

[Third Reprint]

ASSEMBLY, No. 2360

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED FEBRUARY 25, 2010

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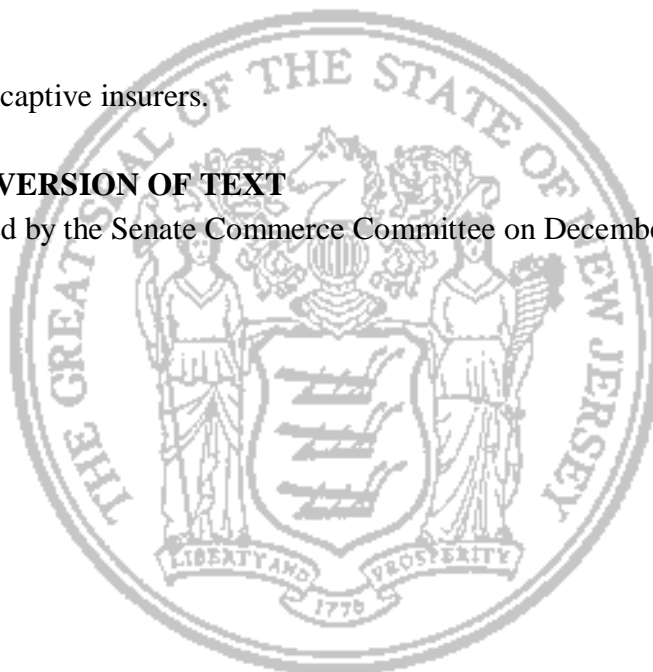
Assemblymen O'Donnell, Chiusano and Connors

SYNOPSIS

Regulates captive insurers.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on December 6, 2010, with amendments.



(Sponsorship Updated As Of: 10/26/2010)

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 ²"Branch business" means any insurance business transacted by
34 a branch captive insurance company in this State.

35 "Branch captive insurance company" means an alien captive
36 insurance company licensed by the commissioner to transact the
37 business of insurance in this State through a business unit with a
38 principal place of business in this State.

39 "Branch operations" means any business operations of a branch
40 captive insurance company in this State.²

41 "Captive insurance company" means any pure captive insurance
42 company, association captive insurance company, sponsored
43 captive insurance company, ¹or¹ industrial insured captive

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted May 6, 2010.

²Assembly floor amendments adopted June 28, 2010.

³Senate SCM committee amendments adopted December 6, 2010.

1 insurance company ¹~~["or risk retention group"]~~¹ formed or licensed
2 under the provisions of this act. ²For purposes of this act, a branch
3 captive insurance company shall be a pure captive insurance
4 company with respect to operations in the State, unless otherwise
5 permitted by the commissioner.²

6 "Commissioner" means the Commissioner of Banking and
7 Insurance.

8 "Controlled unaffiliated business" means a company:

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

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

13 (3) whose risks are managed by a pure captive insurance
14 company in accordance with section ¹~~["16"]~~ ¹15 of this act.

15 "Excess workers' compensation insurance" means, in the case of
16 an employer that has insured or self-insured its workers'
17 compensation risks in accordance with applicable State or federal
18 law, insurance in excess of a specified per incident or aggregate
19 limit established by the commissioner.

20 "Industrial insured" means an insured:

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

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

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

26 "Industrial insured captive insurance company" means a
27 company that insures risks of the industrial insureds that comprise
28 the industrial insured group, and their affiliated companies.

29 "Industrial insured group" means a group of industrial insureds
30 that collectively:

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

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

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

38 "Member organization" means an individual, corporation, limited
39 liability company, partnership, association or other entity that
40 belongs to an association.

41 "Mutual corporation" means a corporation organized without
42 stockholders and includes a nonprofit corporation with members.

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

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

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

3 "Protected cell" means a separate account established and
4 maintained by a sponsored captive insurance company for one
5 participant.

6 "Pure captive insurance company" means a company that insures
7 risks of its parent and affiliated companies or controlled unaffiliated
8 businesses.

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

13 "Sponsor" means an entity that meets the requirements of
14 sections ¹17 and¹ 18 ¹[and 19]¹ of this act and that the
15 commissioner has approved to provide all or part of the capital and
16 surplus required by applicable law to operate a sponsored captive
17 insurance company.

18 "Sponsored captive insurance company" means a captive
19 insurance company:

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

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

23 (3) that insures the risks of separate participants through the
24 contract; and

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

27

28 2. a. A captive insurance company, if permitted by its articles of
29 association, charter or other organizational document, may apply to
30 the commissioner for a license to do business in any of the lines of
31 insurance in subtitle 3 of Title 17 of the Revised Statutes or Title
32 17B of the New Jersey Statutes, including contracts or policies of
33 life insurance, health insurance, annuities, indemnity, property and
34 casualty, fidelity, ¹[surety,]¹ guaranty and title insurance; provided,
35 however, that:

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

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

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

45 (4) ¹[a risk retention group shall not insure risks other than those
46 of its members and owners;

1 (5)]¹ a captive insurance company shall not provide private
2 passenger automobile insurance or homeowner's insurance coverage
3 or any component thereof;

4 '[(6)] (5)¹ a captive insurance company shall not accept or cede
5 reinsurance except as provided in section 10 of this act;

6 '[(7)] (6)¹ a captive insurance company may provide excess
7 workers' compensation insurance to its parent and affiliated
8 companies, unless prohibited by the federal law or laws of the state
9 having jurisdiction over the transaction. A captive insurance
10 company, unless prohibited by federal law, may reinsure workers'
11 compensation of a qualified self-insured plan of its parent and
12 affiliated companies; and

13 '[(8)] (7)¹ a captive insurance company shall comply with all
14 applicable State and federal laws.

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

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

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

22 (3) it maintains its principal place of business in this State ¹with
23 the appropriate number of in-State professional services provider
24 staff to carry out the business of the captive, including but not
25 limited to, attorneys, accountants, managers, actuaries, brokers, and
26 third party administrators¹; and

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

33 c. (1) Before receiving a license, a captive insurance company
34 shall:

35 (a) file with the commissioner a certified copy of its
36 organization documents, a statement under oath of its president and
37 secretary showing its financial condition, and any other statements
38 or documents required by the commissioner; and

39 (b) submit to the commissioner for approval a description of the
40 coverage limits and rates, together with any additional information
41 as the commissioner may reasonably require. In the event of any
42 subsequent material change in an item in the description, the
43 captive insurance company shall submit to the commissioner for
44 approval an appropriate revision and shall not offer any additional
45 lines of insurance until a revision of the description is approved by
46 the commissioner. The captive insurance company shall inform the

1 commissioner of any material change in rates within 30 days of the
2 adoption of any change.

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

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

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

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

10 (d) the adequacy of the loss prevention programs of its insureds;
11 and

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

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

19 (a) the information may be discoverable by a party in a civil
20 action or contested case to which the captive insurance company
21 that submitted the information is a party, upon a showing by the
22 party seeking to discover the information that:

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

25 (ii) the information sought is unavailable from other
26 nonconfidential sources; and

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

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

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

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

38 d. A captive insurance company shall pay to the commissioner
39 a nonrefundable fee ²['of \$200']² for examining, investigating and
40 processing its application for license and the commissioner is
41 authorized to retain legal, financial and examination services from
42 outside the department, the reasonable cost of which may be
43 charged against the applicant. In addition, each captive insurance
44 company shall pay a license fee for the year of registration and a
45 renewal fee for each year thereafter ²['of \$300']. The commissioner
46 shall establish by regulation fees necessary for the administration of
47 this act.²

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

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

10 ¹g. The commissioner may ²issue a license on an expedited
11 basis to a captive insurance company currently formed or licensed
12 pursuant to the laws of a jurisdiction other than this State, provided
13 the captive insurance company complies with all of the filing
14 requirements of this section and presents satisfactory evidence that
15 it meets any additional financial standards which the commissioner
16 may set by regulation.¹ establish by regulation an expedited
17 licensing process for a captive insurance company currently formed
18 or licensed pursuant to the laws of a jurisdiction other than this
19 State that applies for license to do business in this State.²

20
21 3. a. A captive insurance company shall not be issued a license
22 unless it maintains unimpaired paid-in capital and surplus of:

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

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

27 (3) in the case of an industrial insured captive insurance
28 company, not less than \$500,000; ¹and¹

29 (4) ¹[in the case of a risk retention group, not less than
30 \$1,000,000; and

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

33 b. The commissioner may prescribe additional capital and
34 surplus requirements based upon the type, volume and nature of
35 insurance business transacted.

36 c. Capital and surplus may be in the form of cash or an
37 irrevocable letter of credit issued by a bank chartered by the State ¹of
38 New Jersey¹ or a member bank of the Federal Reserve System
39 ¹located in this State¹ and approved by the commissioner.

40
41 4. A captive insurance company shall not pay a dividend out
42 of, or other distribution with respect to, capital or surplus without
43 the prior approval of the commissioner. Approval of an ongoing
44 plan for the payment of dividends or other distributions shall be
45 conditioned upon the retention, at the time of each payment, of
46 capital or surplus in excess of amounts specified by, or determined
47 in accordance with formulas approved by, the commissioner.

1 Notwithstanding any provisions of the "New Jersey Nonprofit
2 Corporation Act," N.J.S.15A:1-1 et seq. to the contrary, a captive
3 insurance company organized under the provisions of the "New
4 Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq. may make
5 distributions as are in conformity with its purposes and approved by
6 the commissioner.

7
8 5. a. A pure captive insurance company may be incorporated
9 or organized as:

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

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

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

14 b. An association captive insurance company ¹[,] or¹ an
15 industrial insured captive insurance company ¹[, or a risk retention
16 group]¹ may be:

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

19 (2) incorporated as a mutual corporation;

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

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

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

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

27 (1) formed as a corporation: (a) before the articles of
28 incorporation are transmitted to the Secretary of State, the
29 incorporators shall petition the commissioner to issue a certificate
30 setting forth the commissioner's finding that the establishment and
31 maintenance of the proposed corporation will promote the general
32 good of the State. In arriving at a finding the commissioner shall
33 consider:

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

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

39 (iii) any other aspects of the proposed corporation as the
40 commissioner deems advisable.

41 (b) the articles of incorporation, certificate and organization fee
42 shall be transmitted to the Secretary of State, who shall record both
43 the articles of incorporation and the certificate.

44 (2) formed as a reciprocal insurer, the organizers shall petition
45 the commissioner to issue a certificate setting forth the
46 commissioner's finding that the establishment and maintenance of
47 the proposed association will promote the general good of the State.
48 In arriving at a finding the commissioner shall consider the items

1 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)
2 of paragraph (1) of this subsection as applicable to a reciprocal
3 insurer.

4 (3) formed as a limited liability company, before the articles of
5 organization are transmitted to the Secretary of State, the organizers
6 shall petition the commissioner to issue a certificate setting forth
7 the commissioner's finding that the establishment and maintenance
8 of the proposed company will promote the general good of the
9 State. In arriving at a finding, the commissioner shall consider the
10 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph
11 (a) of paragraph (1) of this subsection as applicable to a limited
12 liability company.

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

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

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

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

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

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

35 h. A captive insurance company formed under the provisions of
36 this act:

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

44 (2) as a nonprofit corporation shall have the privileges and be
45 subject to the provisions of the "New Jersey Nonprofit Corporation
46 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions
47 contained in this act. In the event of a conflict between the
48 provisions of the "New Jersey Nonprofit Corporation Act,"

1 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall
2 control.

3 i. The procedures to be followed by a captive insurance
4 company in carrying out a merger, consolidation, conversion,
5 mutualization or redomestication shall be prescribed by the
6 commissioner by regulation.

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

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

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

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

28 (1) the irrevocable election certifies that, at the time of the
29 company's organization and at all times thereafter, the company
30 conducted its business in a manner consistent with a nonprofit
31 purpose; and

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

38
39 6. a. Prior to March 1 of each year, a captive insurance
40 company shall submit to the commissioner a report of its financial
41 condition, verified by oath of two of its executive officers. A
42 captive insurance company shall report using generally accepted
43 accounting principles, unless the commissioner approves the use of
44 regulatory accounting principles, with any appropriate or necessary
45 modifications or adaptations as may be required, approved or
46 accepted by the commissioner for the type of insurance and kinds of
47 insurers to be reported upon, and as supplemented by additional
48 information required by the commissioner. Except as otherwise

1 provided, an association captive insurance company ¹and a risk
2 retention group¹ shall file its report in the form required by
3 R.S.17:23-1. The commissioner shall by rule prescribe the forms in
4 which a pure captive insurance company and an industrial insured
5 captive insurance company shall report. The confidentiality
6 requirements of paragraph (3) of subsection c. of section 2 of this
7 act shall apply to each report filed pursuant to this section ¹and,
8 except reports filed by risk retention groups¹.

9 b. A pure captive insurance company or an industrial insured
10 captive insurance company may make written application for filing
11 the required report on a fiscal year-end. If an alternative reporting
12 date is granted, the annual report is due 60 days after the fiscal
13 year-end.

14
15 7. a. At least once in every three years, and whenever the
16 commissioner determines it to be prudent, the commissioner shall
17 personally, or by some competent person appointed by the
18 commissioner, visit each captive insurance company and thoroughly
19 inspect and examine its affairs to determine its financial condition,
20 its ability to fulfill its obligations and whether it has complied with
21 the provisions of this act. The commissioner may increase the three-
22 year period to five years, if the captive insurance company is
23 subject to a comprehensive annual audit during that period of a
24 scope satisfactory to the commissioner by independent auditors
25 approved by the commissioner. The expenses and charges of the
26 examination shall be paid to the State by the company examined.

27 b. All examination reports, preliminary examination reports or
28 results, working papers, recorded information, documents and
29 copies thereof produced by, obtained by or disclosed to the
30 commissioner or any other person in the course of an examination
31 made under this section are confidential and are not subject to
32 subpoena and shall not be made public by the commissioner without
33 the written consent of the company, except to the extent provided in
34 this subsection. Nothing in this subsection shall prevent the
35 commissioner from using the information in furtherance of the
36 commissioner's regulatory authority under this act. The
37 commissioner may, in the commissioner's discretion, grant access to
38 the information to public officers having jurisdiction over the
39 regulation of insurance in any other state or country, or to law
40 enforcement officers of this State or any other state or agency of the
41 federal government at any time, so long as the officers receiving the
42 information agree in writing to hold it in a manner consistent with
43 this section.

44 ²c. As to a branch captive insurance company, the commissioner
45 shall only examine the branch operations and branch business of the
46 branch captive insurance company, in a manner to be prescribed by
47 the commissioner by regulation.²

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

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

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

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

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

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

14 (6) Use methods that, although not otherwise specifically
15 prohibited by law, nevertheless render its operation detrimental or
16 its condition unsound with respect to the public or to its
17 policyholders; or

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

19 b. If the commissioner finds, upon examination, hearing or
20 other evidence, that a captive insurance company has violated any
21 provision of subsection a. of this section, the commissioner may
22 suspend or revoke the company's license if the commissioner deems
23 it in the best interest of the public and the policyholders of the
24 captive insurance company, notwithstanding any other provision of
25 this act.

26
27 9. a. A captive insurance company shall comply with
28 investment requirements to be prescribed by the commissioner by
29 regulation.

30 b. A pure captive insurance company shall not make a loan to,
31 or an investment in, its parent company or affiliates without prior
32 written approval of the commissioner, and a loan or investment
33 shall be evidenced by documentation approved by the
34 commissioner. A pure captive insurance company shall not make a
35 loan using the minimum capital and surplus funds required by
36 section 3 of this act.

37
38 10. a. A captive insurance company may provide reinsurance on
39 risks ceded by any other insurer.

40 b. A captive insurance company may take credit for the
41 reinsurance of risks or portions of risks ceded to reinsurers
42 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et
43 seq.). ¹~~【Prior approval of the commissioner shall be required for~~
44 ~~ceding or taking】~~ A captive insurance company shall not take¹
45 credit for the reinsurance of risks or portions of risks ceded to
46 reinsurers not complying with P.L.1993, c.243 (C.17:51B-1 et seq.)
47 ¹~~【, except for business written by an alien captive insurance~~
48 ~~company outside the United States】¹.~~

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

14 d.]¹ For purposes of this act, insurance by a captive insurance
15 company of any workers' compensation qualified self-insured plan
16 of its parent and affiliates shall be deemed to be reinsurance.

17
18 11. a. A captive insurance company shall not be required to join
19 a rating organization.

20 b. A captive insurance company shall not be permitted to join
21 or contribute financially to a plan, pool, association, or guaranty or
22 insolvency fund in this State ¹, including ²the New Jersey Life and
23 Health Insurance Guaranty Association, P.L.1991, c.208
24 (C.17B:32A-1 et seq.),² the New Jersey Property-Liability
25 Insurance Guaranty Association, P.L.1974, c.17 (C.17:30A-1 et
26 seq.), the New Jersey Surplus Lines Insurance Guaranty Fund,
27 P.L.1984, c.101 (C.17:22-6.70 et seq.), or "the workers'
28 compensation security fund" created pursuant to R.S.34:15-105,¹
29 nor shall a captive insurance company, or an insured or affiliate
30 thereof, ³or a claimant thereof,³ receive a benefit from a plan, pool,
31 association, or guaranty or insolvency fund, ¹including ²the New
32 Jersey Life and Health Insurance Guaranty Association, P.L.1991,
33 c.208 (C.17B:32A-1 et seq.),² the New Jersey Property-Liability
34 Insurance Guaranty Association, P.L.1974, c.17 (C.17:30A-1 et
35 seq.), the New Jersey Surplus Lines Insurance Guaranty Fund,
36 P.L.1984, c.101 (C.17:22-6.70 et seq.), or "the workers'
37 compensation security fund" created pursuant to R.S.34:15-105,¹
38 for claims arising out of the operations of a captive insurance
39 company.

40
41 12. a. Each captive insurance company shall pay to the Director
42 of the Division of Taxation in the Department of Treasury, on or
43 before March 1 of each year, a tax at the rate of .38 of one percent
44 on the first \$20,000,000 and .285 of one percent on the next
45 \$20,000,000 and .19 of one percent on the next \$20,000,000 and
46 .072 of one percent on each dollar thereafter on the direct premiums
47 collected or contracted for on policies or contracts of insurance

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

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

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

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

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

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

45 e. Two or more captive insurance companies under common
46 ownership and control shall be taxed as though they were a single
47 captive insurance company.

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

3 (1) in the case of stock corporations, the direct or indirect
4 ownership of 80 percent or more of the outstanding voting stock of
5 two or more corporations by the same shareholder or shareholders;
6 and

7 (2) in the case of mutual or nonprofit corporations, the direct or
8 indirect ownership of 80 percent or more of the surplus and the
9 voting power of two or more corporations by the same member or
10 members.

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

15 h. ³Annually, ten percent of the premium tax revenues
16 collected by the director pursuant to this section shall be transferred
17 to the commissioner for the regulation of captive insurance
18 companies under this act.

19 i. ³The tax provided for by this section shall be calculated on
20 an annual basis, notwithstanding policies or contracts of insurance
21 or contracts of reinsurance issued on a multiyear basis. In the case
22 of multiyear policies or contracts, the premium shall be prorated for
23 purposes of determining the tax under this section.

24 ² ³j. i. ³ The tax provided for by this section shall only apply
25 to the branch business of a branch captive insurance company.²

26
27 ¹[13. Risk retention groups shall have the privileges and be
28 subject to the provisions of the "New Jersey Risk Retention Act,"
29 P.L.1993, c.240 (C.17:47A-1 et seq.) in addition to the applicable
30 provisions of this act.]¹

31
32 ¹[14.] ¹13. ²[a. (1)]² There is created ²within the Department
33 of Banking and Insurance² 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 ¹[and the "New Jersey Risk Retention Act," P.L.1993,
37 c.240 (C.17:47A-1 et seq.),]¹ and for reasonable expenses incurred
38 in promoting the captive insurance industry in this State. ²[The
39 transfer of 10 percent of the premium tax under subsection h. of
40 section 12 of this act, and all] The commissioner may establish by
41 regulation, fees necessary for the administration of this act. All²
42 fees and assessments received by the department pursuant to the
43 administration of this act ¹[and the "New Jersey Risk Retention
44 Act," P.L.1993, c.240 (C.17:47A-1 et seq.)]¹ shall be credited to
45 this fund. ²[Of this amount, not more than two percent of the
46 premium tax under section 12 of this act may be transferred to the

1 New Jersey Economic Development Authority for expenses for
2 promotional activities conducted by the commission in relation to
3 captive insurance companies.]² All fees received by the department
4 from reinsurers who assume risk solely from captive insurance
5 companies and are subject to the provisions of P.L.1993, c.243
6 (C.17:51B-1 et seq.), shall be deposited into the Captive Insurance
7 Regulation and Supervision Fund ²[, except that all fines and
8 administrative penalties shall be deposited directly into the General
9 Fund.

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

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

19

20 ¹[15.] 14.¹ Except as otherwise provided in this act, the terms
21 and conditions set forth in P.L.1975, c.113 (C.17:30C-1 et seq.),
22 pertaining to insurance reorganizations, receiverships and
23 injunctions, shall apply to captive insurance companies formed or
24 licensed under this act.

25

26 ¹[16.] 15.¹ The commissioner may adopt rules establishing
27 standards to ensure that a parent or affiliated company is able to
28 exercise control of the risk management function of any controlled
29 unaffiliated business to be insured by a pure captive insurance
30 company, except that until such time as rules under this section are
31 adopted, the commissioner may approve the coverage of the risk by
32 a pure captive insurance company.

33

34 ¹[17.] 16.¹ a. An association captive insurance company ¹[,
35 risk retention group,]¹ or industrial insured captive insurance
36 company formed as a stock or mutual corporation may be converted
37 to or merged with and into a reciprocal insurer in accordance with a
38 plan of conversion or merger and the provisions of this section.

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

45 c. In the case of a conversion authorized under subsection a. of
46 this section:

1 (1) the conversion shall be accomplished under a reasonable
2 plan and procedure as approved by the commissioner, except that
3 the commissioner shall not approve a plan of conversion unless the
4 plan:

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

6 (b) provides for a hearing, of which notice is given to the
7 captive insurance company, its directors, officers and policyholders,
8 and, in the case of a stock insurer, its stockholders, and in the case
9 of a mutual insurer, its members, all of which persons shall be
10 entitled to attend and appear at the hearing if notice of a hearing is
11 given and no director, officer, policyholder, member or stockholder
12 requests a hearing, the commissioner may cancel the hearing;

13 (c) provides a fair and equitable plan for the conversion of
14 stockholder, member or policyholder interests into subscriber
15 interests in the resulting reciprocal insurer, substantially
16 proportionate to the corresponding interests in the stock or mutual
17 insurer. This requirement shall not preclude the resulting reciprocal
18 insurer from applying underwriting criteria that could affect
19 ongoing ownership interests; and

20 (d) is approved:

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

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

29 (2) the commissioner shall approve the plan of conversion if the
30 commissioner finds that the conversion will promote the general
31 good of the State in conformity with those standards set forth in
32 paragraph (2) of subsection d. of section 5 of this act;

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

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

40 (5) the corporate existence of the converting insurer shall cease
41 and the resulting reciprocal insurer shall notify the Secretary of
42 State of the conversion upon the conversion becoming effective.

43 d. A merger authorized under subsection a. of this section shall
44 be accomplished substantially in accordance with the procedures to
45 be prescribed by the commissioner, except that, solely for purposes
46 of the merger:

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

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

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

6 (4) if a subscribers' advisory committee does not have a
7 president or secretary, the officers of the committee having
8 substantially equivalent duties shall be deemed the president or
9 secretary of the committee;

10 (5) the commissioner shall approve the articles of merger if the
11 commissioner finds that the merger will promote the general good
12 of the State in conformity with those standards set forth in
13 paragraph (2) of subsection d. of section 5 of this act. If the
14 commissioner approves the articles of merger, the commissioner
15 shall indorse the commissioner's approval thereon and the surviving
16 insurer shall present the same to the Secretary of State;

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

24 (7) an alien captive insurance company may be a party to a
25 merger authorized under subsection a. of this section in accordance
26 with procedures to be prescribed by the commissioner by
27 regulation.

28

29 ¹~~18.~~ 17. a. One or more sponsors may form a sponsored
30 captive insurance company as prescribed in this act.

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

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

36 (2) A sponsored captive insurance company shall separately
37 account for each protected cell in its books and records to reflect
38 the financial condition and results of operations of each protected
39 cell, net income or loss of each protected cell, dividends or other
40 distributions to participants of each protected cell and any other
41 factors prescribed in the participant contract or required by the
42 commissioner.

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

46 (4) A sponsored captive insurance company shall not sell,
47 exchange or transfer assets, issue a dividend or make a distribution

1 between or among any of its protected cells without the written
2 consent of all its protected cells.

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

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

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

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

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

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

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

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

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

30 (b) reinsured by a reinsurer authorized or accredited by the
31 State; or

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

33

34 ¹~~19.~~ 18. a. A risk retention group shall not be either a
35 sponsor or participant in a sponsored captive insurance company.

36 b. An association, corporation, limited liability company,
37 partnership, trust or any another business entity may be a
38 participant in any sponsored captive insurance company formed or
39 licensed under this act.

40 c. A sponsor may be a participant in a sponsored captive
41 insurance company.

42 d. A participant need not be a shareholder of a sponsored
43 captive insurance company or any affiliate of a sponsored captive
44 insurance company.

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

1 ¹[20.] 19. a. No cause of action shall arise nor shall any
2 liability be imposed against the commissioner, the commissioner's
3 authorized agent or any examiner appointed by the commissioner
4 for any statements made or conduct performed in good faith while
5 carrying out the provisions of this act. This section does not
6 abrogate or modify in any way any common law or other statutory
7 privilege or immunity available to any person identified in this
8 subsection. A person identified in this subsection shall be entitled to
9 an award of attorney's fees and costs if he is the prevailing party in
10 a civil cause of action for libel, slander or any other relevant tort
11 arising out of activities in carrying out the provisions of this act and
12 the party bringing the action was not substantially justified in doing
13 so. For purposes of this subsection, a proceeding is "substantially
14 justified" if it had a reasonable basis in law or fact at the time that it
15 was initiated.

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

23

24 ¹[21.] 20. This act shall take effect on the 90th day following
25 enactment.