

[First Reprint]

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 reported by the Assembly Financial Institutions and Insurance Committee on May 6, 2010, with amendments.



(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, ¹or¹ industrial insured captive
36 insurance company ¹[or risk retention group]¹ formed or licensed
37 under the 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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted May 6, 2010.

1 (3) whose risks are managed by a pure captive insurance
2 company in accordance with section **'[16] 15'** of this act.

3 "Excess workers' compensation insurance" means, in the case of
4 an employer that has insured or self-insured its workers'
5 compensation risks in accordance with applicable State or federal
6 law, insurance in excess of a specified per incident or aggregate
7 limit established by the commissioner.

8 "Industrial insured" means an insured:

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

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

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

14 "Industrial insured captive insurance company" means a
15 company that insures risks of the industrial insureds that comprise
16 the industrial insured group, and their affiliated companies.

17 "Industrial insured group" means a group of industrial insureds
18 that collectively:

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

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

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

26 "Member organization" means an individual, corporation, limited
27 liability company, partnership, association or other entity that
28 belongs to an association.

29 "Mutual corporation" means a corporation organized without
30 stockholders and includes a nonprofit corporation with members.

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

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

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

39 "Protected cell" means a separate account established and
40 maintained by a sponsored captive insurance company for one
41 participant.

42 "Pure captive insurance company" means a company that insures
43 risks of its parent and affiliated companies or controlled unaffiliated
44 businesses.

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

1 "Sponsor" means an entity that meets the requirements of
2 sections '17 and '18' **['and 19']** of this act and that the
3 commissioner has approved to provide all or part of the capital and
4 surplus required by applicable law to operate a sponsored captive
5 insurance company.

6 "Sponsored captive insurance company" means a captive
7 insurance company:

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

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

11 (3) that insures the risks of separate participants through the
12 contract; and

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

15
16 2. a. A captive insurance company, if permitted by its articles
17 of association, charter or other organizational document, may apply
18 to the commissioner for a license to do business in any of the lines
19 of insurance in subtitle 3 of Title 17 of the Revised Statutes or Title
20 17B of the New Jersey Statutes, including contracts or policies of
21 life insurance, health insurance, annuities, indemnity, property and
22 casualty, fidelity, **['surety,']** guaranty and title insurance; provided,
23 however, that:

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

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

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

33 (4) **['a risk retention group shall not insure risks other than those**
34 **of its members and owners;**

35 **']** a captive insurance company shall not provide private
36 passenger automobile insurance or homeowner's insurance coverage
37 or any component thereof;

38 **['(6) (5)']** a captive insurance company shall not accept or cede
39 reinsurance except as provided in section 10 of this act;

40 **['(7) (6)']** a captive insurance company may provide excess
41 workers' compensation insurance to its parent and affiliated
42 companies, unless prohibited by the federal law or laws of the state
43 having jurisdiction over the transaction. A captive insurance
44 company, unless prohibited by federal law, may reinsure workers'
45 compensation of a qualified self-insured plan of its parent and
46 affiliated companies; and

- 1 ~~[(8)]~~ (7)¹ a captive insurance company shall comply with all
2 applicable State and federal laws.
- 3 b. A captive insurance company shall not write any insurance
4 business in this State unless:
- 5 (1) it first obtains from the commissioner a license authorizing it
6 to write insurance business in this State;
- 7 (2) its board of directors or committee of managers or, in the
8 case of a reciprocal insurer, its subscribers' advisory committee,
9 holds at least one meeting each year in this State;
- 10 (3) it maintains its principal place of business in this State ¹with
11 the appropriate number of in-State professional services provider
12 staff to carry out the business of the captive, including but not
13 limited to, attorneys, accountants, managers, actuaries, brokers, and
14 third party administrators¹; and
- 15 (4) it appoints a registered agent to accept service of process and
16 to otherwise act on its behalf in this State; provided that whenever
17 that registered agent cannot with reasonable diligence be found at
18 the registered office of the captive insurance company, the
19 Secretary of State shall be an agent of the captive insurance
20 company upon whom any process, notice or demand may be served.
- 21 c. (1) Before receiving a license, a captive insurance company
22 shall:
- 23 (a) file with the commissioner a certified copy of its
24 organization documents, a statement under oath of its president and
25 secretary showing its financial condition, and any other statements
26 or documents required by the commissioner; and
- 27 (b) submit to the commissioner for approval a description of the
28 coverage limits and rates, together with any additional information
29 as the commissioner may reasonably require. In the event of any
30 subsequent material change in an item in the description, the
31 captive insurance company shall submit to the commissioner for
32 approval an appropriate revision and shall not offer any additional
33 lines of insurance until a revision of the description is approved by
34 the commissioner. The captive insurance company shall inform the
35 commissioner of any material change in rates within 30 days of the
36 adoption of any change.
- 37 (2) Each captive insurance company shall also file with the
38 commissioner evidence of the following:
- 39 (a) the amount and liquidity of its assets relative to the risks to
40 be assumed;
- 41 (b) the adequacy of the expertise, experience and character of
42 the person who will manage it;
- 43 (c) the overall soundness of its plan of operation;
- 44 (d) the adequacy of the loss prevention programs of its insureds;
45 and
- 46 (e) those other factors deemed relevant by the commissioner in
47 determining whether the proposed captive insurance company will
48 be able to meet its policy obligations.

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

5 (a) the information may be discoverable by a party in a civil
6 action or contested case to which the captive insurance company
7 that submitted the information is a party, upon a showing by the
8 party seeking to discover the information that:

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

11 (ii) the information sought is unavailable from other
12 nonconfidential sources; and

13 (iii) a subpoena issued by a judicial or administrative officer of
14 competent jurisdiction has been submitted to the commissioner ¹['; and
15 except that the provisions of this paragraph (3) shall not apply to a
16 risk retention group¹]; and

17 (b) the commissioner may, in the commissioner's discretion,
18 disclose the information to a public official having jurisdiction over
19 the regulation of insurance in another state, if:

20 (i) the public official agrees in writing to maintain the
21 confidentiality of the information; and

22 (ii) the laws of the state in which the public official serves
23 require the information to remain confidential.

24 d. A captive insurance company shall pay to the commissioner
25 a nonrefundable fee of \$200 for examining, investigating and
26 processing its application for license and the commissioner is
27 authorized to retain legal, financial and examination services from
28 outside the department, the reasonable cost of which may be
29 charged against the applicant. In addition, each captive insurance
30 company shall pay a license fee for the year of registration and a
31 renewal fee for each year thereafter of \$300.

32 e. If the commissioner is satisfied that the documents and
33 statements filed by a captive insurance company comply with the
34 provisions of this act, the commissioner may grant a license
35 authorizing it to write insurance business in this State until April 1
36 thereafter, which license may be renewed.

37 f. A captive insurance company shall not adopt a name that is
38 the same, deceptively similar, or likely to be confused with or
39 mistaken for any other existing business name registered in the
40 State.

41 ¹g. The commissioner may issue a license on an expedited basis
42 to a captive insurance company currently formed or licensed
43 pursuant to the laws of a jurisdiction other than this State, provided
44 the captive insurance company complies with all of the filing
45 requirements of this section and presents satisfactory evidence that
46 it meets any additional financial standards which the commissioner
47 may set by regulation.¹

- 1 3. a. A captive insurance company shall not be issued a license
2 unless it maintains unimpaired paid-in capital and surplus of:
3 (1) in the case of a pure captive insurance company, not less
4 than \$250,000;
5 (2) in the case of an association captive insurance company, not
6 less than \$750,000;
7 (3) in the case of an industrial insured captive insurance
8 company, not less than \$500,000; 'and'
9 (4) '[in the case of a risk retention group, not less than
10 \$1,000,000; and
11 (5)]' in the case of a sponsored captive insurance company, not
12 less than \$500,000.
13 b. The commissioner may prescribe additional capital and
14 surplus requirements based upon the type, volume and nature of
15 insurance business transacted.
16 c. Capital and surplus may be in the form of cash or an
17 irrevocable letter of credit issued by a bank chartered by the State 'of
18 New Jersey' or a member bank of the Federal Reserve System
19 'located in this State' and approved by the commissioner.
20
21 4. A captive insurance company shall not pay a dividend out
22 of, or other distribution with respect to, capital or surplus without
23 the prior approval of the commissioner. Approval of an ongoing
24 plan for the payment of dividends or other distributions shall be
25 conditioned upon the retention, at the time of each payment, of
26 capital or surplus in excess of amounts specified by, or determined
27 in accordance with formulas approved by, the commissioner.
28 Notwithstanding any provisions of the "New Jersey Nonprofit
29 Corporation Act," N.J.S.15A:1-1 et seq. to the contrary, a captive
30 insurance company organized under the provisions of the "New
31 Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq. may make
32 distributions as are in conformity with its purposes and approved by
33 the commissioner.
34
35 5. a. A pure captive insurance company may be incorporated
36 or organized as:
37 (1) a stock insurer with its capital divided into shares and held
38 by the stockholders;
39 (2) a nonprofit corporation with one or more members; or
40 (3) a manager-managed limited liability company.
41 b. An association captive insurance company '[,] or' an
42 industrial insured captive insurance company '[, or a risk retention
43 group]' may be:
44 (1) incorporated as a stock insurer with its capital divided into
45 shares and held by the stockholders;
46 (2) incorporated as a mutual corporation;

1 (3) organized as a reciprocal insurer in accordance with the
2 provisions of P.L.1945, c.161 (C.17:50-1 et seq.); or
3 (4) organized as a manager-managed limited liability company.
4 c. A captive insurance company incorporated or organized in
5 this State shall have not less than three incorporators or three
6 organizers of whom at least one shall be a resident of this State.
7 d. In the case of a captive insurance company:
8 (1) formed as a corporation: (a) before the articles of
9 incorporation are transmitted to the Secretary of State, the
10 incorporators shall petition the commissioner to issue a certificate
11 setting forth the commissioner's finding that the establishment and
12 maintenance of the proposed corporation will promote the general
13 good of the State. In arriving at a finding the commissioner shall
14 consider:
15 (i) the character, reputation, financial standing and purposes of
16 the incorporators or organizers;
17 (ii) the character, reputation, financial responsibility, insurance
18 experience and business qualifications of the officers and directors;
19 and
20 (iii) any other aspects of the proposed corporation as the
21 commissioner deems advisable.
22 (b) the articles of incorporation, certificate and organization fee
23 shall be transmitted to the Secretary of State, who shall record both
24 the articles of incorporation and the certificate.
25 (2) formed as a reciprocal insurer, the organizers shall petition
26 the commissioner to issue a certificate setting forth the
27 commissioner's finding that the establishment and maintenance of
28 the proposed association will promote the general good of the State.
29 In arriving at a finding the commissioner shall consider the items
30 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)
31 of paragraph (1) of this subsection as applicable to a reciprocal
32 insurer.
33 (3) formed as a limited liability company, before the articles of
34 organization are transmitted to the Secretary of State, the organizers
35 shall petition the commissioner to issue a certificate setting forth
36 the commissioner's finding that the establishment and maintenance
37 of the proposed company will promote the general good of the
38 State. In arriving at a finding, the commissioner shall consider the
39 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph
40 (a) of paragraph (1) of this subsection as applicable to a limited
41 liability company.
42 e. The capital stock of a captive insurance company
43 incorporated as a stock insurer may be authorized with no par value.
44 f. In the case of a captive insurance company:
45 (1) formed as a corporation, at least one of the members of the
46 board of directors shall be a resident of this State;

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

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

6 g. Other than a captive insurance company formed as a limited
7 liability company pursuant to the "New Jersey Limited Liability
8 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) or as a
9 nonprofit corporation pursuant to the "New Jersey Nonprofit
10 Corporation Act," N.J.S.15A:1-1 et seq., a captive insurance
11 company formed as a corporation under the provisions of this act
12 shall have the privileges and be subject to the provisions of the
13 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., as
14 well as the applicable provisions contained in this act. In the event
15 of a conflict between the provisions of the "New Jersey Business
16 Corporation Act," N.J.S.14A:1-1 et seq., and the provisions of this
17 act, this act shall control.

18 h. A captive insurance company formed under the provisions of
19 this act:

20 (1) as a limited liability company shall have the privileges and
21 be subject to the provisions of the "New Jersey Limited Liability
22 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) as well as the
23 applicable provisions contained in this act. In the event of a conflict
24 between the provisions of the "New Jersey Limited Liability
25 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) and the
26 provisions of this act, this act shall control; or

27 (2) as a nonprofit corporation shall have the privileges and be
28 subject to the provisions of the "New Jersey Nonprofit Corporation
29 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions
30 contained in this act. In the event of a conflict between the
31 provisions of the "New Jersey Nonprofit Corporation Act,"
32 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall
33 control.

34 i. The procedures to be followed by a captive insurance
35 company in carrying out a merger, consolidation, conversion,
36 mutualization or redomestication shall be prescribed by the
37 commissioner by regulation.

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

44 k. The articles of incorporation or bylaws of a captive
45 insurance company formed as a corporation may authorize a
46 quorum of its board of directors to consist of not less than one-third
47 of the fixed or prescribed number of directors determined under
48 applicable provisions of the "New Jersey Business Corporation

1 Act," N.J.S.14A:1-1 et seq., or the "New Jersey Nonprofit
2 Corporation Act," N.J.S.15A:1-1 et seq.

3 1. The subscribers' agreement or other organizing document of
4 a captive insurance company formed as a reciprocal insurer may
5 authorize a quorum of its subscribers' advisory committee to consist
6 of not less than one-third of the number of its members.

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

11 (1) the irrevocable election certifies that, at the time of the
12 company's organization and at all times thereafter, the company
13 conducted its business in a manner consistent with a nonprofit
14 purpose; and

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

21

22 6. a. Prior to March 1 of each year, a captive insurance
23 company shall submit to the commissioner a report of its financial
24 condition, verified by oath of two of its executive officers. A
25 captive insurance company shall report using generally accepted
26 accounting principles, unless the commissioner approves the use of
27 regulatory accounting principles, with any appropriate or necessary
28 modifications or adaptations as may be required, approved or
29 accepted by the commissioner for the type of insurance and kinds of
30 insurers to be reported upon, and as supplemented by additional
31 information required by the commissioner. Except as otherwise
32 provided, an association captive insurance company ¹[and a risk
33 retention group]¹ shall file its report in the form required by
34 R.S.17:23-1. The commissioner shall by rule prescribe the forms in
35 which a pure captive insurance company and an industrial insured
36 captive insurance company shall report. The confidentiality
37 requirements of paragraph (3) of subsection c. of section 2 of this
38 act shall apply to each report filed pursuant to this section ¹[,
39 except reports filed by risk retention groups]¹.

40 b. A pure captive insurance company or an industrial insured
41 captive insurance company may make written application for filing
42 the required report on a fiscal year-end. If an alternative reporting
43 date is granted, the annual report is due 60 days after the fiscal
44 year-end.

45

46 7. a. At least once in every three years, and whenever the
47 commissioner determines it to be prudent, the commissioner shall
48 personally, or by some competent person appointed by the

1 commissioner, visit each captive insurance company and thoroughly
2 inspect and examine its affairs to determine its financial condition,
3 its ability to fulfill its obligations and whether it has complied with
4 the provisions of this act. The commissioner may increase the three-
5 year period to five years, if the captive insurance company is
6 subject to a comprehensive annual audit during that period of a
7 scope satisfactory to the commissioner by independent auditors
8 approved by the commissioner. The expenses and charges of the
9 examination shall be paid to the State by the company examined.

10 b. All examination reports, preliminary examination reports or
11 results, working papers, recorded information, documents and
12 copies thereof produced by, obtained by or disclosed to the
13 commissioner or any other person in the course of an examination
14 made under this section are confidential and are not subject to
15 subpoena and shall not be made public by the commissioner without
16 the written consent of the company, except to the extent provided in
17 this subsection. Nothing in this subsection shall prevent the
18 commissioner from using the information in furtherance of the
19 commissioner's regulatory authority under this act. The
20 commissioner may, in the commissioner's discretion, grant access to
21 the information to public officers having jurisdiction over the
22 regulation of insurance in any other state or country, or to law
23 enforcement officers of this State or any other state or agency of the
24 federal government at any time, so long as the officers receiving the
25 information agree in writing to hold it in a manner consistent with
26 this section.

27
28 8. a. Pursuant to subsection b. of this section, the
29 commissioner may suspend or revoke the license of a captive
30 insurance company for any of the following reasons:

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

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

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

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

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

41 (6) Use methods that, although not otherwise specifically
42 prohibited by law, nevertheless render its operation detrimental or
43 its condition unsound with respect to the public or to its
44 policyholders; or

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

46 b. If the commissioner finds, upon examination, hearing or
47 other evidence, that a captive insurance company has violated any
48 provision of subsection a. of this section, the commissioner may

1 suspend or revoke the company's license if the commissioner deems
2 it in the best interest of the public and the policyholders of the
3 captive insurance company, notwithstanding any other provision of
4 this act.

5
6 9. a. A captive insurance company shall comply with
7 investment requirements to be prescribed by the commissioner by
8 regulation.

9 b. A pure captive insurance company shall not make a loan to,
10 or an investment in, its parent company or affiliates without prior
11 written approval of the commissioner, and a loan or investment
12 shall be evidenced by documentation approved by the
13 commissioner. A pure captive insurance company shall not make a
14 loan using the minimum capital and surplus funds required by
15 section 3 of this act.

16
17 10. a. A captive insurance company may provide reinsurance on
18 risks ceded by any other insurer.

19 b. A captive insurance company may take credit for the
20 reinsurance of risks or portions of risks ceded to reinsurers
21 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et
22 seq.). ¹~~【Prior approval of the commissioner shall be required for~~
23 ~~ceding or taking】~~ A captive insurance company shall not take¹
24 credit for the reinsurance of risks or portions of risks ceded to
25 reinsurers not complying with P.L.1993, c.243 (C.17:51B-1 et seq.)
26 ¹~~【, except for business written by an alien captive insurance~~
27 ~~company outside the United States】~~¹ .

28 c. ¹~~【In addition to reinsurers authorized under the provisions of~~
29 ~~P.L.1993, c.243 (C.17:51B-1 et seq.), a captive insurance company~~
30 ~~may take credit for the reinsurance of risks or portions of risks~~
31 ~~ceded to a pool, exchange or association acting as a reinsurer which~~
32 ~~has been authorized by the commissioner. The commissioner may~~
33 ~~require any other documents, financial information or other~~
34 ~~evidence that the pool, exchange or association will be able to~~
35 ~~provide adequate security for its financial obligations. The~~
36 ~~commissioner may deny authorization or impose any limitations on~~
37 ~~the activities of a reinsurance pool, exchange or association that, in~~
38 ~~the commissioner's judgment, are necessary and proper to provide~~
39 ~~adequate security for the ceding captive insurance company and for~~
40 ~~the protection and consequent benefit of the public at large.~~

41 ~~d.】~~¹ For purposes of this act, insurance by a captive insurance
42 company of any workers' compensation qualified self-insured plan
43 of its parent and affiliates shall be deemed to be reinsurance.

44
45 11. a. A captive insurance company shall not be required to join
46 a rating organization.

1 b. A captive insurance company shall not be permitted to join
2 or contribute financially to a plan, pool, association, or guaranty or
3 insolvency fund in this State ¹, including the New Jersey Property-
4 Liability Insurance Guaranty Association, P.L.1974, c.17
5 (C.17:30A-1 et seq.), the New Jersey Surplus Lines Insurance
6 Guaranty Fund, P.L.1984, c.101 (C.17:22-6.70 et seq.), or “the
7 worker’s compensation security fund” created pursuant to
8 R.S.34:15-105.¹ nor shall a captive insurance company, or an
9 insured or affiliate thereof, receive a benefit from a plan, pool,
10 association, or guaranty or insolvency fund, ¹including the New
11 Jersey Property-Liability Insurance Guaranty Association,
12 P.L.1974, c.17 (C.17:30A-1 et seq.), the New Jersey Surplus Lines
13 Insurance Guaranty Fund, P.L.1984, c.101 (C.17:22-6.70 et seq.), or
14 “the worker’s compensation security fund” created pursuant to
15 R.S.34:15-105.¹ for claims arising out of the operations of a captive
16 insurance company.

17

18 12. a. Each captive insurance company shall pay to the Director
19 of the Division of Taxation in the Department of Treasury, on or
20 before March 1 of each year, a tax at the rate of .38 of one percent
21 on the first \$20,000,000 and .285 of one percent on the next
22 \$20,000,000 and .19 of one percent on the next \$20,000,000 and
23 .072 of one percent on each dollar thereafter on the direct premiums
24 collected or contracted for on policies or contracts of insurance
25 written by the captive insurance company during the year ending
26 December 31 next preceding, after deducting from the direct
27 premiums subject to the tax the amounts paid to policyholders as
28 return premiums, which shall include dividends on unabsorbed
29 premiums or premium deposits returned or credited to
30 policyholders; except that no tax shall be due or payable as to
31 considerations received for annuity contracts.

32 b. Each captive insurance company shall pay to the Director of
33 the Division of Taxation in the Department of Treasury, on or
34 before March 1 of each year, a tax at the rate of .214 of one percent
35 on the first \$20,000,000 of assumed reinsurance premium, and .143
36 of one percent on the next \$20,000,000 and .048 of one percent on
37 the next \$20,000,000 and .024 of one percent of each dollar
38 thereafter. However, no tax under this subsection applies to
39 premiums for risks or portions of risks which are subject to taxation
40 on a direct basis pursuant to subsection a. of this section. No tax
41 under this subsection shall apply in connection with the receipt of
42 assets in exchange for the assumption of loss reserves and other
43 liabilities of another insurer under common ownership and control
44 if the transaction is part of a plan to discontinue the operations of
45 the other insurer, and if the intent of the parties to the transaction is
46 to renew or maintain the business with the captive insurance
47 company.

1 c. The annual minimum aggregate tax to be paid by a captive
2 insurance company calculated under subsections a. and b. of this
3 section shall be \$7,500, and the annual maximum aggregate tax
4 shall be \$200,000. The maximum aggregate tax to be paid by a
5 sponsored captive insurance company shall apply to each protected
6 cell only and not to the sponsored captive insurance company as a
7 whole.

8 d. (1) A captive insurance company shall, on or before March
9 1 of each year, file with the commissioner an annual tax return,
10 signed and sworn to by an officer of the company, or by its United
11 States manager, if a company of a foreign country, in the form and
12 containing matters as may be necessary for carrying out the
13 provisions of this section.

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

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

22 e. Two or more captive insurance companies under common
23 ownership and control shall be taxed as though they were a single
24 captive insurance company.

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

27 (1) in the case of stock corporations, the direct or indirect
28 ownership of 80 percent or more of the outstanding voting stock of
29 two or more corporations by the same shareholder or shareholders;
30 and

31 (2) in the case of mutual or nonprofit corporations, the direct or
32 indirect ownership of 80 percent or more of the surplus and the
33 voting power of two or more corporations by the same member or
34 members.

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

39 h. Annually, ten percent of the premium tax revenues collected
40 by the director pursuant to this section shall be transferred to the
41 commissioner for the regulation of captive insurance companies
42 under this act.

43 i. The tax provided for by this section shall be calculated on an
44 annual basis, notwithstanding policies or contracts of insurance or
45 contracts of reinsurance issued on a multiyear basis. In the case of
46 multiyear policies or contracts, the premium shall be prorated for
47 purposes of determining the tax under this section.

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

5
6 ¹[14.] 13.¹ a. (1) There is created a fund to be known as the
7 "Captive Insurance Regulation and Supervision Fund," for the
8 purpose of providing the financial means for the commissioner to
9 administer this act ¹[and the "New Jersey Risk Retention Act,"
10 P.L.1993, c.240 (C.17:47A-1 et seq.),]¹ and for reasonable
11 expenses incurred in promoting the captive insurance industry in
12 this State. The transfer of 10 percent of the premium tax under
13 subsection h. of section 12 of this act, and all fees and assessments
14 received by the department pursuant to the administration of this act
15 ¹[and the "New Jersey Risk Retention Act," P.L.1993, c.240
16 (C.17:47A-1 et seq.)]¹ shall be credited to this fund. Of this
17 amount, not more than two percent of the premium tax under
18 section 12 of this act may be transferred to the New Jersey
19 Economic Development Authority for expenses for promotional
20 activities conducted by the commission in relation to captive
21 insurance companies. All fees received by the department from
22 reinsurers who assume risk solely from captive insurance
23 companies and are subject to the provisions of P.L.1993, c.243
24 (C.17:51B-1 et seq.), shall be deposited into the Captive Insurance
25 Regulation and Supervision Fund, except that all fines and
26 administrative penalties shall be deposited directly into the General
27 Fund.

28 (2) All payments from the Captive Insurance Regulation and
29 Supervision Fund for the maintenance of staff and associated
30 expenses, including contractual services as necessary, shall be
31 disbursed from the State Treasury to the commissioner after receipt
32 of proper documentation regarding services rendered and expenses
33 incurred.

34 b. At the end of each fiscal year, the balance in the Captive
35 Insurance Regulation and Supervision Fund shall be transferred to
36 the General Fund.

37
38 ¹[15.] 14.¹ Except as otherwise provided in this act, the terms
39 and conditions set forth in P.L.1975, c.113 (C.17:30C-1 et seq.),
40 pertaining to insurance reorganizations, receiverships and
41 injunctions, shall apply to captive insurance companies formed or
42 licensed under this act.

43
44 ¹[16.] 15.¹ The commissioner may adopt rules establishing
45 standards to ensure that a parent or affiliated company is able to
46 exercise control of the risk management function of any controlled
47 unaffiliated business to be insured by a pure captive insurance

1 company, except that until such time as rules under this section are
2 adopted, the commissioner may approve the coverage of the risk by
3 a pure captive insurance company.

4
5 '17.] 16.' a. An association captive insurance company '1[,
6 risk retention group,]' or industrial insured captive insurance
7 company formed as a stock or mutual corporation may be converted
8 to or merged with and into a reciprocal insurer in accordance with a
9 plan of conversion or merger and the provisions of this section.

10 b. A plan for conversion or merger shall provide a fair and
11 equitable plan for purchasing, retiring or otherwise extinguishing
12 the interests of the stockholders and policyholders of a stock
13 insurer, and the members and policyholders of a mutual insurer,
14 including a fair and equitable provision for the rights and remedies
15 of dissenting stockholders, members or policyholders.

16 c. In the case of a conversion authorized under subsection a. of
17 this section:

18 (1) the conversion shall be accomplished under a reasonable
19 plan and procedure as approved by the commissioner, except that
20 the commissioner shall not approve a plan of conversion unless the
21 plan:

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

23 (b) provides for a hearing, of which notice is given to the
24 captive insurance company, its directors, officers and policyholders,
25 and, in the case of a stock insurer, its stockholders, and in the case
26 of a mutual insurer, its members, all of which persons shall be
27 entitled to attend and appear at the hearing if notice of a hearing is
28 given and no director, officer, policyholder, member or stockholder
29 requests a hearing, the commissioner may cancel the hearing;

30 (c) provides a fair and equitable plan for the conversion of
31 stockholder, member or policyholder interests into subscriber
32 interests in the resulting reciprocal insurer, substantially
33 proportionate to the corresponding interests in the stock or mutual
34 insurer. This requirement shall not preclude the resulting reciprocal
35 insurer from applying underwriting criteria that could affect
36 ongoing ownership interests; and

37 (d) is approved:

38 (i) in the case of a stock insurer, by a majority of the
39 shareholders entitled to vote represented in person or by proxy at a
40 duly called regular or special meeting at which a quorum is present;
41 and

42 (ii) in the case of a mutual insurer, by a majority of the voting
43 interests of policyholders represented in person or by proxy at a
44 duly called regular or special meeting thereof at which a quorum is
45 present;

46 (2) the commissioner shall approve the plan of conversion if the
47 commissioner finds that the conversion will promote the general

1 good of the State in conformity with those standards set forth in
2 paragraph (2) of subsection d. of section 5 of this act;

3 (3) if the commissioner approves the plan, the commissioner
4 shall amend the converting insurer's certificate of authority to
5 reflect conversion to a reciprocal insurer and issue the amended
6 certificate of authority to the company's attorney-in-fact;

7 (4) the conversion shall be effective upon the issuance of an
8 amended certificate of authority of a reciprocal insurer by the
9 commissioner; and

10 (5) the corporate existence of the converting insurer shall cease
11 and the resulting reciprocal insurer shall notify the Secretary of
12 State of the conversion upon the conversion becoming effective.

13 d. A merger authorized under subsection a. of this section shall
14 be accomplished substantially in accordance with the procedures to
15 be prescribed by the commissioner, except that, solely for purposes
16 of the merger:

17 (1) the plan of merger shall satisfy the provisions of subsection
18 b. of this section;

19 (2) the subscribers' advisory committee of a reciprocal insurer
20 shall be equivalent to the board of directors of a stock or mutual
21 insurance company;

22 (3) the subscribers of a reciprocal insurer shall be the equivalent
23 of the policyholders of a mutual insurance company;

24 (4) if a subscribers' advisory committee does not have a
25 president or secretary, the officers of the committee having
26 substantially equivalent duties shall be deemed the president or
27 secretary of the committee;

28 (5) the commissioner shall approve the articles of merger if the
29 commissioner finds that the merger will promote the general good
30 of the State in conformity with those standards set forth in
31 paragraph (2) of subsection d. of section 5 of this act. If the
32 commissioner approves the articles of merger, the commissioner
33 shall indorse the commissioner's approval thereon and the surviving
34 insurer shall present the same to the Secretary of State;

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

42 (7) an alien captive insurance company may be a party to a
43 merger authorized under subsection a. of this section in accordance
44 with procedures to be prescribed by the commissioner by
45 regulation.

46

47 ¹[18.] 17.¹ a. One or more sponsors may form a sponsored
48 captive insurance company as prescribed in this act.

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

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

6 (2) A sponsored captive insurance company shall separately
7 account for each protected cell in its books and records to reflect
8 the financial condition and results of operations of each protected
9 cell, net income or loss of each protected cell, dividends or other
10 distributions to participants of each protected cell and any other
11 factors prescribed in the participant contract or required by the
12 commissioner.

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

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

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

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

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

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

32 (7) A sponsored captive insurance company shall notify the
33 commissioner in writing within 10 days after learning of any
34 protected cell that is insolvent or otherwise unable to meet its claim
35 or expense obligations.

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

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

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

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

47 (b) reinsured by a reinsurer authorized or accredited by the
48 State; or

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

2

3 ~~'[19.] 18.'~~ a. A risk retention group shall not be either a
4 sponsor or participant in a sponsored captive insurance company.

5 b. An association, corporation, limited liability company,
6 partnership, trust or any another business entity may be a
7 participant in any sponsored captive insurance company formed or
8 licensed under this act.

9 c. A sponsor may be a participant in a sponsored captive
10 insurance company.

11 d. A participant need not be a shareholder of a sponsored
12 captive insurance company or any affiliate of a sponsored captive
13 insurance company.

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

16

17 ~~'[20.] 19.'~~ a. No cause of action shall arise nor shall any
18 liability be imposed against the commissioner, the commissioner's
19 authorized agent or any examiner appointed by the commissioner
20 for any statements made or conduct performed in good faith while
21 carrying out the provisions of this act. This section does not
22 abrogate or modify in any way any common law or other statutory
23 privilege or immunity available to any person identified in this
24 subsection. A person identified in this subsection shall be entitled to
25 an award of attorney's fees and costs if he is the prevailing party in
26 a civil cause of action for libel, slander or any other relevant tort
27 arising out of activities in carrying out the provisions of this act and
28 the party bringing the action was not substantially justified in doing
29 so. For purposes of this subsection, a proceeding is "substantially
30 justified" if it had a reasonable basis in law or fact at the time that it
31 was initiated.

32 b. No cause of action shall arise, nor shall any liability be
33 imposed against any person for the act of communicating or
34 delivering information or data to the commissioner or the
35 commissioner's authorized representative or examiner pursuant to
36 an examination made under this act, if the communication or
37 delivery was performed in good faith and without fraudulent intent
38 or the intent to deceive.

39

40 ~~'[21.] 20.'~~ This act shall take effect on the 90th day following
41 enactment.