable law to operate a sponsored captive insurance company.

1 "Sponsored captive insurance company" means a captive
2 insurance company:

3 (1) in which the minimum capital and surplus required by
4 applicable law is provided by one or more sponsors;

5 (2) that is formed or licensed under this act;

6 (3) that insures the risks of separate participants through the
7 contract; and

8 (4) that segregates each participant's liability through one or
9 more protected cells.

10

11 2. a. A captive insurance company, if permitted by its articles
12 of association, charter or other organizational document, may apply
13 to the commissioner for a license to do business in any of the lines
14 of insurance in subtitle 3 of Title 17 of the Revised Statutes or Title
15 17B of the New Jersey Statutes, including contracts or policies of
16 life insurance, health insurance, annuities, indemnity, property and
17 casualty, fidelity, surety, guaranty and title insurance; provided,
18 however, that:

19 (1) a pure captive insurance company shall not insure risks
20 other than those of its parent and affiliated companies or controlled
21 unaffiliated businesses;

22 (2) an association captive insurance company shall not insure
23 risks other than those of the member organizations of its
24 association, and their affiliated companies;

25 (3) an industrial insured captive insurance company shall not
26 insure risks other than those of the industrial insureds that comprise
27 the industrial insured group and their affiliated companies;

28 (4) a risk retention group shall not insure risks other than those
29 of its members and owners;

30 (5) a captive insurance company shall not provide private
31 passenger automobile insurance or homeowner's insurance coverage
32 or any component thereof;

33 (6) a captive insurance company shall not accept or cede
34 reinsurance except as provided in section 10 of this act;

35 (7) a captive insurance company may provide excess workers'
36 compensation insurance to its parent and affiliated companies,
37 unless prohibited by the federal law or laws of the state having
38 jurisdiction over the transaction. A captive insurance company,
39 unless prohibited by federal law, may reinsure workers'
40 compensation of a qualified self-insured plan of its parent and
41 affiliated companies; and

42 (8) a captive insurance company shall comply with all
43 applicable State and federal laws.

44 b. A captive insurance company shall not write any insurance
45 business in this State unless:

46 (1) it first obtains from the commissioner a license authorizing it
47 to write insurance business in this State;

1 (2) its board of directors or committee of managers or, in the
2 case of a reciprocal insurer, its subscribers' advisory committee,
3 holds at least one meeting each year in this State;

4 (3) it maintains its principal place of business in this State; and

5 (4) it appoints a registered agent to accept service of process and
6 to otherwise act on its behalf in this State; provided that whenever
7 that registered agent cannot with reasonable diligence be found at
8 the registered office of the captive insurance company, the
9 Secretary of State shall be an agent of the captive insurance
10 company upon whom any process, notice or demand may be served.

11 c. (1) Before receiving a license, a captive insurance company
12 shall:

13 (a) file with the commissioner a certified copy of its organization
14 documents, a statement under oath of its president and secretary
15 showing its financial condition, and any other statements or
16 documents required by the commissioner; and

17 (b) submit to the commissioner for approval a description of the
18 coverage limits and rates, together with any additional information
19 as the commissioner may reasonably require. In the event of any
20 subsequent material change in an item in the description, the
21 captive insurance company shall submit to the commissioner for
22 approval an appropriate revision and shall not offer any additional
23 lines of insurance until a revision of the description is approved by
24 the commissioner. The captive insurance company shall inform the
25 commissioner of any material change in rates within 30 days of the
26 adoption of any change.

27 (2) Each captive insurance company shall also file with the
28 commissioner evidence of the following:

29 (a) the amount and liquidity of its assets relative to the risks to
30 be assumed;

31 (b) the adequacy of the expertise, experience and character of
32 the person who will manage it;

33 (c) the overall soundness of its plan of operation;

34 (d) the adequacy of the loss prevention programs of its insureds;
35 and

36 (e) those other factors deemed relevant by the commissioner in
37 determining whether the proposed captive insurance company will
38 be able to meet its policy obligations.

39 (3) Information submitted pursuant to this subsection shall
40 remain confidential and shall not be made public by the
41 commissioner without the written consent of the company except
42 that:

43 (a) the information may be discoverable by a party in a civil
44 action or contested case to which the captive insurance company
45 that submitted the information is a party, upon a showing by the
46 party seeking to discover the information that:

47 (i) the information sought is relevant to and necessary for the
48 furtherance of that action or case;

- 1 (ii) the information sought is unavailable from other
2 nonconfidential sources; and
- 3 (iii) a subpoena issued by a judicial or administrative officer of
4 competent jurisdiction has been submitted to the commissioner;
5 except that the provisions of this paragraph (3) shall not apply to a
6 risk retention group; and
- 7 (b) the commissioner may, in the commissioner's discretion,
8 disclose the information to a public official having jurisdiction over
9 the regulation of insurance in another state, if:
- 10 (i) the public official agrees in writing to maintain the
11 confidentiality of the information; and
- 12 (ii) the laws of the state in which the public official serves
13 require the information to remain confidential.
- 14 d. A captive insurance company shall pay to the commissioner a
15 nonrefundable fee of \$200 for examining, investigating and
16 processing its application for license and the commissioner is
17 authorized to retain legal, financial and examination services from
18 outside the department, the reasonable cost of which may be
19 charged against the applicant. In addition, each captive insurance
20 company shall pay a license fee for the year of registration and a
21 renewal fee for each year thereafter of \$300.
- 22 e. If the commissioner is satisfied that the documents and
23 statements filed by a captive insurance company comply with the
24 provisions of this act, the commissioner may grant a license
25 authorizing it to write insurance business in this State until April 1
26 thereafter, which license may be renewed.
- 27 f. A captive insurance company shall not adopt a name that is
28 the same, deceptively similar, or likely to be confused with or
29 mistaken for any other existing business name registered in the
30 State.
- 31
- 32 3. a. A captive insurance company shall not be issued a license
33 unless it maintains unimpaired paid-in capital and surplus of:
- 34 (1) in the case of a pure captive insurance company, not less than
35 \$250,000;
- 36 (2) in the case of an association captive insurance company, not
37 less than \$750,000;
- 38 (3) in the case of an industrial insured captive insurance
39 company, not less than \$500,000;
- 40 (4) in the case of a risk retention group, not less than \$1,000,000;
41 and
- 42 (5) in the case of a sponsored captive insurance company, not
43 less than \$500,000.
- 44 b. The commissioner may prescribe additional capital and
45 surplus requirements based upon the type, volume and nature of
46 insurance business transacted.
- 47 c. Capital and surplus may be in the form of cash or an
48 irrevocable letter of credit issued by a bank chartered by the State or a

1 member bank of the Federal Reserve System and approved by the
2 commissioner.

3
4 4. A captive insurance company shall not pay a dividend out
5 of, or other distribution with respect to, capital or surplus without
6 the prior approval of the commissioner. Approval of an ongoing
7 plan for the payment of dividends or other distributions shall be
8 conditioned upon the retention, at the time of each payment, of
9 capital or surplus in excess of amounts specified by, or determined
10 in accordance with formulas approved by, the commissioner.
11 Notwithstanding any provisions of the "New Jersey Nonprofit
12 Corporation Act," N.J.S.15A:1-1 et seq. to the contrary, a captive
13 insurance company organized under the provisions of the "New
14 Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq. may make
15 distributions as are in conformity with its purposes and approved by
16 the commissioner.

17
18 5. a. A pure captive insurance company may be incorporated
19 or organized as:

20 (1) a stock insurer with its capital divided into shares and held
21 by the stockholders;

22 (2) a nonprofit corporation with one or more members; or

23 (3) a manager-managed limited liability company.

24 b. An association captive insurance company, an industrial
25 insured captive insurance company, or a risk retention group may
26 be:

27 (1) incorporated as a stock insurer with its capital divided into
28 shares and held by the stockholders;

29 (2) incorporated as a mutual corporation;

30 (3) organized as a reciprocal insurer in accordance with the
31 provisions of P.L.1945, c.161 (C.17:50-1 et seq.); or

32 (4) organized as a manager-managed limited liability company.

33 c. A captive insurance company incorporated or organized in
34 this State shall have not less than three incorporators or three
35 organizers of whom at least one shall be a resident of this State.

36 d. In the case of a captive insurance company:

37 (1) formed as a corporation: (a) before the articles of
38 incorporation are transmitted to the Secretary of State, the
39 incorporators shall petition the commissioner to issue a certificate
40 setting forth the commissioner's finding that the establishment and
41 maintenance of the proposed corporation will promote the general
42 good of the State. In arriving at a finding the commissioner shall
43 consider:

44 (i) the character, reputation, financial standing and purposes of
45 the incorporators or organizers;

46 (ii) the character, reputation, financial responsibility, insurance
47 experience and business qualifications of the officers and directors;

48 and

1 (iii) any other aspects of the proposed corporation as the
2 commissioner deems advisable.

3 (b) the articles of incorporation, certificate and organization fee
4 shall be transmitted to the Secretary of State, who shall record both
5 the articles of incorporation and the certificate.

6 (2) formed as a reciprocal insurer, the organizers shall petition
7 the commissioner to issue a certificate setting forth the
8 commissioner's finding that the establishment and maintenance of
9 the proposed association will promote the general good of the State.
10 In arriving at a finding the commissioner shall consider the items
11 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)
12 of paragraph (1) of this subsection as applicable to a reciprocal
13 insurer.

14 (3) formed as a limited liability company, before the articles of
15 organization are transmitted to the Secretary of State, the organizers
16 shall petition the commissioner to issue a certificate setting forth
17 the commissioner's finding that the establishment and maintenance
18 of the proposed company will promote the general good of the
19 State. In arriving at a finding, the commissioner shall consider the
20 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph
21 (a) of paragraph (1) of this subsection as applicable to a limited
22 liability company.

23 e. The capital stock of a captive insurance company incorporated
24 as a stock insurer may be authorized with no par value.

25 f. In the case of a captive insurance company:

26 (1) formed as a corporation, at least one of the members of the
27 board of directors shall be a resident of this State;

28 (2) formed as a reciprocal insurer, at least one of the members of
29 the subscribers' advisory committee shall be a resident of this State;

30 (3) formed as a limited liability company, at least one of the
31 managers shall be a resident of this State.

32 g. Other than a captive insurance company formed as a limited
33 liability company pursuant to the "New Jersey Limited Liability
34 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) or as a
35 nonprofit corporation pursuant to the "New Jersey Nonprofit
36 Corporation Act," N.J.S.15A:1-1 et seq., a captive insurance
37 company formed as a corporation under the provisions of this act
38 shall have the privileges and be subject to the provisions of the
39 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., as
40 well as the applicable provisions contained in this act. In the event
41 of a conflict between the provisions of the "New Jersey Business
42 Corporation Act," N.J.S.14A:1-1 et seq., and the provisions of this
43 act, this act shall control.

44 h. A captive insurance company formed under the provisions of
45 this act:

46 (1) as a limited liability company shall have the privileges and
47 be subject to the provisions of the "New Jersey Limited Liability
48 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) as well as the

1 applicable provisions contained in this act. In the event of a conflict
2 between the provisions of the "New Jersey Limited Liability
3 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) and the
4 provisions of this act, this act shall control; or

5 (2) as a nonprofit corporation shall have the privileges and be
6 subject to the provisions of the "New Jersey Nonprofit Corporation
7 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions
8 contained in this act. In the event of a conflict between the
9 provisions of the "New Jersey Nonprofit Corporation Act,"
10 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall
11 control.

12 i. The procedures to be followed by a captive insurance
13 company in carrying out a merger, consolidation, conversion,
14 mutualization or redomestication shall be prescribed by the
15 commissioner by regulation.

16 j. A captive insurance company formed as a reciprocal insurer
17 under the provisions of this act shall have the privileges and be
18 subject to the provisions of P.L.1945, c.161 (C.17:50-1 et seq.) in
19 addition to the applicable provisions of this act. In the event of a
20 conflict between the provisions of P.L.1945, c.161 (C.17:50-1 et
21 seq.) and the provisions of this act, this act shall control.

22 k. The articles of incorporation or bylaws of a captive insurance
23 company formed as a corporation may authorize a quorum of its
24 board of directors to consist of not less than one-third of the fixed
25 or prescribed number of directors determined under applicable
26 provisions of the "New Jersey Business Corporation Act,"
27 N.J.S.14A:1-1 et seq., or the "New Jersey Nonprofit Corporation
28 Act," N.J.S.15A:1-1 et seq.

29 l. The subscribers' agreement or other organizing document of a
30 captive insurance company formed as a reciprocal insurer may
31 authorize a quorum of its subscribers' advisory committee to consist
32 of not less than one-third of the number of its members.

33 m. With the commissioner's approval, a captive insurance
34 company organized as a stock insurer may convert to a nonprofit
35 corporation with one or more members by filing with the Secretary
36 of State an irrevocable election for a conversion, provided that:

37 (1) the irrevocable election certifies that, at the time of the
38 company's organization and at all times thereafter, the company
39 conducted its business in a manner consistent with a nonprofit
40 purpose; and

41 (2) at the time of the filing of its irrevocable election, the
42 company files with both the commissioner and the Secretary of
43 State amended and restated articles of incorporation consistent with
44 the provisions of this act and the "New Jersey Nonprofit
45 Corporation Act," N.J.S.15A:1-1 et seq., duly authorized by the
46 corporation.

1 6. a. Prior to March 1 of each year, a captive insurance
2 company shall submit to the commissioner a report of its financial
3 condition, verified by oath of two of its executive officers. A
4 captive insurance company shall report using generally accepted
5 accounting principles, unless the commissioner approves the use of
6 regulatory accounting principles, with any appropriate or necessary
7 modifications or adaptations as may be required, approved or
8 accepted by the commissioner for the type of insurance and kinds of
9 insurers to be reported upon, and as supplemented by additional
10 information required by the commissioner. Except as otherwise
11 provided, an association captive insurance company and a risk
12 retention group shall file its report in the form required by
13 R.S.17:23-1. The commissioner shall by rule prescribe the forms in
14 which a pure captive insurance company and an industrial insured
15 captive insurance company shall report. The confidentiality
16 requirements of paragraph (3) of subsection c. of section 2 of this
17 act shall apply to each report filed pursuant to this section, except
18 reports filed by risk retention groups.

19 b. A pure captive insurance company or an industrial insured
20 captive insurance company may make written application for filing
21 the required report on a fiscal year-end. If an alternative reporting
22 date is granted, the annual report is due 60 days after the fiscal
23 year-end.

24
25 7. a. At least once in every three years, and whenever the
26 commissioner determines it to be prudent, the commissioner shall
27 personally, or by some competent person appointed by the
28 commissioner, visit each captive insurance company and thoroughly
29 inspect and examine its affairs to determine its financial condition,
30 its ability to fulfill its obligations and whether it has complied with
31 the provisions of this act. The commissioner may increase the three-
32 year period to five years, if the captive insurance company is
33 subject to a comprehensive annual audit during that period of a
34 scope satisfactory to the commissioner by independent auditors
35 approved by the commissioner. The expenses and charges of the
36 examination shall be paid to the State by the company examined.

37 b. All examination reports, preliminary examination reports or
38 results, working papers, recorded information, documents and
39 copies thereof produced by, obtained by or disclosed to the
40 commissioner or any other person in the course of an examination
41 made under this section are confidential and are not subject to
42 subpoena and shall not be made public by the commissioner without
43 the written consent of the company, except to the extent provided in
44 this subsection. Nothing in this subsection shall prevent the
45 commissioner from using the information in furtherance of the
46 commissioner's regulatory authority under this act. The
47 commissioner may, in the commissioner's discretion, grant access to
48 the information to public officers having jurisdiction over the

1 regulation of insurance in any other state or country, or to law
2 enforcement officers of this State or any other state or agency of the
3 federal government at any time, so long as the officers receiving the
4 information agree in writing to hold it in a manner consistent with
5 this section.

6

7 8. a. Pursuant to subsection b. of this section, the
8 commissioner may suspend or revoke the license of a captive
9 insurance company for any of the following reasons:

10 (1) Insolvency or impairment of capital or surplus;

11 (2) Failure to meet the capital surplus requirements of section 3
12 of this act;

13 (3) Refusal or failure to submit an annual report, as required by
14 this act, or any other report or statement required by law or by
15 lawful order of the commissioner;

16 (4) Failure to comply with the provisions of its own charter,
17 bylaws or other organizational document;

18 (5) Failure to submit to or pay the cost of examination or any
19 legal obligation relative to an examination, as required by this act;

20 (6) Use methods that, although not otherwise specifically
21 prohibited by law, nevertheless render its operation detrimental or
22 its condition unsound with respect to the public or to its
23 policyholders; or

24 (7) Failure to otherwise comply with the laws of this State.

25 b. If the commissioner finds, upon examination, hearing or other
26 evidence, that a captive insurance company has violated any
27 provision of subsection a. of this section, the commissioner may
28 suspend or revoke the company's license if the commissioner deems
29 it in the best interest of the public and the policyholders of the
30 captive insurance company, notwithstanding any other provision of
31 this act.

32

33 9. a. A captive insurance company shall comply with
34 investment requirements to be prescribed by the commissioner by
35 regulation.

36 b. A pure captive insurance company shall not make a loan to,
37 or an investment in, its parent company or affiliates without prior
38 written approval of the commissioner, and a loan or investment
39 shall be evidenced by documentation approved by the
40 commissioner. A pure captive insurance company shall not make a
41 loan using the minimum capital and surplus funds required by
42 section 3 of this act.

43

44 10. a. A captive insurance company may provide reinsurance on
45 risks ceded by any other insurer.

46 b. A captive insurance company may take credit for the
47 reinsurance of risks or portions of risks ceded to reinsurers
48 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et

1 seq.). Prior approval of the commissioner shall be required for
2 ceding or taking credit for the reinsurance of risks or portions of
3 risks ceded to reinsurers not complying with P.L.1993, c.243
4 (C.17:51B-1 et seq.), except for business written by an alien captive
5 insurance company outside the United States.

6 c. In addition to reinsurers authorized under the provisions of
7 P.L.1993, c.243 (C.17:51B-1 et seq.), a captive insurance company
8 may take credit for the reinsurance of risks or portions of risks
9 ceded to a pool, exchange or association acting as a reinsurer which
10 has been authorized by the commissioner. The commissioner may
11 require any other documents, financial information or other
12 evidence that the pool, exchange or association will be able to
13 provide adequate security for its financial obligations. The
14 commissioner may deny authorization or impose any limitations on
15 the activities of a reinsurance pool, exchange or association that, in
16 the commissioner's judgment, are necessary and proper to provide
17 adequate security for the ceding captive insurance company and for
18 the protection and consequent benefit of the public at large.

19 d. For purposes of this act, insurance by a captive insurance
20 company of any workers' compensation qualified self-insured plan
21 of its parent and affiliates shall be deemed to be reinsurance.

22
23 11. a. A captive insurance company shall not be required to join
24 a rating organization.

25 b. A captive insurance company shall not be permitted to join
26 or contribute financially to a plan, pool, association, or guaranty or
27 insolvency fund in this State, nor shall a captive insurance
28 company, or an insured or affiliate thereof, receive a benefit from a
29 plan, pool, association, or guaranty or insolvency fund for claims
30 arising out of the operations of a captive insurance company.

31
32 12. a. Each captive insurance company shall pay to the Director
33 of the Division of Taxation in the Department of Treasury, on or
34 before March 1 of each year, a tax at the rate of .38 of one percent
35 on the first \$20,000,000 and .285 of one percent on the next
36 \$20,000,000 and .19 of one percent on the next \$20,000,000 and
37 .072 of one percent on each dollar thereafter on the direct premiums
38 collected or contracted for on policies or contracts of insurance
39 written by the captive insurance company during the year ending
40 December 31 next preceding, after deducting from the direct
41 premiums subject to the tax the amounts paid to policyholders as
42 return premiums, which shall include dividends on unabsorbed
43 premiums or premium deposits returned or credited to
44 policyholders; except that no tax shall be due or payable as to
45 considerations received for annuity contracts.

46 b. Each captive insurance company shall pay to the Director of
47 the Division of Taxation in the Department of Treasury, on or
48 before March 1 of each year, a tax at the rate of .214 of one percent

1 on the first \$20,000,000 of assumed reinsurance premium, and .143
2 of one percent on the next \$20,000,000 and .048 of one percent on
3 the next \$20,000,000 and .024 of one percent of each dollar
4 thereafter. However, no tax under this subsection applies to
5 premiums for risks or portions of risks which are subject to taxation
6 on a direct basis pursuant to subsection a. of this section. No tax
7 under this subsection shall apply in connection with the receipt of
8 assets in exchange for the assumption of loss reserves and other
9 liabilities of another insurer under common ownership and control
10 if the transaction is part of a plan to discontinue the operations of
11 the other insurer, and if the intent of the parties to the transaction is
12 to renew or maintain the business with the captive insurance
13 company.

14 c. The annual minimum aggregate tax to be paid by a captive
15 insurance company calculated under subsections a. and b. of this
16 section shall be \$7,500, and the annual maximum aggregate tax
17 shall be \$200,000. The maximum aggregate tax to be paid by a
18 sponsored captive insurance company shall apply to each protected
19 cell only and not to the sponsored captive insurance company as a
20 whole.

21 d. (1) A captive insurance company shall, on or before March
22 1 of each year, file with the commissioner an annual tax return,
23 signed and sworn to by an officer of the company, or by its United
24 States manager, if a company of a foreign country, in the form and
25 containing matters as may be necessary for carrying out the
26 provisions of this section.

27 (2) A captive insurance company shall pay the balance of any
28 tax due under this section based on the company's business during
29 the preceding calendar year and make an installment payment in an
30 amount equal to one-half of the tax payable under this section on
31 the company's business done during the preceding calendar year.

32 (3) The examination of returns and the assessment of additional
33 taxes, penalties and interest shall be as provided by the State
34 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

35 e. Two or more captive insurance companies under common
36 ownership and control shall be taxed as though they were a single
37 captive insurance company.

38 f. For the purposes of this section, "common ownership and
39 control" shall mean:

40 (1) in the case of stock corporations, the direct or indirect
41 ownership of 80 percent or more of the outstanding voting stock of
42 two or more corporations by the same shareholder or shareholders;
43 and

44 (2) in the case of mutual or nonprofit corporations, the direct or
45 indirect ownership of 80 percent or more of the surplus and the
46 voting power of two or more corporations by the same member or
47 members.

1 g. The tax provided for in this section shall constitute all taxes
2 collectible under the laws of this State from any captive insurance
3 company, and a captive insurance company shall not pay taxes
4 pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

5 h. Annually, ten percent of the premium tax revenues collected
6 by the director pursuant to this section shall be transferred to the
7 commissioner for the regulation of captive insurance companies
8 under this act.

9 i. The tax provided for by this section shall be calculated on an
10 annual basis, notwithstanding policies or contracts of insurance or
11 contracts of reinsurance issued on a multiyear basis. In the case of
12 multiyear policies or contracts, the premium shall be prorated for
13 purposes of determining the tax under this section.
14

15 13. Risk retention groups shall have the privileges and be
16 subject to the provisions of the "New Jersey Risk Retention Act,"
17 P.L.1993, c.240 (C.17:47A-1 et seq.) in addition to the applicable
18 provisions of this act.
19

20 14. a. (1) There is created a fund to be known as the "Captive
21 Insurance Regulation and Supervision Fund," for the purpose of
22 providing the financial means for the commissioner to administer
23 this act and the "New Jersey Risk Retention Act," P.L.1993, c.240
24 (C.17:47A-1 et seq.), and for reasonable expenses incurred in
25 promoting the captive insurance industry in this State. The transfer
26 of 10 percent of the premium tax under subsection h. of section 12
27 of this act, and all fees and assessments received by the department
28 pursuant to the administration of this act and the "New Jersey Risk
29 Retention Act," P.L.1993, c.240 (C.17:47A-1 et seq.) shall be
30 credited to this fund. Of this amount, not more than two percent of
31 the premium tax under section 12 of this act may be transferred to
32 the New Jersey Economic Development Authority for expenses for
33 promotional activities conducted by the commission in relation to
34 captive insurance companies. All fees received by the department
35 from reinsurers who assume risk solely from captive insurance
36 companies and are subject to the provisions of P.L.1993, c.243
37 (C.17:51B-1 et seq.), shall be deposited into the Captive Insurance
38 Regulation and Supervision Fund, except that all fines and
39 administrative penalties shall be deposited directly into the General
40 Fund.

41 (2) All payments from the Captive Insurance Regulation and
42 Supervision Fund for the maintenance of staff and associated
43 expenses, including contractual services as necessary, shall be
44 disbursed from the State Treasury to the commissioner after receipt
45 of proper documentation regarding services rendered and expenses
46 incurred.

1 b. At the end of each fiscal year, the balance in the Captive
2 Insurance Regulation and Supervision Fund shall be transferred to
3 the General Fund.

4
5 15. Except as otherwise provided in this act, the terms and
6 conditions set forth in P.L.1975, c.113 (C.17:30C-1 et seq.),
7 pertaining to insurance reorganizations, receiverships and
8 injunctions, shall apply to captive insurance companies formed or
9 licensed under this act.

10
11 16. The commissioner may adopt rules establishing standards to
12 ensure that a parent or affiliated company is able to exercise control
13 of the risk management function of any controlled unaffiliated
14 business to be insured by a pure captive insurance company, except
15 that until such time as rules under this section are adopted, the
16 commissioner may approve the coverage of the risk by a pure
17 captive insurance company.

18
19 17. a. An association captive insurance company, risk retention
20 group, or industrial insured captive insurance company formed as a
21 stock or mutual corporation may be converted to or merged with
22 and into a reciprocal insurer in accordance with a plan of
23 conversion or merger and the provisions of this section.

24 b. A plan for conversion or merger shall provide a fair and
25 equitable plan for purchasing, retiring or otherwise extinguishing
26 the interests of the stockholders and policyholders of a stock
27 insurer, and the members and policyholders of a mutual insurer,
28 including a fair and equitable provision for the rights and remedies
29 of dissenting stockholders, members or policyholders.

30 c. In the case of a conversion authorized under subsection a. of
31 this section:

32 (1) the conversion shall be accomplished under a reasonable
33 plan and procedure as approved by the commissioner, except that
34 the commissioner shall not approve a plan of conversion unless the
35 plan:

36 (a) satisfies the provisions of subsection b. of this section;

37 (b) provides for a hearing, of which notice is given to the
38 captive insurance company, its directors, officers and policyholders,
39 and, in the case of a stock insurer, its stockholders, and in the case
40 of a mutual insurer, its members, all of which persons shall be
41 entitled to attend and appear at the hearing if notice of a hearing is
42 given and no director, officer, policyholder, member or stockholder
43 requests a hearing, the commissioner may cancel the hearing;

44 (c) provides a fair and equitable plan for the conversion of
45 stockholder, member or policyholder interests into subscriber
46 interests in the resulting reciprocal insurer, substantially
47 proportionate to the corresponding interests in the stock or mutual
48 insurer. This requirement shall not preclude the resulting reciprocal

1 insurer from applying underwriting criteria that could affect
2 ongoing ownership interests; and
3 (d) is approved:
4 (i) in the case of a stock insurer, by a majority of the
5 shareholders entitled to vote represented in person or by proxy at a
6 duly called regular or special meeting at which a quorum is present;
7 and
8 (ii) in the case of a mutual insurer, by a majority of the voting
9 interests of policyholders represented in person or by proxy at a
10 duly called regular or special meeting thereof at which a quorum is
11 present;
12 (2) the commissioner shall approve the plan of conversion if the
13 commissioner finds that the conversion will promote the general
14 good of the State in conformity with those standards set forth in
15 paragraph (2) of subsection d. of section 5 of this act;
16 (3) if the commissioner approves the plan, the commissioner
17 shall amend the converting insurer's certificate of authority to
18 reflect conversion to a reciprocal insurer and issue the amended
19 certificate of authority to the company's attorney-in-fact;
20 (4) the conversion shall be effective upon the issuance of an
21 amended certificate of authority of a reciprocal insurer by the
22 commissioner; and
23 (5) the corporate existence of the converting insurer shall cease
24 and the resulting reciprocal insurer shall notify the Secretary of
25 State of the conversion upon the conversion becoming effective.
26 d. A merger authorized under subsection a. of this section shall
27 be accomplished substantially in accordance with the procedures to
28 be prescribed by the commissioner, except that, solely for purposes
29 of the merger:
30 (1) the plan of merger shall satisfy the provisions of subsection
31 b. of this section;
32 (2) the subscribers' advisory committee of a reciprocal insurer
33 shall be equivalent to the board of directors of a stock or mutual
34 insurance company;
35 (3) the subscribers of a reciprocal insurer shall be the equivalent
36 of the policyholders of a mutual insurance company;
37 (4) if a subscribers' advisory committee does not have a
38 president or secretary, the officers of the committee having
39 substantially equivalent duties shall be deemed the president or
40 secretary of the committee;
41 (5) the commissioner shall approve the articles of merger if the
42 commissioner finds that the merger will promote the general good
43 of the State in conformity with those standards set forth in
44 paragraph (2) of subsection d. of section 5 of this act. If the
45 commissioner approves the articles of merger, the commissioner
46 shall indorse the commissioner's approval thereon and the surviving
47 insurer shall present the same to the Secretary of State;

1 (6) notwithstanding section 3 of this act, the commissioner may
2 permit the formation, without surplus, of a captive insurance
3 company organized as a reciprocal insurer, into which an existing
4 captive insurance company may be merged for the purpose of
5 facilitating a transaction under this section, except that there shall
6 be no more than one authorized insurance company surviving the
7 merger; and

8 (7) an alien captive insurance company may be a party to a
9 merger authorized under subsection a. of this section in accordance
10 with procedures to be prescribed by the commissioner by
11 regulation.

12

13 18. a. One or more sponsors may form a sponsored captive
14 insurance company as prescribed in this act.

15 b. A sponsored captive insurance company may establish and
16 maintain one or more protected cells to insure the risks of one or
17 more participants, subject to the following conditions:

18 (1) A sponsored captive insurance company shall not have any
19 stockholders other than its participants and sponsors.

20 (2) A sponsored captive insurance company shall separately
21 account for each protected cell in its books and records to reflect
22 the financial condition and results of operations of each protected
23 cell, net income or loss of each protected cell, dividends or other
24 distributions to participants of each protected cell and any other
25 factors prescribed in the participant contract or required by the
26 commissioner.

27 (3) The assets of a sponsored captive insurance company are not
28 chargeable with liabilities arising out of any other insurance
29 business the sponsored captive insurance company may conduct.

30 (4) A sponsored captive insurance company shall not sell,
31 exchange or transfer assets, issue a dividend or make a distribution
32 between or among any of its protected cells without the written
33 consent of all its protected cells.

34 (5) A sponsored captive insurance company shall not sell,
35 exchange or transfer assets, issue a dividend or make a distribution
36 to a sponsor or participant unless the commissioner approves the
37 transaction and determines that the transaction will not cause
38 insolvency or impairment of any protected cell.

39 (6) At the time of filing its annual report pursuant to section 6 of
40 this act, a sponsored captive insurance company shall also file with
41 the department:

42 (a) an accounting statement detailing the financial experience of
43 each protected cell, in a form to be prescribed by the commissioner;
44 and

45 (b) any other financial report prescribed by the commissioner.

46 (7) A sponsored captive insurance company shall notify the
47 commissioner in writing within 10 days after learning of any

1 protected cell that is insolvent or otherwise unable to meet its claim
2 or expense obligations.

3 (8) A sponsored captive insurance company shall obtain the
4 commissioner's written approval of any participant contract before
5 the contract becomes effective.

6 (9) The addition of a new participant or the withdrawal of a
7 participant from an existing sponsored captive insurance company
8 shall be considered a change in the captive insurer's business plan
9 and shall require the commissioner's approval.

10 (10) With respect to each protected cell, the insurance business
11 written by a sponsored captive insurance company may be:

12 (a) assumed from an insurance company licensed under the laws
13 of any state;

14 (b) reinsured by a reinsurer authorized or accredited by the
15 State; or

16 (c) secured by a trust fund or an irrevocable letter of credit.

17

18 19. a. A risk retention group shall not be either a sponsor or
19 participant in a sponsored captive insurance company.

20 b. An association, corporation, limited liability company,
21 partnership, trust or any another business entity may be a
22 participant in any sponsored captive insurance company formed or
23 licensed under this act.

24 c. A sponsor may be a participant in a sponsored captive
25 insurance company.

26 d. A participant need not be a shareholder of a sponsored captive
27 insurance company or any affiliate of a sponsored captive insurance
28 company.

29 e. A participant shall insure only its own risks through a
30 sponsored captive insurance company.

31

32 20. a. No cause of action shall arise nor shall any liability be
33 imposed against the commissioner, the commissioner's authorized
34 agent or any examiner appointed by the commissioner for any
35 statements made or conduct performed in good faith while carrying
36 out the provisions of this act. This section does not abrogate or
37 modify in any way any common law or other statutory privilege or
38 immunity available to any person identified in this subsection. A
39 person identified in this subsection shall be entitled to an award of
40 attorney's fees and costs if he is the prevailing party in a civil cause
41 of action for libel, slander or any other relevant tort arising out of
42 activities in carrying out the provisions of this act and the party
43 bringing the action was not substantially justified in doing so. For
44 purposes of this subsection, a proceeding is "substantially justified"
45 if it had a reasonable basis in law or fact at the time that it was
46 initiated.

47 b. No cause of action shall arise, nor shall any liability be
48 imposed against any person for the act of communicating or

1 delivering information or data to the commissioner or the
2 commissioner's authorized representative or examiner pursuant to
3 an examination made under this act, if the communication or
4 delivery was performed in good faith and without fraudulent intent
5 or the intent to deceive.

6

7 21. This act shall take effect on the 90th day following
8 enactment.

9

10

11

STATEMENT

12

13 This bill permits a captive insurance company to be licensed by
14 the Department of Banking and Insurance to do business in the
15 State in any of the lines of insurance in subtitle 3 of Title 17 of the
16 Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New
17 Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including
18 contracts or policies of life insurance, health insurance, annuities,
19 indemnity, property and casualty, fidelity, surety, guaranty and title
20 insurance, and reinsurance, provided the captive meets certain
21 requirements.

22 The bill regulates captive insurance companies, which include
23 pure captive insurance companies, association captive insurance
24 companies, sponsored captive insurance companies, industrial
25 insured captive insurance companies and risk retention groups. Risk
26 retention groups are already authorized to be licensed in the State.

27 The bill provides that a captive insurance company must meet
28 certain requirements, including those relating to formation, capital
29 and surplus, annual reporting, examination, local office presence,
30 ability to meet policy obligations, payment of certain fees and taxes,
31 and annual reporting.

32 In addition, the bill creates a "Captive Insurance Regulation and
33 Supervision Fund" to provide the financial means for the
34 commissioner to administer the bill's requirements and the
35 requirements of the "New Jersey Risk Retention Act," P.L.1993,
36 c.240 (C.17:47A-1 et seq.).

37 Further, the bill provides procedures for various types of captive
38 insurance companies to merge with other entities and procedures
39 that a sponsored captive insurance company must follow with
40 respect to protected cell companies.

41 Under the bill, a captive insurance company cannot be required
42 to join a rating organization. The bill prohibits a captive insurance
43 company from joining or contributing to a state insolvency guaranty
44 fund and from receiving benefits from the fund if the captive
45 insurance company becomes impaired or insolvent.

46 Finally, the bill authorizes the Commissioner of Banking and
47 Insurance to suspend or revoke a captive's license for a violation of
48 the bill's provisions or unsound operations.