



Substitute Senate Bill No. 281

Public Act No. 08-127

AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective January 1, 2009*) As used in sections 1 to 17, inclusive, of this act:

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

(2) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations or other entities that has been in continuous existence for at least one year, where the association itself or some or all of the member organizations:

(A) Own, control or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(C) Constitute all of the subscribers of an association captive

Substitute Senate Bill No. 281

insurance company formed as a reciprocal insurer.

(3) "Association captive insurance company" means any company that insures risks of the member organizations of the association and their affiliated companies.

(4) "Captive insurance company" means any pure captive insurance company, association captive insurance company, industrial insured captive insurance company or risk retention group that is domiciled in this state and formed or licensed under the provisions of sections 1 to 17, inclusive, of this act.

(5) "Commissioner" means the Insurance Commissioner.

(6) "Controlled unaffiliated business" means any company:

(A) That is not in the corporate system of a parent and affiliated companies;

(B) That has an existing contractual relationship with a parent or affiliated company; and

(C) Whose risks are insured by a pure captive insurance company in accordance with section 17 of this act.

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

(8) "Industrial insured" means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

Substitute Senate Bill No. 281

(B) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and

(C) Who has at least twenty-five full-time employees.

(9) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(10) "Industrial insured group" means any group of industrial insureds that collectively:

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

(B) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(C) Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer.

(11) "Member organization" means any individual, corporation, limited liability company, partnership, association or other entity that belongs to an association.

(12) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members.

(13) "Parent" means a corporation, limited liability company, partnership, other entity or individual that directly or indirectly owns, controls or holds with power to vote more than fifty per cent of the outstanding voting:

(A) Securities of a pure captive insurance company organized as a stock corporation; or

Substitute Senate Bill No. 281

(B) Membership interests of a pure captive insurance company organized as a nonprofit corporation.

(14) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

(15) "Risk retention group" means a captive insurance company organized under the laws of this state pursuant to the federal Liability Risk Retention Act of 1986, 15 USC 3901 et seq., as amended from time to time, as a stock or mutual corporation, a reciprocal or other limited liability entity.

Sec. 2. (NEW) (*Effective January 1, 2009*) (a) Any captive insurance company, when permitted by its articles of association, charter or other organizational document, may apply to the Insurance Commissioner for a license to do the business of life insurance, annuities, health insurance, as defined in section 38a-469 of the general statutes, and commercial risk insurance, as defined in section 38a-663 of the general statutes, provided:

(1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;

(3) No industrial insured captive insurance company may insure any risks other than those of the industrial insureds that comprise the industrial insured group, and their affiliated companies;

(4) No risk retention group may insure any risks other than those of its members and owners;

Substitute Senate Bill No. 281

(5) No captive insurance company may provide private passenger motor vehicle or homeowner's insurance coverage or any component thereof;

(6) No captive insurance company may accept or cede reinsurance except as provided in section 11 of this act;

(7) Any captive insurance company that provides life insurance, annuities or health insurance shall comply with all applicable state and federal laws.

(b) No captive insurance company shall do any insurance business in this state unless:

(1) It first obtains from the Insurance Commissioner a license authorizing it to do insurance business in this state;

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

(3) It maintains its principal place of business in this state; and

(4) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state. Whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Insurance Commissioner shall be an agent of such captive insurance company upon whom any process, notice or demand may be served.

(c) (1) To be considered for a license, a captive insurance company shall:

(A) File with the commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or

Substitute Senate Bill No. 281

documents required by the commissioner; and

(B) Submit to the commissioner for approval a description of the coverages, deductibles, coverage limits and rates and such additional information as the commissioner may require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates not later than thirty days after the adoption of such change.

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

(A) The amount and liquidity of the company's assets relative to the risks to be assumed;

(B) The adequacy of the expertise, experience and character of the persons who will manage the company;

(C) The overall soundness of the company's plan of operation;

(D) The adequacy of the loss prevention programs of the company's insureds; and

(E) Such other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted pursuant to this subsection shall be and shall remain confidential and shall not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

Substitute Senate Bill No. 281

(A) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party upon a showing by the party seeking to discover such information that:

(i) The information sought is relevant to and necessary for the furtherance of such action or case;

(ii) The information sought is unavailable from other nonconfidential sources; and

(iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner, provided such submission requirement shall not apply to a risk retention group; and

(B) The commissioner may, in the commissioner's discretion, disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided:

(i) Such public official agrees, in writing, to maintain the confidentiality of such information; and

(ii) The laws of the state in which such public official serves require such information to be and to remain confidential.

(d) (1) Each captive insurance company shall pay to the commissioner a nonrefundable fee of eight hundred dollars for examining, investigating and processing its application for license, and the commissioner may retain legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of subdivisions (2) to (5), inclusive, of subsection (k) of section 38a-14 of the general statutes shall apply to examinations, investigations and processing conducted under this section.

Substitute Senate Bill No. 281

(2) Each captive insurance company shall pay a license fee for the first year of licensure and a renewal fee for each year thereafter as set forth in section 38a-11 of the 2008 supplement to the general statutes, as amended by this act.

(e) If the commissioner finds that the documents and statements that a captive insurance company has filed comply with the provisions of sections 1 to 17, inclusive, of this act, the commissioner may grant a license authorizing the company to do insurance business in this state until April first thereafter. The captive insurance company may apply to renew such license on such forms as the commissioner prescribes.

Sec. 3. (NEW) (*Effective January 1, 2009*) No captive insurance company shall adopt a name that is the same, deceptively similar or likely to be confused with or mistaken for any other existing business name registered in this state.

Sec. 4. (NEW) (*Effective January 1, 2009*) (a) The Insurance Commissioner shall not issue a license to a captive insurance company or allow the company to retain such license unless the company has and maintains unimpaired paid-in capital and surplus of:

(1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars;

(2) In the case of an association captive insurance company, not less than seven hundred fifty thousand dollars;

(3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars; and

(4) In the case of a risk retention group, not less than one million dollars.

(b) The commissioner may adopt regulations, in accordance with

Substitute Senate Bill No. 281

chapter 54 of the general statutes, to establish additional capital and surplus requirements based upon the type, volume and nature of insurance business transacted.

(c) Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

Sec. 5. (NEW) (*Effective January 1, 2009*) No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the Insurance Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned on the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner.

Sec. 6. (NEW) (*Effective January 1, 2009*) (a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members or as a manager-managed limited liability company.

(b) An association captive insurance company, an industrial insured captive insurance company or a risk retention group may be:

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

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by its insureds;

(3) Organized as a reciprocal insurer; or

Substitute Senate Bill No. 281

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

(c) A captive insurance company incorporated or organized in this state shall have not less than three incorporators or three organizers of whom at least one shall be a resident of this state.

(d) In the case of a captive insurance company:

(1) (A) Formed as a corporation, before the articles of incorporation are transmitted to the Secretary of the State, the incorporators shall petition the Insurance Commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such a finding the commissioner shall consider:

(i) The character, reputation, financial standing and purposes of the incorporators;

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

(iii) Such other aspects as the commissioner deems advisable.

(B) The articles of incorporation, such certificate and the organization fee shall be transmitted to the Secretary of the State who shall record both the articles of incorporation and the certificate.

(2) Formed as a reciprocal insurer, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed association will promote the general good of the state. In arriving at such a finding the commissioner shall consider the items set forth in subparagraph (A) of subdivision (1) of this subsection.

(3) Formed as a limited liability company, before the articles of

Substitute Senate Bill No. 281

organization are transmitted to the Secretary of the State, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed company will promote the general good of the state. In arriving at such a finding, the commissioner shall consider the items set forth in subparagraph (A) of subdivision (1) of this subsection.

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

(f) In the case of a captive insurance company:

(1) Formed as a corporation, at least one of the members of the board of directors shall be a resident of this state;

(2) Formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this state;

(3) Formed as a limited liability company, at least one of the managers shall be a resident of this state.

(g) Other than captive insurance companies formed as limited liability companies or as nonprofit corporations, captive insurance companies formed as corporations under the provisions of sections 1 to 17, inclusive, of this act shall have the privileges and be subject to the provisions of title 33 of the general statutes as well as the applicable provisions in sections 1 to 17, inclusive, of this act. In the event of conflict between the provisions of title 33 of the general statutes and sections 1 to 17, inclusive, of this act, the provisions of sections 1 to 17, inclusive, of this act shall control.

(h) Captive insurance companies formed under the provisions of sections 1 to 17, inclusive, of this act:

Substitute Senate Bill No. 281

(1) As limited liability companies shall have the privileges and be subject to the provisions of chapter 613 of the general statutes and applicable provisions in sections 1 to 17, inclusive, of this act. In the event of a conflict between the provisions of chapter 613 of the general statutes and sections 1 to 17, inclusive, of this act, the provisions of sections 1 to 17, inclusive, of this act shall control; or

(2) As nonprofit corporations shall have the privileges and be subject to the applicable provisions of title 33 of the general statutes and applicable provisions in sections 1 to 17, inclusive, of this act. In the event of conflict between the provisions of title 33 of the general statutes and sections 1 to 17, inclusive, of this act, the provisions of sections 1 to 17, inclusive, of this act shall control.

(i) The provisions of chapter 698 of the general statutes pertaining to mergers, consolidations and conversions shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described in said chapter 698.

(j) Captive insurance companies formed as reciprocal insurers under the provisions of sections 1 to 17, inclusive, of this act shall have the privileges and be subject to the provisions of title 38a of the general statutes in addition to the applicable provisions of sections 1 to 17, inclusive, of this act. In the event of a conflict between the provisions of sections 1 to 17, inclusive, of this act and title 38a of the general statutes, the provisions of sections 1 to 17, inclusive, of this act shall control.

(k) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(l) The subscribers' agreement or other organizing document of a

Substitute Senate Bill No. 281

captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one-third of the number of its members.

Sec. 7. (NEW) (*Effective January 1, 2009*) (a) Captive insurance companies shall not be required to make any annual report except as provided in sections 1 to 17, inclusive, of this act.

(b) Prior to March first of each year, each captive insurance company shall submit to the Insurance Commissioner a report of its financial condition verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, with any appropriate or necessary modifications or adaptations required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each risk retention group shall file its report in the form required by sections 38a-53 of the 2008 supplement to the general statutes and 38a-53a of the general statutes. The commissioner may adopt regulations, in accordance with chapter 54 of the general statutes, to establish the manner in which pure captive insurance companies and industrial insured captive insurance companies shall report. The provisions of subsection (b) of section 38a-69a of the general statutes shall apply to each report filed pursuant to this section.

(c) Any pure captive insurance company or industrial insured captive insurance company may make written application to the commissioner for approval to file the required report at the end of the fiscal year. If the commissioner grants approval for such alternative reporting date:

Substitute Senate Bill No. 281

(1) The annual report shall be due sixty days after the end of the fiscal year; and

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file prior to March first of each year for each calendar year-end such information as the commissioner may prescribe verified by oath of two of its executive officers.

Sec. 8. (NEW) (*Effective January 1, 2009*) (a) At least once every five years, and additionally whenever the Insurance Commissioner determines it to be prudent, the commissioner or the commissioner's designee shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of sections 1 to 17, inclusive, of this act and any applicable provisions of title 38a of the general statutes.

(b) In scheduling and determining the nature, scope and frequency of such examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and such other criteria as set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners and in effect at the time the commissioner exercises discretion under this section.

(c) (1) To carry out examinations under this section, the commissioner may appoint as examiners one or more competent persons, not officers of or connected with or interested in any insurance company, other than as a policyholder. The commissioner may engage the services of attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists to assist in conducting the examinations

Substitute Senate Bill No. 281

under this section as examiners, the cost of which shall be borne by the company which is the subject of the examination. Notwithstanding the provisions of this subdivision, no domestic captive insurance company subject to examination under this section shall pay, as costs associated with the examination, the salaries, fringe benefits, traveling and maintenance expenses of examining personnel of the Insurance Department engaged in such examination if such domestic company is otherwise liable to assessment levied under section 38a-47 of the general statutes, except that such company shall pay the traveling and maintenance expenses of examining personnel of the department when such company is examined outside the state.

(2) In conducting the examination, the commissioner, the commissioner's actuary or any examiner authorized by the commissioner may examine, under oath, the officers and agents of such a company and all persons deemed to have material information regarding the company's property or business. Each such company, its officers and agents shall produce the books and papers, in its or their possession, relating to its business or affairs, and any other person may be required to produce any book or paper, in his custody, deemed to be relevant to such examination for the inspection of the commissioner, the commissioner's actuary or examiners, when required. The officers and agents of the company shall facilitate the examination and aid the examiners in making the same so far as it is in their power to do so. The refusal of any company by its officers, directors, employees or agents to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension of, or refusal of or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to section 9 of this act.

Substitute Senate Bill No. 281

(3) In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The commissioner may also adopt such other guidelines or procedures as the commissioner may deem appropriate.

(d) (1) Nothing contained in this section shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(2) Nothing contained in this section shall be construed to limit the commissioner's authority in such legal or regulatory action to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination.

(3) Not later than sixty days after completion of the examination, the examiner in charge shall file, under oath, with the Insurance Department a verified written report of examination. Upon receipt of the verified report, the Insurance Department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity, not to exceed thirty days, to make a written submission or rebuttal with respect to any matters contained in the examination report. Not later than thirty days after the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order: (A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is

Substitute Senate Bill No. 281

operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or (B) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile pursuant to subparagraph (A) of this subdivision; or (C) calling for an investigatory hearing with no less than twenty days notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(e) (1) All orders entered pursuant to subdivision (3) of subsection (d) of this section shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. The findings and conclusions, which form the basis of any such order of the commissioner, shall be subject to review as provided in section 38a-19 of the 2008 supplement to the general statutes.

(2) Any investigatory hearing conducted under subparagraph (C) of subdivision (3) of subsection (d) of this section by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent (A) upon the filed examination report, (B) raised by or as a result of the commissioner's review of relevant workpapers, or (C) by the written submission or rebuttal of the company. Not later than twenty days after conclusions of any such hearing, the commissioner shall enter an order pursuant to subparagraph (A) of subdivision (3) of subsection (d) of this section. The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the

Substitute Senate Bill No. 281

examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's authorized representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's authorized representative shall be under oath and preserved for the record. Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency. The hearing shall proceed with the commissioner or the commissioner's authorized representative posing questions to the persons subpoenaed. Thereafter the company and the Insurance Department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or the commissioner's authorized representative. The company and the Insurance Department shall be permitted to make closing statements and may be represented by counsel of their choice.

(f) The commissioner may, if the commissioner deems it in the public interest, publish any such report or the result of any such examination contained in such report in one or more newspapers of the state.

(g) Nothing contained in this section shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to such report to (1) the Insurance Department of this or any other state or country, (2) law enforcement officials of this or any other state, or (3) any agency of the federal government at any time, unless such agency or office receiving the report or matters

Substitute Senate Bill No. 281

relating to such report agrees, in writing, that such documents shall be confidential.

(h) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section shall (1) be confidential, (2) not be subject to subpoena, and (3) not be made public by the commissioner or any other person, except to the extent provided in subsection (g) of this section. Access to such information may be granted by the commissioner to the National Association of Insurance Commissioners, unless it agrees, in writing, that such information shall be confidential.

(i) (1) The commissioner may engage the services of, from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though said persons may, from time to time, be similarly employed or retained by persons subject to examination under this section.

(2) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this section.

(3) No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative examiner pursuant to an examination made under this section, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

Substitute Senate Bill No. 281

(4) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (2) of this subsection.

(5) A person identified in subdivision (2) of this subsection shall be entitled to an award of attorney's fees and costs if he is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

Sec. 9. (NEW) (*Effective January 1, 2009*) (a) The commissioner may, at any time, for cause, suspend, revoke or refuse to renew any license of a captive insurance company, or in lieu of or in addition to suspension or revocation of such license, the commissioner, after reasonable notice to and hearing of any holder of such license, may impose a fine not to exceed ten thousand dollars. Such hearings may be held by the commissioner or any person designated by the commissioner.

(b) Any captive insurance company aggrieved by the action of the commissioner in suspending, revoking or refusing to renew a license or in imposing a fine may appeal therefrom, in accordance with the provisions of section 4-183 of the general statutes, except venue for such appeal shall be in the judicial district of New Britain. Appeals under this section shall be privileged in respect to the order of trial assignment.

Sec. 10. (NEW) (*Effective January 1, 2009*) (a) Association captive insurance companies and risk retention groups shall comply with the investment requirements in chapter 698 of the general statutes, as applicable. Notwithstanding any other provision of sections 1 to 17,

Substitute Senate Bill No. 281

inclusive, of this act, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments, except that the Insurance Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(c) No pure captive insurance company may make a loan to or an investment in its parent company or affiliates without prior written approval of the commissioner, and any such loan or investment shall be evidenced by documentation approved by the commissioner. Loans of minimum capital and surplus funds required in section 4 of this act are prohibited.

Sec. 11. (NEW) (*Effective January 1, 2009*) (a) Any captive insurance company may assume reinsurance from any other insurer only on risks that such company is authorized to write directly.

(b) A captive insurance company may only take credit for the reinsurance of risks or portions of risks ceded to reinsurers that complies with the provisions of section 38a-85 or 38a-86 of the general statutes.

(c) For purposes of sections 1 to 17, inclusive, of this act, insurance by a captive insurance company of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

Sec. 12. (NEW) (*Effective January 1, 2009*) No captive insurance company shall be required to join a rating organization.

Sec. 13. (NEW) (*Effective January 1, 2009*) No captive insurance company may join or contribute financially to any plan, pool,

Substitute Senate Bill No. 281

association or guaranty or insolvency fund in this state, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

Sec. 14. (NEW) (*Effective January 1, 2009*) (a) Each captive insurance company shall pay to the Commissioner of Revenue Services, in the month of February of each year, a tax at the rate of thirty-eight hundredths of one per cent on the first twenty million dollars and two hundred eighty-five thousandths of one per cent on the next twenty million dollars and nineteen hundredths of one per cent on the next twenty million dollars and seventy-two thousandths of one per cent on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December thirty-first next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders, except that no tax shall be due or payable as to considerations received for annuity contracts.

(b) The annual minimum aggregate tax to be paid by a captive insurance company calculated under subsections (a) and (b) of this section shall be seven thousand five hundred dollars, and the annual maximum aggregate tax shall be two hundred thousand dollars.

(c) A captive insurance company failing to file returns as required in this section or failing to pay within the time required all taxes assessed by this section shall be subject to penalty under section 12-229 of the general statutes.

(d) Two or more captive insurance companies under common ownership and control shall be taxed as though they were a single

Substitute Senate Bill No. 281

captive insurance company.

(e) For the purposes of this section common ownership and control means:

(1) In the case of stock corporations, the direct or indirect ownership of eighty per cent or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(2) In the case of mutual or nonprofit corporations, the direct or indirect ownership of eighty per cent or more of the surplus and the voting power of two or more corporations by the same member or members.

(f) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city or municipality within this state, except taxes on real and personal property used in the production of income.

(g) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

Sec. 15. (NEW) (*Effective January 1, 2009*) Unless otherwise provided in sections 1 to 17, inclusive, of this act, no provision of title 38a of the general statutes shall apply to captive insurance companies, unless expressly included therein, except for the following: Sections 38a-16, 38a-17, section 38a-54 of the 2008 supplement to the general statutes, sections 38a-55 to 38a-57, inclusive, 38a-59, 38a-69a, sections 38a-250 to 38a-266, inclusive, sections 38a-903 to 38a-961, inclusive, and sections 38a-962 to 38a-962j, inclusive, of the general statutes or the 2008

Substitute Senate Bill No. 281

supplement to the general statutes.

Sec. 16. (NEW) (*Effective January 1, 2009*) (a) An association captive insurance company, risk retention group or industrial insured captive insurance company formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan for such conversion or merger and the provisions of this section.

(b) Any plan for such conversion or merger shall provide a fair and equitable plan for purchasing, retiring or otherwise extinguishing the interests of the stockholders and policyholders of a stock insurer, and the members and policyholders of a mutual insurer, including a fair and equitable provision for the rights and remedies of dissenting stockholders, members or policyholders.

(c) In the case of a conversion authorized under subsection (a) of this section:

(1) Such conversion shall be accomplished under such reasonable plan and procedure as may be approved by the commissioner, except that the Insurance Commissioner shall not approve any such plan of conversion unless such plan:

(A) Satisfies the provisions of subsection (b) of this section;

(B) Provides for a hearing, of which notice is given or to be given to the captive insurance company, its directors, officers and policyholders, and in the case of a stock insurer, its stockholders, and in the case of a mutual insurer, its members, all of which persons shall be entitled to attend and appear at such hearing, except that if notice of a hearing is given and no director, officer, policyholder, member or stockholder requests a hearing, the commissioner may cancel such hearing;

Substitute Senate Bill No. 281

(C) Provides a fair and equitable plan for the conversion of stockholder, member or policyholder interests into subscriber interests in the resulting reciprocal insurer, substantially proportionate to the corresponding interests in the stock or mutual insurer, except that such plan shall not preclude the resulting reciprocal insurer from applying underwriting criteria that could affect ongoing ownership interests; and

(D) Is approved:

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

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

(2) The commissioner shall approve such plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in subdivision (2) of subsection (d) of section 6 of this act;

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

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

(5) Upon the effective date of such conversion the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of the State of such

Substitute Senate Bill No. 281

conversion.

(d) A merger authorized under subsection (a) of this section shall be accomplished substantially in accordance with the procedures set forth in chapter 698 of the general statutes, except that, solely for purposes of such merger:

(1) The plan of merger shall satisfy the provisions of subsection (b) of this section;

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

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

(4) If a subscribers' advisory committee does not have a president or secretary, the officers of such committee having substantially equivalent duties shall be deemed the president or secretary of such committee;

(5) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in subdivision (2) of subsection (d) of section 6 of this act. If the commissioner approves the articles of merger, the commissioner shall endorse the commissioner's approval thereon and the surviving insurer shall present the articles of merger to the Secretary of the State at the Secretary of the State's office;

(6) Notwithstanding section 4 of this act, the commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a

Substitute Senate Bill No. 281

transaction under this section, except that there shall be no more than one authorized insurance company surviving such merger; and

(7) An alien insurer may be a party to a merger authorized under subsection (a) of this section, except that the requirements for a merger between a domestic and a foreign insurer under chapter 698 of the general statutes shall apply to a merger between a domestic and an alien insurer under this subsection. Such alien insurer shall be treated as a foreign insurer under chapter 698 of the general statutes and such other jurisdictions shall be the equivalent of a state for purposes of chapter 698 of the general statutes.

(e) A conversion or merger under this section shall have the effects of conversion or merger set forth in chapter 698 of the general statutes to the extent such effects are not inconsistent with the provisions of sections 1 to 17, inclusive, of this act.

Sec. 17. (NEW) (*Effective January 1, 2009*) The Insurance Commissioner may adopt regulations, in accordance with chapter 54 of the general statutes, to establish standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company, except that until such regulations are approved, the commissioner may approve the coverage of such risks by a pure captive insurance company.

Sec. 18. Subsection (a) of section 38a-11 of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2009*):

(a) The commissioner shall demand and receive the following fees:
(1) For the annual fee for each license issued to a domestic insurance company, one hundred dollars; (2) for receiving and filing annual reports of domestic insurance companies, twenty-five dollars; (3) for

Substitute Senate Bill No. 281

filing all documents prerequisite to the issuance of a license to an insurance company, one hundred seventy-five dollars, except that the fee for such filings by any health care center, as defined in section 38a-175, shall be one thousand one hundred dollars; (4) for filing any additional paper required by law, fifteen dollars; (5) for each certificate of valuation, organization, reciprocity or compliance, twenty dollars; (6) for each certified copy of a license to a company, twenty dollars; (7) for each certified copy of a report or certificate of condition of a company to be filed in any other state, twenty dollars; (8) for amending a certificate of authority, one hundred dollars; (9) for each license issued to a rating organization, one hundred dollars. In addition, insurance companies shall pay any fees imposed under section 12-211; (10) a filing fee of twenty-five dollars for each initial application for a license made pursuant to section 38a-769; (11) with respect to insurance agents' appointments: (A) A filing fee of twenty-five dollars for each request for any agent appointment, except that no filing fee shall be payable for a request for agent appointment by an insurance company domiciled in a state or foreign country which does not require any filing fee for a request for agent appointment for a Connecticut insurance company; (B) a fee of forty dollars for each appointment issued to an agent of a domestic insurance company or for each appointment continued; and (C) a fee of twenty dollars for each appointment issued to an agent of any other insurance company or for each appointment continued, except that no fee shall be payable for an appointment issued to an agent of an insurance company domiciled in a state or foreign country which does not require any fee for an appointment issued to an agent of a Connecticut insurance company; (12) with respect to insurance producers: (A) An examination fee of seven dollars for each examination taken, except when a testing service is used, the testing service shall pay a fee of seven dollars to the commissioner for each examination taken by an applicant; (B) a fee of forty dollars for each license issued; (C) a fee of forty dollars per year, or any portion thereof, for each license renewed;

Substitute Senate Bill No. 281

and (D) a fee of forty dollars for any license renewed under the transitional process established in section 38a-784; (13) with respect to public adjusters: (A) An examination fee of seven dollars for each examination taken, except when a testing service is used, the testing service shall pay a fee of seven dollars to the commissioner for each examination taken by an applicant; and (B) a fee of one hundred twenty-five dollars for each license issued or renewed; (14) with respect to casualty adjusters: (A) An examination fee of ten dollars for each examination taken, except when a testing service is used, the testing service shall pay a fee of ten dollars to the commissioner for each examination taken by an applicant; (B) a fee of forty dollars for each license issued or renewed; and (C) the expense of any examination administered outside the state shall be the responsibility of the entity making the request and such entity shall pay to the commissioner one hundred dollars for such examination and the actual traveling expenses of the examination administrator to administer such examination; (15) with respect to motor vehicle physical damage appraisers: (A) An examination fee of forty dollars for each examination taken, except when a testing service is used, the testing service shall pay a fee of forty dollars to the commissioner for each examination taken by an applicant; (B) a fee of forty dollars for each license issued or renewed; and (C) the expense of any examination administered outside the state shall be the responsibility of the entity making the request and such entity shall pay to the commissioner one hundred dollars for such examination and the actual traveling expenses of the examination administrator to administer such examination; (16) with respect to certified insurance consultants: (A) An examination fee of thirteen dollars for each examination taken, except when a testing service is used, the testing service shall pay a fee of thirteen dollars to the commissioner for each examination taken by an applicant; (B) a fee of two hundred dollars for each license issued; and (C) a fee of one hundred twenty-five dollars for each license renewed; (17) with respect to surplus lines brokers: (A)

Substitute Senate Bill No. 281

An examination fee of ten dollars for each examination taken, except when a testing service is used, the testing service shall pay a fee of ten dollars to the commissioner for each examination taken by an applicant; and (B) a fee of five hundred dollars for each license issued or renewed; (18) with respect to fraternal agents, a fee of forty dollars for each license issued or renewed; (19) a fee of thirteen dollars for each license certificate requested, whether or not a license has been issued; (20) with respect to domestic and foreign benefit societies shall pay: (A) For service of process, twenty-five dollars for each person or insurer to be served; (B) for filing a certified copy of its charter or articles of association, five dollars; (C) for filing the annual report, ten dollars; and (D) for filing any additional paper required by law, three dollars; (21) with respect to foreign benefit societies: (A) For each certificate of organization or compliance, four dollars; (B) for each certified copy of permit, two dollars; and (C) for each copy of a report or certificate of condition of a society to be filed in any other state, four dollars; (22) with respect to reinsurance intermediaries: A fee of five hundred dollars for each license issued or renewed; (23) with respect to viatical settlement providers: (A) A filing fee of thirteen dollars for each initial application for a license made pursuant to section 38a-465a; and (B) a fee of twenty dollars for each license issued or renewed; (24) with respect to viatical settlement brokers: (A) A filing fee of thirteen dollars for each initial application for a license made pursuant to section 38a-465a; and (B) a fee of twenty dollars for each license issued or renewed; (25) with respect to viatical settlement investment agents: (A) A filing fee of thirteen dollars for each initial application for a license made pursuant to section 38a-465a; and (B) a fee of twenty dollars for each license issued or renewed; (26) with respect to preferred provider networks, a fee of two thousand five hundred dollars for each license issued or renewed; (27) with respect to rental companies, as defined in section 38a-799, a fee of forty dollars for each permit issued or renewed; (28) with respect to medical discount plan organizations licensed under section 38a-479rr, a fee of five hundred

Substitute Senate Bill No. 281

dollars for each license issued or renewed; (29) with respect to pharmacy benefits managers, an application fee of fifty dollars for each registration issued or renewed; (30) with respect to captive insurance companies, as defined in section 1 of this act, a fee of three hundred dollars for each license issued or renewed; and ~~[(30)]~~ (31) with respect to each duplicate license issued a fee of twenty-five dollars for each license issued.

Sec. 19. Section 38a-254 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2009*):

All premiums paid for coverages within this state to a risk retention ~~[groups and insurers]~~ group or insurer, other than a captive insurance company, as defined in section 1 of this act, or a licensed or eligible surplus lines [insurers] insurer, shall be subject to taxation as provided in section 38a-277.

Sec. 20. Subsection (b) of section 38a-226a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(b) The annual license fee shall be two thousand five hundred dollars and shall be dedicated ~~[exclusively]~~ to the regulation of utilization review, except that the commissioner shall be authorized to use such funds as is necessary to implement the provisions of sections 1 to 17, inclusive, of this act.