

CAPTIVE INSURERS ACT

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Dunnigan

This act modifies the Insurance Code to enact provisions providing for the regulation and operation of captive insurance companies. The act regulates the scope of business, requirements for incorporation, certificates of authority, financial responsibility, and annual reports. The act provides for inspections and examinations and establishes grounds for suspension and revocation. The act establishes investment requirements and premium taxes, and provides procedures for certain conversions and mergers. The act takes effect July 1, 2003.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

- 31A-3-304**, Utah Code Annotated 1953
- 31A-36-101**, Utah Code Annotated 1953
- 31A-36-102**, Utah Code Annotated 1953
- 31A-36-103**, Utah Code Annotated 1953
- 31A-36-104**, Utah Code Annotated 1953
- 31A-36-105**, Utah Code Annotated 1953
- 31A-36-106**, Utah Code Annotated 1953
- 31A-36-201**, Utah Code Annotated 1953
- 31A-36-202**, Utah Code Annotated 1953
- 31A-36-203**, Utah Code Annotated 1953
- 31A-36-204**, Utah Code Annotated 1953
- 31A-36-205**, Utah Code Annotated 1953
- 31A-36-301**, Utah Code Annotated 1953
- 31A-36-302**, Utah Code Annotated 1953
- 31A-36-303**, Utah Code Annotated 1953
- 31A-36-304**, Utah Code Annotated 1953

- 31A-36-305, Utah Code Annotated 1953
- 31A-36-306, Utah Code Annotated 1953
- 31A-36-401, Utah Code Annotated 1953
- 31A-36-402, Utah Code Annotated 1953
- 31A-36-403, Utah Code Annotated 1953
- 31A-36-501, Utah Code Annotated 1953
- 31A-36-502, Utah Code Annotated 1953
- 31A-36-503, Utah Code Annotated 1953
- 31A-36-504, Utah Code Annotated 1953
- 31A-36-505, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 31A-3-304 is enacted to read:

CHAPTER 3. DEPARTMENT FUNDING, FEES, AND TAXES

Part 3. Taxation of Surplus Lines, Illegal Transactions, and

Captive Insurance Companies

31A-3-304. Premium tax on a captive insurance company.

(1) A captive insurance company, as defined in Section 31A-36-102, is subject to a tax 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 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders, at the rate of:

- (a) .4% on the first \$20,000,000;
- (b) .3% on the next \$20,000,000;
- (c) .2% on the next \$20,000,000; and
- (d) .075% on each dollar thereafter.

(2) (a) A captive insurance company is subject to a tax on assumed reinsurance premium at the rate of:

- (i) .225% on the first \$20,000,000 of assumed reinsurance premium;
- (ii) .15% on the next \$20,000,000 of assumed reinsurance premium;
- (iii) .050% on the next \$20,000,000 of assumed reinsurance premium; and
- (iv) .025% of each dollar thereafter of assumed reinsurance premium.

(b) Notwithstanding Subsection (2)(a), reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis under Subsection (1).

(c) A premium tax under this section is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if:

- (i) the transaction is part of a plan to discontinue the operations of the other insurer; and
- (ii) the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

(3) If the aggregate taxes to be paid by a captive insurance company calculated under Subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(4) A captive insurance company that fails to make returns or to pay all taxes required by this section is subject to the relevant sanctions of this title.

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

(6) In the case of a branch captive insurance company, as defined in Section 31A-36-102, the tax provided for in this section applies only to the branch business of the company.

(7) (a) Except as provided in Subsection (7)(b), the tax provided for in this section constitutes all taxes collectible under the laws of this state from a captive insurance company, and no other occupation tax or other taxes may be levied or collected from a captive insurance company by the state or a county, city, or municipality within this state.

(b) Notwithstanding Subsection (7)(a), a captive insurance company is subject to real and personal property taxes.

(8) A captive insurance company shall pay a tax imposed by this section to the State Tax

Commission by March 31 of each year.

Section 2. Section **31A-36-101** is enacted to read:

CHAPTER 36. CAPTIVE INSURANCE COMPANIES ACT

Part 1. General Provisions

31A-36-101. Title.

This chapter is known as the "Captive Insurance Companies Act."

Section 3. Section **31A-36-102** is enacted to read:

31A-36-102. Definitions.

As used in this chapter:

(1) "Association" means a legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one year if:

(a) the association or its member organizations:

(i) 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; or

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

(b) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(2) "Association captive insurance company" means a company that insures risks of the:

(a) member organizations of the association; and

(b) affiliates of the member organizations of the association.

(3) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(4) "Branch captive insurance company" means an out-of-state captive insurance company that has obtained a certificate of authority by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(5) "Branch operations" means any business operations of a branch captive insurance company in this state.

(6) "Captive insurance company" means any of the following formed or holding a certificate of authority under this chapter:

- (a) a branch captive insurance company;
- (b) a pure captive insurance company;
- (c) an association captive insurance company;
- (d) a sponsored captive insurance company; or
- (e) an industrial insured captive insurance company.

(7) "Common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership by the same shareholder or shareholders of 80% or more of the outstanding voting stock of two or more corporations; and

(b) in the case of mutual corporations, the direct or indirect ownership by the same member or members of 80% or more of the surplus and the voting power of two or more corporations.

(8) "Controlled unaffiliated business" means a company:

- (a) that is not in the corporate system of a parent and affiliates;
- (b) that has an existing contractual relationship with a parent or affiliate; and
- (c) whose risks are managed by a pure captive insurance company in accordance with Section 31A-36-504.

(9) "Industrial insured" means an insured:

- (a) that produces insurance:
 - (i) by the services of a full-time employee acting as a risk manager or insurance manager;
- or
- (ii) utilizing the services of a regularly and continuously qualified insurance consultant;
 - (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
- and
- (c) that has at least 25 full-time employees.

(10) "Industrial insured captive insurance company" means a company that insures risks

of:

(a) the industrial insureds that comprise the industrial insured group; and

(b) the affiliates of the industrial insured group.

(11) "Industrial insured group" means:

(a) a group of industrial insureds that collectively:

(i) 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; or

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

(b) a group that is:

(i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section 3901 et seq., as amended, as a corporation or other limited liability association; and

(ii) taxable under this title as a:

(A) stock corporation; or

(B) mutual insurer.

(12) "Member organization" means an individual, corporation, partnership, or association that belongs to an association.

(13) "Out-of-state captive insurance company" means an insurance company:

(a) formed to write insurance business for its parents and affiliates; and

(b) authorized by another state to write insurance business for its parents and affiliates.

(14) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurance company.

(15) "Participant" means any of the following that are insured by a sponsored captive insurance company, if the losses of the participant are limited through a participant contract to the assets of a protected cell:

(a) an entity permitted to be a participant under Section 31A-36-403; and

(b) any affiliate of an entity permitted to be a participant under Section 31A-36-403.

(16) "Participant contract" means a contract by which a sponsored captive insurance company:

- (a) insures the risks of a participant; and
- (b) limits the losses of the participant to the assets of a protected cell.

(17) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.

(18) "Pure captive insurance company" means a company that insures risks of its parent and affiliates.

(19) "Sponsor" means an entity that:

- (a) meets the requirements of Section 31A-36-402; and
- (b) is approved by the commissioner to:
 - (i) provide all or part of the capital and surplus required by applicable law; and
 - (ii) organize and operate a sponsored captive insurance company.

(20) "Sponsored captive insurance company" means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by sponsors;

- (b) that is formed or holding a certificate of authority under this chapter;
- (c) that insures the risks of separate participants through the contract; and
- (d) that segregates each participant's liability through a protected cell.

Section 4. Section **31A-36-103** is enacted to read:

31A-36-103. Chapter exclusivity.

Except as otherwise provided in this chapter, no provisions of this title other than this chapter apply to a captive insurance company.

Section 5. Section **31A-36-104** is enacted to read:

31A-36-104. Applicability of reorganization, receivership, and injunction authority.

(1) Except as provided in Subsection (2), the provisions of this title pertaining to insurance reorganizations, receiverships, and injunctions apply to a captive insurance company formed or holding a certificate of authority under this chapter.

(2) In the case of a sponsored captive insurance company:

(a) the assets of the protected cell may not be used to pay any expenses or claims other than those attributable to the protected cell; and

(b) the capital and surplus of the sponsored captive insurance company must at all times be available to pay any:

(i) expenses of the sponsored captive insurance company; or

(ii) claims against the sponsored captive insurance company.

Section 6. Section **31A-36-105** is enacted to read:

31A-36-105. Operation of a branch captive insurance company.

Except as otherwise provided in this chapter, a branch captive insurance company must be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner under Section 31A-36-106.

Section 7. Section **31A-36-106** is enacted to read:

31A-36-106. Authority to make rules.

(1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner may adopt rules to:

(a) determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company;

(b) determine any statement, document, or information a captive insurance company must provide to the commissioner to obtain a certificate of authority;

(c) prescribe capital requirements for a captive insurance company in addition to those required under Section 31A-36-204 based on the type, volume, and nature of insurance business transacted by the captive insurance company;

(d) establish:

(i) the amount of capital or surplus required to be retained under Subsection 31A-36-205(4) at the payment of a dividend or other distribution by a captive insurance company; or

(ii) a formula to determine the amount described in Subsection 31A-36-205(4);

(e) waive or modify the requirements for public notice and hearing for any of the following by a captive insurance company:

(i) merger;

(ii) consolidation;

(iii) conversion;

(iv) mutualization; or

(v) redomestication;

(f) approve the use of alternative reliable methods of valuation and rating for:

(i) an association captive insurance company;

(ii) a sponsored captive insurance company; or

(iii) an industrial insured group;

(g) prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company;

(h) determine the financial reports a sponsored captive insurance company shall annually file with the commissioner;

(i) determine the required forms and reports under Section 31A-36-501; and

(j) establish standards to ensure that a parent or affiliate of a pure captive insurance 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.

(2) Notwithstanding Subsection (1)(j), until the commissioner adopts the rules authorized under Subsection (1)(j), the commissioner may by temporary order grant authority to a pure captive insurance company to insure risks.

Section 8. Section **31A-36-201** is enacted to read:

Part 2. Certificate of Authority

31A-36-201. Certificate of authority.

The commissioner may issue a certificate of authority to act as an insurer in this state to a captive insurance company that meets the requirements of this chapter.

Section 9. Section 31A-36-202 is enacted to read:

31A-36-202. Permissive areas of insurance.

(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.

(b) Notwithstanding Subsection (1)(a):

(i) a pure captive insurance company may not insure any risks other than those of its:

(A) parent and affiliates; or

(B) controlled unaffiliated business;

(ii) an association captive insurance company may not insure any risks other than those of the:

(A) member organizations of its association; and

(B) affiliates of the member organizations of its association;

(iii) an industrial insured captive insurance company may not insure any risks other than those of the:

(A) industrial insureds that comprise the industrial insured group; and

(B) affiliates of the industrial insureds that comprise the industrial insured group;

(iv) a captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component of these coverages; and

(v) a captive insurance company may not accept or cede reinsurance except as provided in Section 31A-36-303.

(2) To conduct insurance business in this state a captive insurance company shall:

(a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state;

(b) hold at least once each year in this state:

(i) a board of directors meeting; or

(ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;

(c) maintain in this state:

(i) the principal place of business of the captive insurance company; or

(ii) in the case of a branch captive insurance company, the principal place of business for the branch operations of the branch captive insurance company; and

(d) except as provided in Subsection (3), appoint a resident registered agent to accept service of process and to otherwise act on behalf of the captive insurance company in this state.

(3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company formed as a corporation or a reciprocal insurer, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

(4) (a) Before receiving a certificate of authority, a captive insurance company:

(i) formed as a corporation shall file with the commissioner:

(A) a certified copy of the charter and bylaws of the corporation;

(B) a statement under oath of the president and secretary of the corporation showing the financial condition of the corporation; and

(C) any other statement or document required by the commissioner under Section 31A-36-106;

(ii) formed as a reciprocal shall:

(A) file with the commissioner:

(I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

(II) a certified copy of the subscribers' agreement of the reciprocal;

(III) a statement under oath of the attorney-in-fact of the reciprocal showing the financial condition of the reciprocal; and

(IV) any other statement or document required by the commissioner under Section 31A-36-106; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, rates, and any other information the commissioner requires under Section

31A-36-106.

(b) (i) If there is a subsequent material change in an item in the description required under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).

(ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional kinds of insurance until the commissioner approves a revision of the description.

(iii) A reciprocal captive insurance company shall inform the commissioner of any material change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by Subsection (4)(a), an applicant captive insurance company shall file with the commissioner evidence of:

(i) the amount and liquidity of the assets of the applicant captive insurance company relative to the risks to be assumed by the applicant captive insurance company;

(ii) the adequacy of the expertise, experience, and character of the person who will manage the applicant captive insurance company;

(iii) the overall soundness of the plan of operation of the applicant captive insurance company;

(iv) the adequacy of the loss prevention programs of the applicant captive insurance company's parent, member organizations, or industrial insureds, as applicable; and

(v) any other factors the commissioner:

(A) requires under Section 31A-36-106; and

(B) considers relevant in ascertaining whether the applicant captive insurance company will be able to meet the policy obligations of the applicant captive insurance company.

(d) In addition to the information required by Subsections (4)(a), (b), and (c), an applicant sponsored captive insurance company shall file with the commissioner:

(i) a business plan at the level of detail required by the commissioner under Section 31A-36-106 demonstrating:

(A) the manner in which the applicant sponsored captive insurance company will account for the losses and expenses of each protected cell; and

(B) the manner in which the applicant sponsored captive insurance company will report to the commissioner the financial history, including losses and expenses, of each protected cell:

(ii) a statement acknowledging that all financial records of the applicant sponsored captive insurance company, including records pertaining to any protected cell, shall be made available for inspection or examination by the commissioner;

(iii) any contract or sample contract between the applicant sponsored captive insurance company and any participant; and

(iv) evidence that expenses will be allocated to each protected cell in an equitable manner.

(e) Information submitted pursuant to this Subsection (4) shall be classified as a protected record under Title 63, Chapter 2, Government Records Access and Management Act.

(f) The commissioner may disclose information submitted pursuant to this Subsection (4) to a public official having jurisdiction over the regulation of insurance in another state if:

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

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

(g) The provisions of Subsections (4)(e) and (4)(f) do not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.

(5) (a) A captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103 and 63-38-3.2:

(i) a fee for examining, investigating, and processing, by department employees, of an application for a certificate of authority made by a captive insurance company;

(ii) a fee for obtaining a certificate of authority for the year the captive insurance company is issued a certificate of authority by the department; and

(iii) a certificate of authority renewal fee.

(b) The commissioner may retain legal, financial, and examination services from outside the department to perform the services under Subsection (5)(a) and Section 31A-36-502 and charge the reasonable cost of those services against the applicant captive insurance company.

(6) If the commissioner is satisfied that the documents and statements filed by the applicant captive insurance company comply with the provisions of this chapter, the commissioner may grant a certificate of authority authorizing the company to do insurance business in this state.

(7) A certificate of authority granted under this section expires annually and must be renewed by July 1 of each year.

Section 10. Section **31A-36-203** is enacted to read:

31A-36-203. Deceptive name prohibited.

A captive insurance company may not adopt a name that is:

- (1) the same as any other existing business name registered in this state;
- (2) deceptively similar to any other existing business name registered in this state; or
- (3) likely to be:
 - (a) confused with any other existing business name registered in this state; or
 - (b) mistaken for any other existing business name registered in this state.

Section 11. Section **31A-36-204** is enacted to read:

31A-36-204. Paid-in capital.

(1) (a) The commissioner may not issue a certificate of authority to a pure captive insurance company, sponsored captive insurance company, association captive insurance company incorporated as a stock insurer, or industrial insured captive insurance company incorporated as a stock insurer unless the company possesses and thereafter maintains unimpaired paid-in capital of:

- (i) in the case of a pure captive insurance company, not less than \$100,000;
- (ii) in the case of an association captive insurance company incorporated as a stock insurer, not less than \$400,000;

(iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than \$200,000; or

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

(b) The paid-in capital required under this Subsection (1) may be in the form of:

(i) cash; or

(ii) an irrevocable letter of credit:

(A) issued by:

(I) a bank chartered by this state; or

(II) a member bank of the Federal Reserve System; and

(B) approved by the commissioner.

(2) (a) The commissioner may, under Section 31A-36-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.

(b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:

(i) cash; or

(ii) an irrevocable letter of credit issued by:

(A) a bank chartered by this state; or

(B) a member bank of the Federal Reserve System.

(3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:

(i) funded by an irrevocable letter of credit or other acceptable asset; and

(ii) in the United States for the benefit of:

(A) United States policyholders; and

(B) United States ceding insurers under:

(I) insurance policies issued; or

(II) reinsurance contracts issued or assumed.

(b) The amount of the security required under this Subsection (3) shall be no less than:

- (i) the capital and surplus required by this chapter; and
- (ii) the reserves on the insurance policies or reinsurance contracts, including:
 - (A) reserves for losses;
 - (B) allocated loss adjustment expenses;
 - (C) incurred but not reported losses; and
 - (D) unearned premiums with regard to business written through branch operations.

(c) Notwithstanding the other provisions of this Subsection (3), the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount as the security posted if the security remains posted with the reinsurer.

(4) (a) A captive insurance company may not pay the following without the prior approval of the commissioner:

- (i) a dividend out of capital or surplus in excess of the limits under Section 16-10a-640;

or

(ii) a distribution with respect to capital or surplus in excess of the limits under Section 16-10a-640.

(b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital or surplus in excess of:

- (i) amounts specified by the commissioner under Section 31A-36-106; or
- (ii) determined in accordance with formulas approved by the commissioner under

Section 31A-36-106.

Section 12. Section **31A-36-205** is enacted to read:

31A-36-205. Free surplus.

(1) (a) Except as provided in Subsection (2), the commissioner may not issue a certificate of authority to a captive insurance company unless the company possesses and maintains free surplus of:

- (i) in the case of a pure captive insurance company, not less than \$150,000;

(ii) in the case of an association captive insurance company incorporated as a stock insurer, not less than \$350,000;

(iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than \$300,000;

(iv) in the case of an association captive insurance company incorporated as a mutual insurer, not less \$750,000;

(v) in the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than \$500,000; and

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

(b) The surplus required under this Subsection (1) may be in the form of:

(i) cash; or

(ii) an irrevocable letter of credit issued by:

(A) a bank chartered by this state; or

(B) a member bank of the Federal Reserve System that is approved by the commissioner.

(2) Notwithstanding the requirements of Subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a certificate of authority unless the captive insurance company possesses and maintains free surplus of \$1,000,000.

(3) (a) The commissioner may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted.

(b) The capital required under this Subsection (3) may be in the form of an irrevocable letter of credit issued by:

(i) a bank chartered by this state; or

(ii) a member bank of the Federal Reserve System.

(4) (a) Without the prior approval of the commissioner, a captive insurance company may not pay:

(i) a dividend out of capital or surplus in excess of the limits under Section 16-10a-640;

or

(ii) a distribution with respect to capital or surplus in excess of the limits under Section

16-10a-640.

(b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distribution on the retention, at the time of each payment, of capital or surplus in excess of amounts:

(i) specified by the commissioner; or

(ii) determined in accordance with formulas approved by the commissioner.

Section 13. Section **31A-36-301** is enacted to read:

Part 3. Requirements

31A-36-301. Incorporation.

(1) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:

(a) divided into shares; and

(b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:

(i) divided into shares; and

(ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;

(b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or

(c) organized as a reciprocal.

(3) A captive insurance company may not have fewer than three incorporators of whom not fewer than two must be residents of this state.

(4) (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (4)(a), the commissioner shall consider:

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

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

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects the commissioner considers advisable.

(5) (a) The articles of incorporation, the certificate issued pursuant to Subsection (4), and the organization fees required by Subsection 31A-36-202(5) shall be filed with the Division of Corporations and Commercial Code.

(b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection (4) for a captive insurance company that complies with this section.

(6) (a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.

(b) In considering a petition under Subsection (6)(a), 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;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects the commissioner considers advisable.

(7) (a) An out-of-state captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:

(i) the home state of the out-of-state captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that state; and

(ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the out-of-state captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.

(b) After the commissioner issues a certificate under Subsection (7)(a) to an out-of-state captive insurance company, the out-of-state captive insurance company may register to do business in this state.

(8) The capital stock of a captive insurance company incorporated as a stock insurer may not be issued at less than par value.

(9) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.

(10) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.

(11) (a) A captive insurance company formed as a corporation under this chapter has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.

(b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.

(c) Except as provided in Subsection (11)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the

procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

(d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-36-106.

(e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.

(12) (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.

(b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.

(c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.

(d) In addition to the provisions of this Subsection (12), a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.

(13) The articles of incorporation or bylaws of a captive insurance company may not authorize a quorum of a board of directors to consist of fewer than 1/3 of the fixed or prescribed number of directors as provided in Section 16-10a-824.

Section 14. Section **31A-36-302** is enacted to read:

31A-36-302. Investment requirements.

(1) (a) Except as provided in Subsection (1)(b), an association captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in this title.

(b) Notwithstanding Subsection (1)(a) and any other provision of this title, the

commissioner may approve the use of alternative reliable methods of valuation and rating under Section 31A-36-106 for:

- (i) an association captive insurance company;
- (ii) a sponsored captive insurance company; or
- (iii) an industrial insured group.

(2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in this title.

(b) Notwithstanding Subsection (2)(a), the commissioner may, under Section 31A-36-106, prohibit or limit an investment that threatens the solvency or liquidity of:

- (i) a pure captive insurance company; or
- (ii) an industrial insured captive insurance company.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may not make loans to:

- (A) the parent company of the captive insurance company; or
- (B) an affiliate of the captive insurance company.

(ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make loans to:

- (A) the parent company of the pure captive insurance company; or
- (B) an affiliate of the pure captive insurance company.

(b) A loan under Subsection (3)(a):

- (i) may be made only on the prior written approval of the commissioner; and
- (ii) must be evidenced by a note in a form approved by the commissioner.

(c) A pure captive insurance company may not make a loan from:

- (i) the paid-in capital required under Subsection 31A-36-204(1); or
- (ii) the free surplus required under Subsection 31A-36-205(1).

Section 15. Section **31A-36-303** is enacted to read:

31A-36-303. Reinsurance.

(1) A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded by any other insurer.

(2) (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404.

(b) Unless the reinsurer is in compliance with Section 31A-17-404, a captive insurance company may not take credit for:

(i) reserves on risks ceded to a reinsurer; or

(ii) portions of risks ceded to a reinsurer.

Section 16. Section **31A-36-304** is enacted to read:

31A-36-304. Rating organization.

A captive insurance company is not required to join a rating organization.

Section 17. Section **31A-36-305** is enacted to read:

31A-36-305. Contributions to guaranty or insolvency fund prohibited.

(1) A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may not join or contribute financially to any of the following in this state:

(a) a plan;

(b) a pool;

(c) an association;

(d) a guaranty fund; or

(e) an insolvency fund.

(2) A captive insurance company, the insured of a captive insurance company, the parent of a captive insurance company, an affiliate of a captive insurance company, a member organization of an association captive insurance company, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the captive insurance company, may not receive a benefit from:

(a) a plan;

(b) a pool;

(c) an association;

(d) a guaranty fund for claims arising out of the operations of the captive insurance company; or

(e) an insolvency fund for claims arising out of the operations of the captive insurance company.

Section 18. Section **31A-36-306** is enacted to read:

31A-36-306. Conversion.

(1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be:

(a) converted to a reciprocal insurer in accordance with a plan and the provisions of this section; or

(b) merged with and into a reciprocal insurer in accordance with a plan and the provisions of this section.

(2) A plan for a conversion or merger under this section:

(a) shall be fair and equitable to:

(i) the shareholders, in the case of a stock insurer; or

(ii) the policyholders, in the case of a mutual insurer; and

(b) shall provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided:

(i) a dissenting shareholder; or

(ii) a dissenting policyholder.

(3) In the case of a conversion authorized under Subsection (1):

(a) the conversion must be accomplished under a reasonable plan and procedure that are approved by the commissioner;

(b) the commissioner may not approve the plan of conversion under this section unless the plan:

(i) satisfies the provisions of Subsections (2) and (6);

(ii) provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and

(iii) is approved;

(A) 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; or

(B) 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 at which a quorum is present;

(c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under Subsection 31A-36-301(4);

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

(e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and

(f) upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.

(4) A merger authorized under Subsection (1) must be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:

(a) the plan or merger shall satisfy Subsection (2);

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

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

(d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;

(e) 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 the standards under Subsection 31A-36-301(4);

(f) notwithstanding Section 31A-36-204, 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 to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and

(g) an out-of-state insurer may be a party to a merger authorized under Subsection (1), and the out-of-state insurer shall be treated as an alien insurer.

(5) If the commissioner approves the articles of merger under this section, the commissioner shall endorse the commissioner's approval on the articles, and the surviving insurer shall present the name to the Division of Corporations and Commercial Code.

(6) (a) Except as provided in Subsection (6)(b), a conversion authorized under Subsection (1) must provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing;

(b) Notwithstanding Subsection (6)(a), the commissioner may waive or modify the requirements for the hearing.

(c) If a notice of hearing is required, but no hearing is requested, after notice has been given under Subsection (6)(a), the commissioner may cancel the hearing.

Section 19. Section **31A-36-401** is enacted to read:

Part 4. Sponsored Captive Insurance Companies

31A-36-401. Sponsored captive insurance companies -- Formation.

(1) One or more sponsors may form a sponsored captive insurance company under this chapter.

(2) A sponsored captive insurance company formed under this chapter may establish and maintain a protected cell to insure risks of a participant if:

(a) the shareholders of a sponsored captive insurance company are limited to:

(i) the participants of the sponsored captive insurance company; and

(ii) the sponsors of the sponsored captive insurance company;

(b) each protected cell is accounted for separately on the books and records of the sponsored captive insurance company to reflect:

(i) the financial condition of the protected cell;

(ii) the results of operations of the protected cell;

(iii) the net income or loss of the protected cell;

(iv) the dividends or other distributions to participants of the protected cell; and

(v) other factors that may be:

(A) provided in the participant contract; or

(B) required by the commissioner;

(c) the assets of a protected cell are not chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(d) a sale, exchange, or other transfer of assets is not made by the sponsored captive insurance company between or among any of the protected cells of the sponsored captive insurance company without the consent of the protected cells;

(e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a protected cell to a sponsor or participant without the commissioner's approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

(f) a sponsored captive insurance company annually files with the commissioner financial reports the commissioner requires under Section 31A-36-106, including accounting statements detailing the financial experience of each protected cell;

(g) a sponsored captive insurance company notifies the commissioner in writing within ten business days of a protected cell that is insolvent or otherwise unable to meet the claim or

expense obligations of the protected cell;

(h) a participant contract does not take effect without the commissioner's prior written approval; and

(i) the addition of each new protected cell and withdrawal of a participant of any existing protected cell does not take effect without the commissioner's prior written approval.

Section 20. Section **31A-36-402** is enacted to read:

31A-36-402. Sponsored captive insurance companies -- Certificate of authority mandatory.

(1) A sponsor of a sponsored captive insurance company shall be:

(a) an insurer authorized or approved under the laws of any state;

(b) a reinsurer authorized or approved under the laws of any state; or

(c) a captive insurance company holding a certificate of authority under this chapter.

(2) The business written by a sponsored captive insurance company shall be fronted by an insurance company authorized or approved under the laws of any state.

(3) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Section 21. Section **31A-36-403** is enacted to read:

31A-36-403. Participants in sponsored captive insurance companies.

(1) Any of the following may be a participant in a sponsored captive insurance company holding a certificate of authority under this chapter:

(a) an association;

(b) a corporation;

(c) a limited liability company;

(d) a partnership;

(e) a trust; or

(f) any other business entity.

(2) A sponsor may be a participant in a sponsored captive insurance company.

(3) A participant need not be:

(a) a shareholder of the sponsored captive insurance company; or

(b) an affiliate of the sponsored captive insurance company.

(4) A participant shall insure only the participant's own risks through a sponsored captive insurance company.

Section 22. Section **31A-36-501** is enacted to read:

Part 5. Department Enforcement

31A-36-501. Reports to commissioner.

(1) A captive insurance company is not required to make any report except those provided in this chapter.

(2) (a) Before March 1 of each year, a captive insurance company shall submit to the commissioner a report of the financial condition of the captive insurance company, verified by oath of two of the executive officers of the captive insurance company.

(b) Except as provided in Sections 31A-36-204 and 31A-36-205, a captive insurance company shall report:

(i) unless the commissioner approves the use of statutory accounting principles, using generally accepted accounting principles;

(ii) using any useful or necessary modifications or adaptations to accounting principles required, approved, or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon; and

(iii) any supplemental or additional information required by the commissioner.

(c) Except as otherwise provided, an association captive insurance company and an industrial insured group shall file the report required under this section using the form required by the commissioner under Section 31A-36-106.

(3) (a) A pure captive insurance company may make written application to file the required report on a fiscal year end that is consistent with the fiscal year of the parent company of the pure captive insurance company.

(b) If the commissioner grants an alternative reporting date for a pure captive insurance company requested under Subsection (3)(a):

(i) the annual report is due 60 days after the fiscal year end; and

(ii) the pure captive insurance company shall file before March 1 of each year for each calendar year end, a report required by the commissioner under Section 31A-36-106 to provide sufficient detail to support the premium tax return of the pure captive insurance company.

(4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the out-of-state captive insurance company is formed, verified by oath by two of its executive officers.

(b) If the commissioner is satisfied that the annual report filed by the out-of-state captive insurance company in the jurisdiction in which the out-of-state captive insurance company is formed provides adequate information concerning the financial condition of the out-of-state captive insurance company, the commissioner may waive the requirement for completion of the annual statement required for a captive insurance company under this section with respect to business written in the out-of-state jurisdiction.

(c) A waiver by the commissioner under Subsection (4)(b) shall be:

(i) in writing; and

(ii) subject to public inspection.

Section 23. Section **31A-36-502** is enacted to read:

31A-36-502. Tri-annual visit.

(1) At least once in three years, and whenever the commissioner determines it to be prudent, the department, or a person appointed by the commissioner, shall visit each captive insurance company and thoroughly inspect and examine the affairs of the captive insurance company to ascertain:

(a) the financial condition of the captive insurance company;

(b) the ability of the captive insurance company to fulfill the obligations of the captive insurance company; and

(c) whether the captive insurance company has complied with this chapter.

(2) The commissioner upon application may enlarge the three-year period to five years, if

a captive insurance company is subject to a comprehensive annual audit during that period:

(a) of a scope satisfactory to the commissioner; and

(b) performed by independent auditors approved by the commissioner.

(3) A captive insurance company that is inspected and examined under this section shall pay, as provided in Subsection 31A-36-202(5)(b), the expenses and charges of an inspection and examination.

Section 24. Section **31A-36-503** is enacted to read:

31A-36-503. Classification and use of records.

(1) The following shall be classified as a protected record under Title 63, Chapter 2, Government Records Access and Management Act:

(a) examination reports under this section;

(b) preliminary examination reports or results under this section;

(c) working papers for an examination conducted under this section;

(d) recorded information for an examination conducted under this section; and

(e) documents and copies of documents produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination conducted under this section.

(2) This section does not prevent the commissioner from using the information provided under this section in furtherance of the commissioner's regulatory authority under this title.

(3) Notwithstanding other provisions of this section, the commissioner may grant access to the information provided under this section to:

(a) public officers having jurisdiction over the regulation of insurance in any other state or country; or

(b) law enforcement officers of this state or any other state or agency of the federal government, if the officers receiving the information agree in writing to hold the information in a manner consistent with this section.

Section 25. Section **31A-36-504** is enacted to read:

31A-36-504. Business written by a captive insurance company.

(1) This section applies to all business written by a captive insurance company.

(2) Notwithstanding this section, the examination for a branch captive insurance company shall be of branch business and branch operations only, if the branch captive insurance company:

(a) provides annually to the commissioner a certificate of compliance, or an equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed; and

(b) demonstrates to the commissioner's satisfaction that the branch captive insurance company is operating in sound financial condition in accordance with all applicable laws and regulations of the jurisdiction in which the branch captive insurance company is formed.

(3) As a condition of obtaining a certificate of authority, an out-of-state captive insurance company shall grant authority to the commissioner to examine the affairs of the out-of-state captive insurance company in the jurisdiction in which the out-of-state captive insurance company is formed.

(4) To the extent that the provisions of Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and 31A-2-205 do not contradict the provisions of this section, this section applies to captive insurance companies that have received a certificate of authority under this chapter.

Section 26. Section **31A-36-505** is enacted to read:

31A-36-505. Suspension or revocation -- Grounds.

(1) The commissioner may suspend or revoke the certificate of authority of a captive insurance company to conduct an insurance business in this state for:

(a) insolvency or impairment of capital or surplus;

(b) failure to meet the requirements of Section 31A-36-204 or 31A-36-205;

(c) refusal or failure to submit:

(i) an annual report required by Section 31A-36-501; or

(ii) any other report or statement required by law or by lawful order of the commissioner;

(d) failure to comply with the charter, bylaws, or other organizational document of the captive insurance company;

(e) failure to submit to:

- (i) an examination under Section 31A-36-502; or
- (ii) any legal obligation relative to an examination under Section 31A-36-502;
- (f) refusal or failure to pay the cost of examination under Section 31A-36-502;
- (g) use of methods that, although not otherwise specifically prohibited by law, render:
 - (i) the operation of the captive insurance company detrimental to the public or the policyholders of the captive insurance company; or
 - (ii) the condition of the captive insurance company unsound with respect to the public or to the policyholders of the captive insurance company; or
 - (h) failure otherwise to comply with laws of this state.
- (2) Notwithstanding any other provision of this title, if the commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate of authority of the captive insurance company if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company to revoke the certificate of authority.

Section 27. Effective date.

This act takes effect on July 1, 2003.