

SENATE, No. 168

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

SYNOPSIS

Regulates captive insurers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/11/2010)

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.

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

6 "Industrial insured" means an insured:

- 7 (1) who procures the insurance of a risk by use of the services of
8 a full time employee acting as an insurance manager or buyer;
9 (2) who has at least 25 full time employees; and
10 (3) whose aggregate annual premiums for insurance on all risks
11 total at least \$25,000.

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

15 "Industrial insured group" means a group of industrial insureds
16 that collectively:

- 17 (1) own, control, or hold with power to vote all of the
18 outstanding voting securities of an industrial insured captive
19 insurance company incorporated as a stock insurer;
20 (2) have complete voting control over an industrial insured
21 captive insurance company incorporated as a mutual insurer; or
22 (3) constitute all of the subscribers of an industrial insured
23 captive insurance company formed as a reciprocal insurer.

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

27 "Mutual corporation" means a corporation organized without
28 stockholders and includes a nonprofit corporation with members.

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

- 33 (1) securities of a pure captive insurance company organized as
34 a stock corporation; or
35 (2) membership interests of a pure captive insurance company
36 organized as a nonprofit corporation.

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

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

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

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

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

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

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

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

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

14

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

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

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

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

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

34 (5) a captive insurance company shall not provide private
35 passenger automobile insurance or homeowner's insurance coverage
36 or any component thereof;

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

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

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

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

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

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

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

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

15 c. (1) Before receiving a license, a captive insurance company
16 shall:

17 (a) file with the commissioner a certified copy of its organization
18 documents, a statement under oath of its president and secretary
19 showing its financial condition, and any other statements or
20 documents required by the commissioner; and

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

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

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

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

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

38 (d) the adequacy of the loss prevention programs of its insureds;
39 and

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

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

1 (a) the information may be discoverable by a party in a civil
2 action or contested case to which the captive insurance company
3 that submitted the information is a party, upon a showing by the
4 party seeking to discover the information that:

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

7 (ii) the information sought is unavailable from other
8 nonconfidential sources; and

9 (iii) a subpoena issued by a judicial or administrative officer of
10 competent jurisdiction has been submitted to the commissioner;
11 except that the provisions of this paragraph (3) shall not apply to a
12 risk retention group; and

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

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

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

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

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

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

37

38 3. a. A captive insurance company shall not be issued a license
39 unless it maintains unimpaired paid-in capital and surplus of:

40 (1) in the case of a pure captive insurance company, not less than
41 \$250,000;

42 (2) in the case of an association captive insurance company, not
43 less than \$750,000;

44 (3) in the case of an industrial insured captive insurance
45 company, not less than \$500,000;

46 (4) in the case of a risk retention group, not less than \$1,000,000;
47 and

1 (5) in the case of a sponsored captive insurance company, not
2 less than \$500,000.

3 b. The commissioner may prescribe additional capital and
4 surplus requirements based upon the type, volume and nature of
5 insurance business transacted.

6 c. Capital and surplus may be in the form of cash or an
7 irrevocable letter of credit issued by a bank chartered by the State or a
8 member bank of the Federal Reserve System and approved by the
9 commissioner.

10

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

24

25 5. a. A pure captive insurance company may be incorporated or
26 organized as:

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

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

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

31 b. An association captive insurance company, an industrial
32 insured captive insurance company, or a risk retention group may
33 be:

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

36 (2) incorporated as a mutual corporation;

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

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

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

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

44 (1) formed as a corporation: (a) before the articles of
45 incorporation are transmitted to the Secretary of State, the
46 incorporators shall petition the commissioner to issue a certificate
47 setting forth the commissioner's finding that the establishment and

1 maintenance of the proposed corporation will promote the general
2 good of the State. In arriving at a finding the commissioner shall
3 consider:

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

6 (ii) the character, reputation, financial responsibility, insurance
7 experience and business qualifications of the officers and directors;
8 and

9 (iii) any other aspects of the proposed corporation as the
10 commissioner deems advisable.

11 (b) the articles of incorporation, certificate and organization fee
12 shall be transmitted to the Secretary of State, who shall record both
13 the articles of incorporation and the certificate.

14 (2) formed as a reciprocal insurer, the organizers shall petition
15 the commissioner to issue a certificate setting forth the
16 commissioner's finding that the establishment and maintenance of
17 the proposed association will promote the general good of the State.
18 In arriving at a finding the commissioner shall consider the items
19 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)
20 of paragraph (1) of this subsection as applicable to a reciprocal
21 insurer.

22 (3) formed as a limited liability company, before the articles of
23 organization are transmitted to the Secretary of State, the organizers
24 shall petition the commissioner to issue a certificate setting forth
25 the commissioner's finding that the establishment and maintenance
26 of the proposed company will promote the general good of the
27 State. In arriving at a finding, the commissioner shall consider the
28 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph
29 (a) of paragraph (1) of this subsection as applicable to a limited
30 liability company.

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

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

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

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

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

40 g. Other than a captive insurance company formed as a limited
41 liability company pursuant to the "New Jersey Limited Liability
42 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) or as a
43 nonprofit corporation pursuant to the "New Jersey Nonprofit
44 Corporation Act," N.J.S.15A:1-1 et seq., a captive insurance
45 company formed as a corporation under the provisions of this act
46 shall have the privileges and be subject to the provisions of the
47 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., as

1 well as the applicable provisions contained in this act. In the event
2 of a conflict between the provisions of the "New Jersey Business
3 Corporation Act," N.J.S.14A:1-1 et seq., and the provisions of this
4 act, this act shall control.

5 h. A captive insurance company formed under the provisions of
6 this act:

7 (1) as a limited liability company shall have the privileges and
8 be subject to the provisions of the "New Jersey Limited Liability
9 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) as well as the
10 applicable provisions contained in this act. In the event of a conflict
11 between the provisions of the "New Jersey Limited Liability
12 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) and the
13 provisions of this act, this act shall control; or

14 (2) as a nonprofit corporation shall have the privileges and be
15 subject to the provisions of the "New Jersey Nonprofit Corporation
16 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions
17 contained in this act. In the event of a conflict between the
18 provisions of the "New Jersey Nonprofit Corporation Act,"
19 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall
20 control.

21 i. The procedures to be followed by a captive insurance
22 company in carrying out a merger, consolidation, conversion,
23 mutualization or redomestication shall be prescribed by the
24 commissioner by regulation.

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

31 k. The articles of incorporation or bylaws of a captive insurance
32 company formed as a corporation may authorize a quorum of its
33 board of directors to consist of not less than one-third of the fixed
34 or prescribed number of directors determined under applicable
35 provisions of the "New Jersey Business Corporation Act,"
36 N.J.S.14A:1-1 et seq., or the "New Jersey Nonprofit Corporation
37 Act," N.J.S.15A:1-1 et seq.

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

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

46 (1) the irrevocable election certifies that, at the time of the
47 company's organization and at all times thereafter, the company

1 conducted its business in a manner consistent with a nonprofit
2 purpose; and

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

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

28 b. A pure captive insurance company or an industrial insured
29 captive insurance company may make written application for filing
30 the required report on a fiscal year-end. If an alternative reporting
31 date is granted, the annual report is due 60 days after the fiscal
32 year-end.

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

46 b. All examination reports, preliminary examination reports or
47 results, working papers, recorded information, documents and

1 copies thereof produced by, obtained by or disclosed to the
2 commissioner or any other person in the course of an examination
3 made under this section are confidential and are not subject to
4 subpoena and shall not be made public by the commissioner without
5 the written consent of the company, except to the extent provided in
6 this subsection. Nothing in this subsection shall prevent the
7 commissioner from using the information in furtherance of the
8 commissioner's regulatory authority under this act. The
9 commissioner may, in the commissioner's discretion, grant access to
10 the information to public officers having jurisdiction over the
11 regulation of insurance in any other state or country, or to law
12 enforcement officers of this State or any other state or agency of the
13 federal government at any time, so long as the officers receiving the
14 information agree in writing to hold it in a manner consistent with
15 this section.

16

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

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

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

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

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

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

30 (6) Use methods that, although not otherwise specifically
31 prohibited by law, nevertheless render its operation detrimental or
32 its condition unsound with respect to the public or to its
33 policyholders; or

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

35 b. If the commissioner finds, upon examination, hearing or other
36 evidence, that a captive insurance company has violated any
37 provision of subsection a. of this section, the commissioner may
38 suspend or revoke the company's license if the commissioner deems
39 it in the best interest of the public and the policyholders of the
40 captive insurance company, notwithstanding any other provision of
41 this act.

42

43 9. a. A captive insurance company shall comply with investment
44 requirements to be prescribed by the commissioner by regulation.

45 b. A pure captive insurance company shall not make a loan to,
46 or an investment in, its parent company or affiliates without prior
47 written approval of the commissioner, and a loan or investment

1 shall be evidenced by documentation approved by the
2 commissioner. A pure captive insurance company shall not make a
3 loan using the minimum capital and surplus funds required by
4 section 3 of this act.

5

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

8 b. A captive insurance company may take credit for the
9 reinsurance of risks or portions of risks ceded to reinsurers
10 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et
11 seq.). Prior approval of the commissioner shall be required for
12 ceding or taking credit for the reinsurance of risks or portions of
13 risks ceded to reinsurers not complying with P.L.1993, c.243
14 (C.17:51B-1 et seq.), except for business written by an alien captive
15 insurance company outside the United States.

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

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

32

33 11. a. A captive insurance company shall not be required to join
34 a rating organization.

35 b. A captive insurance company shall not be permitted to join or
36 contribute financially to a plan, pool, association, or guaranty or
37 insolvency fund in this State, nor shall a captive insurance
38 company, or an insured or affiliate thereof, receive a benefit from a
39 plan, pool, association, or guaranty or insolvency fund for claims
40 arising out of the operations of a captive insurance company.

41

42 12. a. Each captive insurance company shall pay to the Director
43 of the Division of Taxation in the Department of Treasury, on or
44 before March 1 of each year, a tax at the rate of .38 of one percent
45 on the first \$20,000,000 and .285 of one percent on the next
46 \$20,000,000 and .19 of one percent on the next \$20,000,000 and
47 .072 of one percent on each dollar thereafter on the direct premiums

1 collected or contracted for on policies or contracts of insurance
2 written by the captive insurance company during the year ending
3 December 31 next preceding, after deducting from the direct
4 premiums subject to the tax the amounts paid to policyholders as
5 return premiums, which shall include dividends on unabsorbed
6 premiums or premium deposits returned or credited to
7 policyholders; except that no tax shall be due or payable as to
8 considerations received for annuity contracts.

9 b. Each captive insurance company shall pay to the Director of
10 the Division of Taxation in the Department of Treasury, on or
11 before March 1 of each year, a tax at the rate of .214 of one percent
12 on the first \$20,000,000 of assumed reinsurance premium, and .143
13 of one percent on the next \$20,000,000 and .048 of one percent on
14 the next \$20,000,000 and .024 of one percent of each dollar
15 thereafter. However, no tax under this subsection applies to
16 premiums for risks or portions of risks which are subject to taxation
17 on a direct basis pursuant to subsection a. of this section. No tax
18 under this subsection shall apply in connection with the receipt of
19 assets in exchange for the assumption of loss reserves and other
20 liabilities of another insurer under common ownership and control
21 if the transaction is part of a plan to discontinue the operations of
22 the other insurer, and if the intent of the parties to the transaction is
23 to renew or maintain the business with the captive insurance
24 company.

25 c. The annual minimum aggregate tax to be paid by a captive
26 insurance company calculated under subsections a. and b. of this
27 section shall be \$7,500, and the annual maximum aggregate tax
28 shall be \$200,000. The maximum aggregate tax to be paid by a
29 sponsored captive insurance company shall apply to each protected
30 cell only and not to the sponsored captive insurance company as a
31 whole.

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

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

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

- 1 e. Two or more captive insurance companies under common
2 ownership and control shall be taxed as though they were a single
3 captive insurance company.
- 4 f. For the purposes of this section, "common ownership and
5 control" shall mean:
- 6 (1) in the case of stock corporations, the direct or indirect
7 ownership of 80 percent or more of the outstanding voting stock of
8 two or more corporations by the same shareholder or shareholders;
9 and
- 10 (2) in the case of mutual or nonprofit corporations, the direct or
11 indirect ownership of 80 percent or more of the surplus and the
12 voting power of two or more corporations by the same member or
13 members.
- 14 g. The tax provided for in this section shall constitute all taxes
15 collectible under the laws of this State from any captive insurance
16 company, and a captive insurance company shall not pay taxes
17 pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).
- 18 h. Annually, ten percent of the premium tax revenues collected
19 by the director pursuant to this section shall be transferred to the
20 commissioner for the regulation of captive insurance companies
21 under this act.
- 22 i. The tax provided for by this section shall be calculated on an
23 annual basis, notwithstanding policies or contracts of insurance or
24 contracts of reinsurance issued on a multiyear basis. In the case of
25 multiyear policies or contracts, the premium shall be prorated for
26 purposes of determining the tax under this section.
- 27
- 28 13. Risk retention groups shall have the privileges and be
29 subject to the provisions of the "New Jersey Risk Retention Act,"
30 P.L.1993, c.240 (C.17:47A-1 et seq.) in addition to the applicable
31 provisions of this act.
- 32
- 33 14. a. (1) There is created a fund to be known as the "Captive
34 Insurance Regulation and Supervision Fund," for the purpose of
35 providing the financial means for the commissioner to administer
36 this act and the "New Jersey Risk Retention Act," P.L.1993, c.240
37 (C.17:47A-1 et seq.), and for reasonable expenses incurred in
38 promoting the captive insurance industry in this State. The transfer
39 of 10 percent of the premium tax under subsection h. of section 12
40 of this act, and all fees and assessments received by the department
41 pursuant to the administration of this act and the "New Jersey Risk
42 Retention Act," P.L.1993, c.240 (C.17:47A-1 et seq.) shall be
43 credited to this fund. Of this amount, not more than two percent of
44 the premium tax under section 12 of this act may be transferred to
45 the New Jersey Commerce, Economic Growth & Tourism
46 Commission, for expenses for promotional activities conducted by
47 the commission in relation to captive insurance companies. All fees

1 received by the department from reinsurers who assume risk solely
2 from captive insurance companies and are subject to the provisions
3 of P.L.1993, c.243 (C.17:51B-1 et seq.), shall be deposited into the
4 Captive Insurance Regulation and Supervision Fund, except that all
5 fines and administrative penalties shall be deposited directly into
6 the General Fund.

7 (2) All payments from the Captive Insurance Regulation and
8 Supervision Fund for the maintenance of staff and associated
9 expenses, including contractual services as necessary, shall be
10 disbursed from the State Treasury to the commissioner after receipt
11 of proper documentation regarding services rendered and expenses
12 incurred.

13 b. At the end of each fiscal year, the balance in the Captive
14 Insurance Regulation and Supervision Fund shall be transferred to
15 the General Fund.

16

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

22

23 16. The commissioner may adopt rules establishing standards to
24 ensure that a parent or affiliated company is able to exercise control
25 of the risk management function of any controlled unaffiliated
26 business to be insured by a pure captive insurance company, except
27 that until such time as rules under this section are adopted, the
28 commissioner may approve the coverage of the risk by a pure
29 captive insurance company.

30

31 17. a. An association captive insurance company, risk retention
32 group, or industrial insured captive insurance company formed as a
33 stock or mutual corporation may be converted to or merged with
34 and into a reciprocal insurer in accordance with a plan of
35 conversion or merger and the provisions of this section.

36 b. A plan for conversion or merger shall provide a fair and
37 equitable plan for purchasing, retiring or otherwise extinguishing
38 the interests of the stockholders and policyholders of a stock
39 insurer, and the members and policyholders of a mutual insurer,
40 including a fair and equitable provision for the rights and remedies
41 of dissenting stockholders, members or policyholders.

42 c. In the case of a conversion authorized under subsection a. of
43 this section:

44 (1) the conversion shall be accomplished under a reasonable
45 plan and procedure as approved by the commissioner, except that
46 the commissioner shall not approve a plan of conversion unless the
47 plan:

- 1 (a) satisfies the provisions of subsection b. of this section;
- 2 (b) provides for a hearing, of which notice is given to the captive
3 insurance company, its directors, officers and policyholders, and, in
4 the case of a stock insurer, its stockholders, and in the case of a
5 mutual insurer, its members, all of which persons shall be entitled
6 to attend and appear at the hearing if notice of a hearing is given
7 and no director, officer, policyholder, member or stockholder
8 requests a hearing, the commissioner may cancel the hearing;
- 9 (c) provides a fair and equitable plan for the conversion of
10 stockholder, member or policyholder interests into subscriber
11 interests in the resulting reciprocal insurer, substantially
12 proportionate to the corresponding interests in the stock or mutual
13 insurer. This requirement shall not preclude the resulting reciprocal
14 insurer from applying underwriting criteria that could affect
15 ongoing ownership interests; and
- 16 (d) is approved:
- 17 (i) in the case of a stock insurer, by a majority of the
18 shareholders entitled to vote represented in person or by proxy at a
19 duly called regular or special meeting at which a quorum is present;
20 and
- 21 (ii) in the case of a mutual insurer, by a majority of the voting
22 interests of policyholders represented in person or by proxy at a
23 duly called regular or special meeting thereof at which a quorum is
24 present;
- 25 (2) the commissioner shall approve the plan of conversion if the
26 commissioner finds that the conversion will promote the general
27 good of the State in conformity with those standards set forth in
28 paragraph (2) of subsection d. of section 5 of this act;
- 29 (3) if the commissioner approves the plan, the commissioner
30 shall amend the converting insurer's certificate of authority to
31 reflect conversion to a reciprocal insurer and issue the amended
32 certificate of authority to the company's attorney-in-fact;
- 33 (4) the conversion shall be effective upon the issuance of an
34 amended certificate of authority of a reciprocal insurer by the
35 commissioner; and
- 36 (5) the corporate existence of the converting insurer shall cease
37 and the resulting reciprocal insurer shall notify the Secretary of
38 State of the conversion upon the conversion becoming effective.
- 39 d. A merger authorized under subsection a. of this section shall
40 be accomplished substantially in accordance with the procedures to
41 be prescribed by the commissioner, except that, solely for purposes
42 of the merger:
- 43 (1) the plan of merger shall satisfy the provisions of subsection
44 b. of this section;
- 45 (2) the subscribers' advisory committee of a reciprocal insurer
46 shall be equivalent to the board of directors of a stock or mutual
47 insurance company;

- 1 (3) the subscribers of a reciprocal insurer shall be the equivalent
2 of the policyholders of a mutual insurance company;
- 3 (4) if a subscribers' advisory committee does not have a
4 president or secretary, the officers of the committee having
5 substantially equivalent duties shall be deemed the president or
6 secretary of the committee;
- 7 (5) the commissioner shall approve the articles of merger if the
8 commissioner finds that the merger will promote the general good
9 of the State in conformity with those standards set forth in
10 paragraph (2) of subsection d. of section 5 of this act. If the
11 commissioner approves the articles of merger, the commissioner
12 shall indorse the commissioner's approval thereon and the surviving
13 insurer shall present the same to the Secretary of State;
- 14 (6) notwithstanding section 3 of this act, the commissioner may
15 permit the formation, without surplus, of a captive insurance
16 company organized as a reciprocal insurer, into which an existing
17 captive insurance company may be merged for the purpose of
18 facilitating a transaction under this section, except that there shall
19 be no more than one authorized insurance company surviving the
20 merger; and
- 21 (7) an alien captive insurance company may be a party to a
22 merger authorized under subsection a. of this section in accordance
23 with procedures to be prescribed by the commissioner by
24 regulation.
- 25
- 26 18. a. One or more sponsors may form a sponsored captive
27 insurance company as prescribed in this act.
- 28 b. A sponsored captive insurance company may establish and
29 maintain one or more protected cells to insure the risks of one or
30 more participants, subject to the following conditions:
- 31 (1) A sponsored captive insurance company shall not have any
32 stockholders other than its participants and sponsors.
- 33 (2) A sponsored captive insurance company shall separately
34 account for each protected cell in its books and records to reflect
35 the financial condition and results of operations of each protected
36 cell, net income or loss of each protected cell, dividends or other
37 distributions to participants of each protected cell and any other
38 factors prescribed in the participant contract or required by the
39 commissioner.
- 40 (3) The assets of a sponsored captive insurance company are not
41 chargeable with liabilities arising out of any other insurance
42 business the sponsored captive insurance company may conduct.
- 43 (4) A sponsored captive insurance company shall not sell,
44 exchange or transfer assets, issue a dividend or make a distribution
45 between or among any of its protected cells without the written
46 consent of all its protected cells.

- 1 (5) A sponsored captive insurance company shall not sell,
2 exchange or transfer assets, issue a dividend or make a distribution
3 to a sponsor or participant unless the commissioner approves the
4 transaction and determines that the transaction will not cause
5 insolvency or impairment of any protected cell.
- 6 (6) At the time of filing its annual report pursuant to section 6 of
7 this act, a sponsored captive insurance company shall also file with
8 the department:
- 9 (a) an accounting statement detailing the financial experience of
10 each protected cell, in a form to be prescribed by the commissioner;
11 and
- 12 (b) any other financial report prescribed by the commissioner.
- 13 (7) A sponsored captive insurance company shall notify the
14 commissioner in writing within 10 days after learning of any
15 protected cell that is insolvent or otherwise unable to meet its claim
16 or expense obligations.
- 17 (8) A sponsored captive insurance company shall obtain the
18 commissioner's written approval of any participant contract before
19 the contract becomes effective.
- 20 (9) The addition of a new participant or the withdrawal of a
21 participant from an existing sponsored captive insurance company
22 shall be considered a change in the captive insurer's business plan
23 and shall require the commissioner's approval.
- 24 (10) With respect to each protected cell, the insurance business
25 written by a sponsored captive insurance company may be:
- 26 (a) assumed from an insurance company licensed under the laws
27 of any state;
- 28 (b) reinsured by a reinsurer authorized or accredited by the
29 State; or
- 30 (c) secured by a trust fund or an irrevocable letter of credit.
- 31
- 32 19. a. A risk retention group shall not be either a sponsor or
33 participant in a sponsored captive insurance company.
- 34 b. An association, corporation, limited liability company,
35 partnership, trust or any another business entity may be a
36 participant in any sponsored captive insurance company formed or
37 licensed under this act.
- 38 c. A sponsor may be a participant in a sponsored captive
39 insurance company.
- 40 d. A participant need not be a shareholder of a sponsored captive
41 insurance company or any affiliate of a sponsored captive insurance
42 company.
- 43 e. A participant shall insure only its own risks through a
44 sponsored captive insurance company.
- 45
- 46 20. a. No cause of action shall arise nor shall any liability be
47 imposed against the commissioner, the commissioner's authorized

1 agent or any examiner appointed by the commissioner for any
2 statements made or conduct performed in good faith while carrying
3 out the provisions of this act. This section does not abrogate or
4 modify in any way any common law or other statutory privilege or
5 immunity available to any person identified in this subsection. A
6 person identified in this subsection shall be entitled to an award of
7 attorney's fees and costs if he is the prevailing party in a civil cause
8 of action for libel, slander or any other relevant tort arising out of
9 activities in carrying out the provisions of this act and the party
10 bringing the action was not substantially justified in doing so. For
11 purposes of this subsection, a proceeding is "substantially justified"
12 if it had a reasonable basis in law or fact at the time that it was
13 initiated.

14 b. No cause of action shall arise, nor shall any liability be
15 imposed against any person for the act of communicating or
16 delivering information or data to the commissioner or the
17 commissioner's authorized representative or examiner pursuant to
18 an examination made under this act, if the communication or
19 delivery was performed in good faith and without fraudulent intent
20 or the intent to deceive.

21

22 21. This act shall take effect on the 90th day following
23 enactment.

24

25

26

STATEMENT

27

28 This bill permits a captive insurance company to be licensed by
29 the Department of Banking and Insurance to do business in the
30 State in any of the lines of insurance in subtitle 3 of Title 17 of the
31 Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New
32 Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including
33 contracts or policies of life insurance, health insurance, annuities,
34 indemnity, property and casualty, fidelity, surety, guaranty and title
35 insurance, and reinsurance, provided the captive meets certain
36 requirements.

37 The bill regulates captive insurance companies, which include
38 pure captive insurance companies, association captive insurance
39 companies, sponsored captive insurance companies, industrial
40 insured captive insurance companies and risk retention groups. Risk
41 retention groups are already authorized to be licensed in the State.

42 The bill provides that a captive insurance company must meet
43 certain requirements, including those relating to formation, capital
44 and surplus, annual reporting, examination, local office presence,
45 ability to meet policy obligations, payment of certain fees and taxes,
46 and annual reporting.

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

6 Further, the bill provides procedures for various types of captive
7 insurance companies to merge with other entities and procedures
8 that a sponsored captive insurance company must follow with
9 respect to protected cell companies.

10 Under the bill, a captive insurance company cannot be required
11 to join a rating organization. The bill prohibits a captive insurance
12 company from joining or contributing to a state insolvency guaranty
13 fund and from receiving benefits from the fund if the captive
14 insurance company becomes impaired or insolvent.

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