

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



- 28 **31A-36-303**, Utah Code Annotated 1953
- 29 **31A-36-304**, Utah Code Annotated 1953
- 30 **31A-36-305**, Utah Code Annotated 1953
- 31 **31A-36-306**, Utah Code Annotated 1953
- 32 **31A-36-401**, Utah Code Annotated 1953
- 33 **31A-36-402**, Utah Code Annotated 1953
- 34 **31A-36-403**, Utah Code Annotated 1953
- 35 **31A-36-501**, Utah Code Annotated 1953
- 36 **31A-36-502**, Utah Code Annotated 1953
- 37 **31A-36-503**, Utah Code Annotated 1953
- 38 **31A-36-504**, Utah Code Annotated 1953
- 39 **31A-36-505**, Utah Code Annotated 1953

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

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

42 **CHAPTER 3. DEPARTMENT FUNDING, FEES, AND TAXES**

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

44 **Captive Insurance Companies**

45 **31A-3-304. Premium tax on a captive insurance company.**

46 (1) A captive insurance company, as defined in Section 31A-36-102, is subject to a tax
47 on the direct premiums collected or contracted for on policies or contracts of insurance written
48 by the captive insurance company during the year ending December 31 next preceding, after
49 deducting from the direct premiums subject to the tax the amounts paid to policyholders as
50 return premiums, including dividends on unabsorbed premiums or premium deposits returned
51 or credited to policyholders, at the rate of:

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

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

- 58 (i) .225% on the first \$20,000,000 of assumed reinsurance premium;

59 (ii) .15% on the next \$20,000,000 of assumed reinsurance premium;

60 (iii) .050% on the next \$20,000,000 of assumed reinsurance premium; and

61 (iv) .025% of each dollar thereafter of assumed reinsurance premium.

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

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

67 (i) the transaction is part of a plan to discontinue the operations of the other insurer;
68 and

69 (ii) the intent of the parties to the transaction is to renew or maintain business with the
70 captive insurance company.

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

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

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

78 (6) In the case of a branch captive insurance company, as defined in Section
79 31A-36-102, the tax provided for in this section applies only to the branch business of the
80 company.

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

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

87 (8) A captive insurance company shall pay a tax imposed by this section to the State
88 Tax Commission by March ~~h~~ **31** ~~h~~ of each year.

89 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;

- 121 (b) a pure captive insurance company;
122 (c) an association captive insurance company;
123 (d) a sponsored captive insurance company; or
124 (e) an industrial insured captive insurance company.
- 125 (7) "Common ownership and control" means:
126 (a) in the case of stock corporations, the direct or indirect ownership by the same
127 shareholder or shareholders of 80% or more of the outstanding voting stock of two or more
128 corporations; and
129 (b) in the case of mutual corporations, the direct or indirect ownership by the same
130 member or members of 80% or more of the surplus and the voting power of two or more
131 corporations.
- 132 (8) "Controlled unaffiliated business" means a company:
133 (a) that is not in the corporate system of a parent and affiliates;
134 (b) that has an existing contractual relationship with a parent or affiliate; and
135 (c) whose risks are managed by a pure captive insurance company in accordance with
136 Section 31A-36-504.
- 137 (9) "Industrial insured" means an insured:
138 (a) that produces insurance:
139 (i) by the services of a full-time employee acting as a risk manager or insurance
140 manager; or
141 (ii) utilizing the services of a regularly and continuously qualified insurance consultant;
142 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
143 and
144 (c) that has at least 25 full-time employees.
- 145 (10) "Industrial insured captive insurance company" means a company that insures
146 risks of:
147 (a) the industrial insureds that comprise the industrial insured group; and
148 (b) the affiliates of the industrial insured group.
- 149 (11) "Industrial insured group" means:
150 (a) a group of industrial insureds that collectively:
151 (i) own, control, or hold with power to vote all of the outstanding voting securities of

152 an industrial insured captive insurance company incorporated as a stock insurer; or
153 (ii) have complete voting control over an industrial insured captive insurance company
154 incorporated as a mutual insurer; or
155 (b) a group that is:
156 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section
157 3901 et seq., as amended, as a corporation or other limited liability association; and
158 (ii) taxable under this title as a:
159 (A) stock corporation; or
160 (B) mutual insurer.
161 (12) "Member organization" means a individual, corporation, partnership, or
162 association that belongs to an association.
163 (13) "Out-of-state captive insurance company" means an insurance company:
164 (a) formed to write insurance business for its parents and affiliates; and
165 (b) authorized by another state to write insurance business for its parents and affiliates.
166 (14) "Parent" means a corporation, partnership, or individual that directly or indirectly
167 owns, controls, or holds with power to vote more than 50% of the outstanding voting securities
168 of a pure captive insurance company.
169 (15) "Participant" means any of the following that are insured by a sponsored captive
170 insurance company, if the losses of the participant are limited through a participant contract to
171 the assets of a protected cell:
172 (a) an entity permitted to be a participant under Section 31A-36-403; and
173 (b) any affiliate of an entity permitted to be a participant under Section 31A-36-403.
174 (16) "Participant contract" means a contract by which a sponsored captive insurance
175 company:
176 (a) insures the risks of a participant; and
177 (b) limits the losses of the participant to the assets of a protected cell.
178 (17) "Protected cell" means a separate account established and maintained by a
179 sponsored captive insurance company for one participant.
180 (18) "Pure captive insurance company" means a company that insures risks of its
181 parent and affiliates.
182 (19) "Sponsor" means an entity that:

- 183 (a) meets the requirements of Section 31A-36-402; and
- 184 (b) is approved by the commissioner to:
- 185 (i) provide all or part of the capital and surplus required by applicable law; and
- 186 (ii) organize and operate a sponsored captive insurance company.
- 187 (20) "Sponsored captive insurance company" means a captive insurance company:
- 188 (a) in which the minimum capital and surplus required by applicable law is provided by
- 189 sponsors:
- 190 (b) that is formed or holding a certificate of authority under this chapter;
- 191 (c) that insures the risks of separate participants through the contract; and
- 192 (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

214 permitted by the commissioner under Section 31A-36-106.

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

216 **31A-36-106. Authority to make rules.**

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

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

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

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

226 (d) establish:

227 (i) the amount of capital or surplus required to be retained under Subsection
228 31A-36-205(4) at the payment of a dividend or other distribution by a captive insurance
229 company; or

230 (ii) a formula to determine the amount described in Subsection (4)(a);

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

233 (i) merger;

234 (ii) consolidation;

235 (iii) conversion;

236 (iv) mutualization; or

237 (v) redomestication;

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

239 (i) an association captive insurance company;

240 (ii) a sponsored captive insurance company; or

241 (iii) an industrial insured group;

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

243 (i) a pure captive insurance company; or

244 (ii) an industrial insured captive insurance company;

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

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

248 (j) establish standards to ensure that a parent or affiliate of a pure captive insurance
249 company is able to exercise control of the risk management function of any controlled
250 unaffiliated business to be insured by the pure captive insurance company.

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

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

255 **Part 2. Certificate of Authority**

256 **31A-36-201. Certificate of authority.**

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

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

260 **31A-36-202. Permissive areas of insurance.**

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

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

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

267 (A) parent and affiliates; or

268 (B) controlled unaffiliated business;

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

271 (A) member organizations of its association; and

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

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

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

276 (B) affiliates of the industrial insureds that comprise the industrial insured group;
277 (iv) a captive insurance company may not provide personal motor vehicle or
278 homeowner's insurance coverage or any component of these coverages; and
279 (v) a captive insurance company may not accept or cede reinsurance except as provided
280 in Section 31A-36-303.

281 (2) To conduct insurance business in this state a captive insurance company shall:
282 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
283 insurance business in this state;
284 (b) hold at least once each year in this state:
285 (i) a board of directors meeting; or
286 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;
287 (c) maintain in this state:
288 (i) the principal place of business of the captive insurance company; or
289 (ii) in the case of a branch captive insurance company, the principal place of business
290 for the branch operations of the branch captive insurance company; and
291 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
292 service of process and to otherwise act on behalf of the captive insurance company in this state.

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

298 (4) (a) Before receiving a certificate of authority, a captive insurance company:
299 (i) formed as a corporation shall file with the commissioner:
300 (A) a certified copy of the charter and bylaws of the corporation;
301 (B) a statement under oath of the president and secretary of the corporation showing
302 the financial condition of the corporation; and
303 (C) any other statement or document required by the commissioner under Section
304 31A-36-106;
305 (ii) formed as a reciprocal shall:
306 (A) file with the commissioner:

307 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;
308 (II) a certified copy of the subscribers' agreement of the reciprocal;
309 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the
310 financial condition of the reciprocal; and
311 (IV) any other statement or document required by the commissioner under Section
312 31A-36-106; and
313 (B) submit to the commissioner for approval a description of the coverages,
314 deductibles, coverage limits, rates, and any other information the commissioner requires under
315 Section 31A-36-106.
316 (b) (i) If there is a subsequent material change in an item in the description required
317 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal
318 captive insurance company shall submit to the commissioner for approval an appropriate
319 revision to the description required under Subsection (4)(a)(ii)(B).
320 (ii) A reciprocal captive insurance company that is required to submit a revision under
321 Subsection (4)(b)(i) may not offer any additional kinds of insurance until the commissioner
322 approves a revision of the description.
323 (iii) A reciprocal captive insurance company shall inform the commissioner of any
324 material change in rates within 30 days of the adoption of the change.
325 (c) In addition to the information required by Subsection (3)(a), an applicant captive
326 insurance company shall file with the commissioner evidence of:
327 (i) the amount and liquidity of the assets of the applicant captive insurance company
328 relative to the risks to be assumed by the applicant captive insurance company;
329 (ii) the adequacy of the expertise, experience, and character of the person who will
330 manage the applicant captive insurance company;
331 (iii) the overall soundness of the plan of operation of the applicant captive insurance
332 company;
333 (iv) the adequacy of the loss prevention programs of the applicant captive insurance
334 company's parent, member organizations, or industrial insureds, as applicable; and
335 (v) any other factors the commissioner:
336 (A) requires under Section 31A-36-106; and
337 (B) considers relevant in ascertaining whether the applicant captive insurance company

338 will be able to meet the policy obligations of the applicant captive insurance company.

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

341 (i) a business plan at the level of detail required by the commissioner under Section
342 31A-36-106 demonstrating:

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

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

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

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

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

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

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

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

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

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

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

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

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

371 (iii) a certificate of authority renewal fee;

372 (b) The commissioner may retain legal, financial, and examination services from
373 outside the department to perform the services under Subsection (5)(a) and Section
374 31A-36-502 and charge the reasonable cost of those services against the applicant captive
375 insurance company.

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

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

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

383 **31A-36-203. Deceptive name prohibited.**

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

385 (1) the same as any other existing business name registered in this state;

386 (2) deceptively similar to any other existing business name registered in this state; or

387 (3) likely to be:

388 (a) confused with any other existing business name registered in this state; or

389 (b) mistaken for any other existing business name registered in this state.

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

391 **31A-36-204. Paid-in capital.**

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

397 (i) in the case of a pure captive insurance company, not less than \$100,000;

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

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

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

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

404 (i) cash; or

405 (ii) an irrevocable letter of credit:

406 (A) issued by:

407 (I) a bank chartered by this state; or

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

409 (B) approved by the commissioner.

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

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

414 (i) cash; or

415 (ii) an irrevocable letter of credit issued by:

416 (A) a bank chartered by this state; or

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

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

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

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

423 (A) United States policyholders; and

424 (B) United States ceding insurers under:

425 (I) insurance policies issued; or

426 (II) reinsurance contracts issued or assumed.

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

428 (i) the capital and surplus required by this chapter; and

429 (ii) the reserves on the insurance policies or reinsurance contracts, including:

430 (A) reserves for losses;

431 (B) allocated loss adjustment expenses;
432 (C) incurred but not reported losses; and
433 (D) unearned premiums with regard to business written through branch operations.

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

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

440 (i) a dividend out of capital or surplus in excess of the limits under Section
441 16-10a-640; or

442 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
443 16-10a-640.

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

447 (i) amounts specified by the commissioner under Section 31A-36-106; or

448 (ii) determined in accordance with formulas approved by the commissioner under
449 Section 31A-36-106.

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

451 **31A-36-205. Free surplus.**

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

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

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

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

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

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

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

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

466 (i) cash; or

467 (ii) an irrevocable letter of credit issued by:

468 (A) a bank chartered by this state; or

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

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

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

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

478 (i) a bank chartered by this state; or

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

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

482 (i) a dividend out of capital or surplus in excess of the limits under Section
483 16-10a-640; or

484 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
485 16-10a-640.

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

489 (i) specified by the commissioner; or

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

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

492 **Part 3. Requirements**

493 **31A-36-301. Incorporation.**

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

497 (a) divided into shares; and

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

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

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

504 (i) divided into shares; and

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

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

510 (c) organized as a reciprocal.

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

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

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

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

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

523 (iii) any information in:

- 524 (A) the application for a certificate of authority; or
- 525 (B) the department's files; and
- 526 (iv) other aspects the commissioner considers advisable.

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

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

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

536 (b) In considering a petition under Subsection (6)(a), the commissioner shall consider:

- 537 (i) the character, reputation, financial standing, and purposes of the incorporators;
- 538 (ii) the character, reputation, financial responsibility, insurance experience, and
539 business qualifications of the officers and directors;

540 (iii) any information in:

- 541 (A) the application for a certificate of authority; or
- 542 (B) the department's files; and
- 543 (iv) other aspects the commissioner considers advisable.

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

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

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

554 (b) After the commissioner issues a certificate under Subsection (7)(a) to an

555 out-of-state captive insurance company, the out-of-state captive insurance company may
556 register to do business in this state.

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

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

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

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

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

568 (c) Except as provided in Subsection (11)(d), the provisions of this title pertaining to a
569 merger, consolidation, conversion, mutualization, and redomestication apply in determining the
570 procedures to be followed by a captive insurance company in carrying out any of the
571 transactions described in those provisions.

572 (d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the
573 requirements for public notice and hearing in accordance with rules adopted under Section
574 31A-36-106.

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

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

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

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

586 (d) In addition to the provisions of this Subsection (12), a captive insurance company
587 organized as a reciprocal insurer that is an industrial insured group has the privileges of Section
588 31A-4-114 in addition to applicable provisions of this title.

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

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

593 **31A-36-302. Investment requirements.**

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

597 (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the
598 commissioner may approve the use of alternative reliable methods of valuation and rating
599 under Section 31A-36-106 for:

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

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

606 (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section
607 31A-36-106, prohibit or limit an investment that threatens the solvency or liquidity of:

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

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

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

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

- 616 (A) the parent company of the pure captive insurance company; or

617 (B) an affiliate of the pure captive insurance company.

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

619 (i) may be made only on the prior written approval of the commissioner; and

620 (ii) must be evidenced by a note in a form approved by the commissioner.

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

622 (i) the paid-in capital required under Subsection 31A-36-204(1); or

623 (ii) the free surplus required under Subsection 31A-36-205(1).

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

625 **31A-36-303. Reinsurance.**

626 (1) A captive insurance company may provide reinsurance, as authorized in this title,

627 on risks ceded by any other insurer.

628 (2) (a) A captive insurance company may take credit for reserves on risks or portions of

629 risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404.

630 (b) Unless the reinsurer is in compliance with Section 31A-17-104, a captive insurance

631 company may not take credit for:

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

633 (ii) portions of risks ceded to a reinsurer.

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

635 **31A-36-304. Rating organization.**

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

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

638 **31A-36-305. Contributions to guaranty or insolvency fund prohibited.**

639 (1) A captive insurance company, including a captive insurance company organized as

640 a reciprocal insurer under this chapter, may not join or contribute financially to any of the

641 following in this state:

642 (a) a plan;

643 (b) a pool;

644 (c) an association;

645 (d) a guaranty fund; or

646 (e) an insolvency fund.

647 (2) A captive insurance company, the insured of a captive insurance company, the

648 parent of a captive insurance company, an affiliate of a captive insurance company, a member
649 organization of an association captive insurance company, or in the case of a captive insurance
650 company organized as a reciprocal insurer, a subscriber of the captive insurance company, may
651 not receive a benefit from:

652 (a) a plan;

653 (b) a pool;

654 (c) an association;

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

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

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

660 **31A-36-306. Conversion.**

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

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

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

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

668 (a) shall be fair and equitable to:

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

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

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

674 (i) a dissenting shareholder; or

675 (ii) a dissenting policyholder.

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

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

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

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

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

685 (iii) is approved;

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

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

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

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

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

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

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

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

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

709 (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of

710 a mutual insurance company;

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

714 (e) the commissioner shall approve the articles of merger if the commissioner finds that
715 the merger will promote the general good of the state in conformity with the standards under
716 Subsection 31A-36-301(4);

717 (f) notwithstanding Section 31A-36-204, the commissioner may permit the formation,
718 without surplus, of a captive insurance company organized as a reciprocal insurer, into which
719 an existing captive insurance company may be merged to facilitate a transaction under this
720 section, if there is no more than one authorized insurance company surviving the merger; and

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

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

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

730 (b) Notwithstanding Subsection (3)(b)(ii)(A), the commissioner may waive or modify
731 the requirements for the hearing.

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

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

735 **Part 4. Sponsored Captive Insurance Companies**

736 **31A-36-401. Sponsored captive insurance companies -- Formation.**

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

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

- 741 (a) the shareholders of a sponsored captive insurance company are limited to:
742 (i) the participants of the sponsored captive insurance company; and
743 (ii) the sponsors of the sponsored captive insurance company;
744 (b) each protected cell is accounted for separately on the books and records of the
745 sponsored captive insurance company to reflect:
746 (i) the financial condition of the protected cell;
747 (ii) the results of operations of the protected cell;
748 (iii) the net income or loss of the protected cell;
749 (iv) the dividends or other distributions to participants of the protected cell; and
750 (v) other factors that may be:
751 (A) provided in the participant contract; or
752 (B) required by the commissioner;
753 (c) the assets of a protected cell are not chargeable with liabilities arising out of any
754 other insurance business the sponsored captive insurance company may conduct;
755 (d) a sale, exchange, or other transfer of assets is not made by the sponsored captive
756 insurance company between or among any of the protected cells of the sponsored captive
757 insurance company without the consent of the protected cells;
758 (e) a sale, exchange, transfer of assets, dividend, or distribution is not made from a
759 protected cell to a sponsor or participant without the commissioner's approval, which may not
760 be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or
761 impairment with respect to a protected cell;
762 (f) a sponsored captive insurance company annually files with the commissioner
763 financial reports the commissioner requires under Section 31A-36-106, including accounting
764 statements detailing the financial experience of each protected cell;
765 (g) a sponsored captive insurance company notifies the commissioner in writing within
766 ten business days of a protected cell that is insolvent or otherwise unable to meet the claim or
767 expense obligations of the protected cell;
768 (h) a participant contract does not take effect without the commissioner's prior written
769 approval; and
770 (i) the addition of each new protected cell and withdrawal of a participant of any
771 existing protected cell does not take effect without the commissioner's prior written approval.

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

773 **31A-36-402. Sponsored captive insurance companies -- Certificate of authority**
774 **mandatory.**

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

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

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

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

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

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

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

784 **31A-36-403. Participants in sponsored captive insurance companies.**

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

787 (a) an association;

788 (b) a corporation;

789 (c) a limited liability company;

790 (d) a partnership;

791 (e) a trust; or

792 (f) any other business entity.

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

794 (3) A participant need not be:

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

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

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

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

800 **Part 5. Department Enforcement**

801 **31A-36-501. Reports to commissioner.**

802 (1) A captive insurance company is not required to make any report except those

803 provided in this chapter.

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

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

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

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

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

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

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

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

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

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

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

831 (b) If the commissioner is satisfied that the annual report filed by the out-of-state
832 captive insurance company in the jurisdiction in which the out-of-state captive insurance
833 company is formed provides adequate information concerning the financial condition of the

834 out-of-state captive insurance company, the commissioner may waive the requirement for
835 completion of the annual statement required for a captive insurance company under this section
836 with respect to business written in the out-of-state jurisdiction.

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

838 (i) in writing; and

839 (ii) subject to public inspection.

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

841 **31A-36-502. Tri-annual visit.**

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

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

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

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

850 (2) The commissioner upon application may enlarge the three-year period to five years,
851 if a captive insurance company is subject to a comprehensive annual audit during that period:

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

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

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

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

858 **31A-36-503. Classification and use of records.**

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

861 (a) examination reports under this section;

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

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

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

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

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

871 (3) Notwithstanding other provisions of this Subsection (2), the commissioner may
872 grant access to the information provided under this section to:

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

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

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

879 **31A-36-504. Business written by a captive insurance company.**

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

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

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

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

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

894 (4) To the extent that the provisions of Sections 31A-2-203, 31A-2-203.5, 31A-2-204,
895 and 31A-2-205 do not contradict the provisions of this section, this section applies to captive

896 insurance companies that have received a certificate of authority under this chapter.

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

898 **31A-36-505. Suspension or revocation -- Grounds.**

899 (1) The commissioner may suspend or revoke the certificate of authority of a captive

900 insurance company to conduct an insurance business in this state for:

901 (a) insolvency or impairment of capital or surplus;

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

903 (c) refusal or failure to submit:

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

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

906 commissioner;

907 (d) failure to comply with the charter, bylaws, or other organizational document of the

908 captive insurance company;

909 (e) failure to submit to:

910 (i) an examination under Section 31A-36-502; or

911 (ii) any legal obligation relative to an examination under Section 31A-36-502;

912 (f) refusal or failure to pay the cost of examination under Section 31A-36-502;

913 (g) use of methods that, although not otherwise specifically prohibited by law, render:

914 (i) the operation of the captive insurance company detrimental to the public or the

915 policyholders of the captive insurance company; or

916 (ii) the condition of the captive insurance company unsound with respect to the public

917 or to the policyholders of the captive insurance company; or

918 (h) failure otherwise to comply with laws of this state.

919 (2) Notwithstanding any other provision of this title, if the commissioner finds, upon

920 examination, hearing, or other evidence, that a captive insurance company has committed any

921 of the acts specified in Subsection (1), the commissioner may suspend or revoke the certificate

922 of authority of the captive insurance company if the commissioner considers it in the best

923 interest of the public and the policyholders of the captive insurance company to revoke the

924 certificate of authority.

925 Section 27. **Effective date.**

926 This act takes effect on July 1, 2003.

Legislative Review Note

as of 2-18-03 8:39 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

This bill will generate revenue for the General Fund, however the Insurance Department does not have enough experience with captive insurers to make a reliable estimate. If five businesses apply, revenues will be \$10,000 with no estimate given for premium revenue.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$0	\$0	\$10,000	\$10,000
TOTAL	\$0	\$0	\$10,000	\$10,000

Individual and Business Impact

Captive insurers will pay applications fees of \$2,000 each plus premium taxes.
