

1 **CAPTIVE INSURANCE COMPANIES ACT**

2 **AMENDMENTS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: James A. Dunnigan**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Captive Insurance Companies Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends definitions and references to defined terms;
- 13 ▶ modifies provisions related to paying expenses or claims of a protected cell;
- 14 ▶ clarifies rulemaking authority;
- 15 ▶ authorizes the commissioner to issue orders related to captive insurance companies;
- 16 ▶ modifies provisions related to permissive areas of insurance;
- 17 ▶ modifies capital and free surplus requirements;
- 18 ▶ addresses when an alien insurer may be a party to a merger;
- 19 ▶ modifies the requirements related to a sponsored captive insurance company;
- 20 ▶ authorizes the commissioner to approve a sponsored captive insurance company
- 21 insuring risks other than a participant's risks;
- 22 ▶ provides for discounting of loss and loss adjustment expense reserves;
- 23 ▶ modifies reporting requirements;
- 24 ▶ addresses applicability of insurance laws to captive insurance companies;
- 25 ▶ addresses incorporation of a captive reinsurance company;
- 26 ▶ addresses requirements of a captive reinsurance company;
- 27 ▶ provides for minimum capitalization or reserve requirements for a captive



28 reinsurance company;

29 ▶ proposes requirements for the management of assets of a captive reinsurance

30 company; and

31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **31A-37-102**, as enacted by Chapter 251, Laws of Utah 2003

39 **31A-37-104**, as enacted by Chapter 251, Laws of Utah 2003

40 **31A-37-106**, as enacted by Chapter 251, Laws of Utah 2003

41 **31A-37-202**, as enacted by Chapter 251, Laws of Utah 2003

42 **31A-37-204**, as enacted by Chapter 251, Laws of Utah 2003

43 **31A-37-205**, as enacted by Chapter 251, Laws of Utah 2003

44 **31A-37-301**, as enacted by Chapter 251, Laws of Utah 2003

45 **31A-37-306**, as enacted by Chapter 251, Laws of Utah 2003

46 **31A-37-402**, as enacted by Chapter 251, Laws of Utah 2003

47 **31A-37-403**, as enacted by Chapter 251, Laws of Utah 2003

48 **31A-37-501**, as enacted by Chapter 251, Laws of Utah 2003

49 **31A-37-504**, as enacted by Chapter 251, Laws of Utah 2003

50 ENACTS:

51 **31A-37-404**, Utah Code Annotated 1953

52 **31A-37-601**, Utah Code Annotated 1953

53 **31A-37-602**, Utah Code Annotated 1953

54 **31A-37-603**, Utah Code Annotated 1953

55 **31A-37-604**, Utah Code Annotated 1953



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

58 Section 1. Section **31A-37-102** is amended to read:

59 **31A-37-102. Definitions.**

60 As used in this chapter:

61 (1) "Affiliated company" means a company that because of common ownership,
62 control, operation, or management is in the same corporate system as:63 (a) a parent;64 (b) an industrial insured; or65 (c) a member organization.66 (2) "Alien captive insurance company" means an insurance company:67 (a) formed to write insurance business for its parents and affiliates; and68 (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or
69 regulatory standards:70 (i) on companies transacting the business of insurance in the alien jurisdiction; and71 (ii) in a form acceptable to the commissioner.72 [1] (3) "Association" means a legal association of individuals, corporations,
73 partnerships, or associations that has been in continuous existence for at least one year if:74 (a) the association or its member organizations:75 (i) own, control, or hold with power to vote all of the outstanding voting securities of
76 an association captive insurance company incorporated as a stock insurer; or77 (ii) have complete voting control over an association captive insurance company
78 incorporated as a mutual insurer; or79 (b) the association's member organizations collectively constitute all of the subscribers
80 of an association captive insurance company formed as a reciprocal insurer.81 [2] (4) "Association captive insurance company" means a company that insures risks
82 of the:83 (a) member organizations of the association; and84 (b) affiliates of the member organizations of the association.85 [3] (5) "Branch business" means any insurance business transacted by a branch
86 captive insurance company in this state.87 [4] (6) "Branch captive insurance company" means an ~~out-of-state~~ alien captive
88 insurance company that has obtained a certificate of authority by the commissioner to transact
89 the business of insurance in this state through a business unit with a principal place of business

90 in this state.

91 ~~[(5)]~~ (7) "Branch operations" means any business operations of a branch captive
92 insurance company in this state.

93 ~~[(6)]~~ (8) "Captive insurance company" means any of the following formed or holding a
94 certificate of authority under this chapter:

- 95 (a) a branch captive insurance company;
- 96 (b) a pure captive insurance company;
- 97 (c) an association captive insurance company;
- 98 (d) a sponsored captive insurance company; [or]
- 99 (e) an industrial insured captive insurance company[-];
- 100 (f) a captive reinsurance company; or
- 101 (g) a special purpose captive insurance company.

102 (9) "Captive reinsurance company" means a reinsurance company that is:

- 103 (a) formed or licensed pursuant to this chapter;
- 104 (b) wholly owned by a qualifying reinsurance parent company; and
- 105 (c) a stock corporation.

106 ~~[(7)]~~ (10) "Common ownership and control" means:

- 107 (a) in the case of stock corporations, the direct or indirect ownership by the same
108 shareholder or shareholders of 80% or more of the outstanding voting stock of two or more
109 corporations; and
- 110 (b) in the case of mutual corporations, the direct or indirect ownership by the same
111 member or members of 80% or more of the surplus and the voting power of two or more
112 corporations.

113 (11) "Commissioner" means the Insurance Commissioner or the commissioner's
114 designee.

115 (12) "Consolidated debt to total capital ratio" means the ratio of Subsection (12)(a) to
116 (b).

117 (a) This Subsection (12)(a) is an amount equal to the sum of all debts and hybrid
118 capital instruments including:

- 119 (i) all borrowings from depository institutions;
- 120 (ii) all senior debt;

- 121 (iii) all subordinated debts;
122 (iv) all trust preferred shares; and
123 (v) all other hybrid capital instruments that are not included in the determination of
124 consolidated GAAP net worth issued and outstanding.
- 125 (b) This Subsection (12)(b) is an amount equal to the sum of:
126 (i) total capital consisting of all debts and hybrid capital instruments as described in
127 Subsection (12)(a); and
128 (ii) shareholders' equity determined in accordance with generally accepted accounting
129 principles for reporting to the United States Securities and Exchange Commission.
- 130 (13) "Consolidated GAAP net worth" means the consolidated shareholders' equity
131 determined in accordance with generally accepted accounting principles for reporting to the
132 United States Securities and Exchange Commission.
- 133 ~~[(8)]~~ (14) "Controlled unaffiliated business" means a company:
134 (a) that is not in the corporate system of a parent and affiliates;
135 (b) that has an existing contractual relationship with a parent or affiliate; and
136 (c) whose risks are managed by a pure captive insurance company in accordance with
137 Section 31A-37-504.
- 138 (15) "Department" means the Insurance Department.
- 139 ~~[(9)]~~ (16) "Industrial insured" means an insured:
140 (a) that produces insurance:
141 (i) by the services of a full-time employee acting as a risk manager or insurance
142 manager; or
143 (ii) ~~utilizing~~ using the services of a regularly and continuously qualified insurance
144 consultant;
145 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;
146 and
147 (c) that has at least 25 full-time employees.
- 148 ~~[(10)]~~ (17) "Industrial insured captive insurance company" means a company that
149 insures risks of:
150 (a) the industrial insureds that comprise the industrial insured group; and
151 (b) the affiliates of the industrial insured group.

152 ~~[(11)]~~ (18) "Industrial insured group" means:

153 (a) a group of industrial insureds that collectively:

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

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

158 (b) a group that is:

159 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section
160 3901 et seq., as amended, as a corporation or other limited liability association; and

161 (ii) taxable under this title as a:

162 (A) stock corporation; or

163 (B) mutual insurer.

164 ~~[(12)]~~ (19) "Member organization" means an individual, corporation, partnership, or
165 association that belongs to an association.

166 ~~[(13)] "Out-of-state captive insurance company" means an insurance company:]~~

167 ~~[(a) formed to write insurance business for its parents and affiliates; and]~~

168 ~~[(b) authorized by another state to write insurance business for its parents and~~
169 ~~affiliates.]~~

170 ~~[(14)]~~ (20) "Parent" means a corporation, partnership, or individual that directly or
171 indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting
172 securities of a pure captive insurance company.

173 ~~[(15)]~~ (21) "Participant" means any of the following that are insured by a sponsored
174 captive insurance company, if the losses of the participant are limited through a participant
175 contract to the assets of a protected cell:

176 (a) an entity permitted to be a participant under Section 31A-37-403; and

177 (b) any affiliate of an entity permitted to be a participant under Section 31A-37-403.

178 ~~[(16)]~~ (22) "Participant contract" means a contract by which a sponsored captive
179 insurance company:

180 (a) insures the risks of a participant; and

181 (b) limits the losses of the participant to the assets of a protected cell.

182 ~~[(17)]~~ (23) "Protected cell" means a separate account established and maintained by a

183 sponsored captive insurance company for one participant.

184 ~~[(18)]~~ (24) "Pure captive insurance company" means a company that insures risks of its
185 parent and affiliates.

186 (25) "Qualifying reinsurer parent company" means a reinsurer:

187 (a) authorized to write reinsurance by this state; and

188 (b) that has:

189 (i) a consolidated GAAP net worth of not less than \$500,000,000; and

190 (ii) a consolidated debt to total capital ratio not greater than .50.

191 ~~[(19)]~~ (26) "Sponsor" means an entity that:

192 (a) meets the requirements of Section 31A-37-402; and

193 (b) is approved by the commissioner to:

194 (i) provide all or part of the capital and surplus required by applicable law; and

195 (ii) organize and operate a sponsored captive insurance company.

196 ~~[(20)]~~ (27) "Sponsored captive insurance company" means a captive insurance
197 company:

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

200 (b) that is formed or holding a certificate of authority under this chapter;

201 (c) that insures the risks of separate participants through the contract; and

202 (d) that segregates each participant's liability through ~~[a]~~ one or more protected ~~[cell]~~
203 cells.

204 (28) "Treasury rates" means the United States Treasury strip asked yield as published
205 in the Wall Street Journal as of a balance sheet date.

206 Section 2. Section **31A-37-104** is amended to read:

207 **31A-37-104. Applicability of reorganization, receivership, and injunction**
208 **authority.**

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

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

213 (a) the assets of the protected cell may not be used to pay any expenses or claims other

214 than those attributable to the protected cell; ~~and~~

215 (b) the capital and surplus of the sponsored captive insurance company ~~must~~:

216 (i) shall at all times be available to pay any:

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

218 ~~(ii)~~ (B) claims against the sponsored captive insurance company~~[-]; and~~

219 (ii) may not be used to pay expenses or claims attributable to a protected cell.

220 Section 3. Section 31A-37-106 is amended to read:

221 **31A-37-106. Authority to make rules -- Authority to issue orders.**

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

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

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

228 (c) determine any factors a captive insurance company shall provide evidence of under
229 Subsection 31A-37-202(4)(c);

230 ~~(d)~~ (d) prescribe capital requirements for a captive insurance company in addition to
231 those required under Section 31A-37-204 based on the type, volume, and nature of insurance
232 business transacted by the captive insurance company;

233 ~~(e)~~ (e) establish:

234 (i) the amount of capital or surplus required to be retained under Subsection
235 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance
236 company; or

237 (ii) a formula to determine the amount described in Subsection 31A-37-205(4);

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

240 (i) merger;

241 (ii) consolidation;

242 (iii) conversion;

243 (iv) mutualization; or

244 (v) redomestication;

245 [~~(f)~~] (g) approve the use of alternative reliable methods of valuation and rating for:

246 (i) an association captive insurance company;

247 (ii) a sponsored captive insurance company; or

248 (iii) an industrial insured group;

249 [~~(g)~~] (h) prohibit or limit an investment that threatens the solvency or liquidity of:

250 (i) a pure captive insurance company; or

251 (ii) an industrial insured captive insurance company;

252 [~~(h)~~] (i) determine the financial reports a sponsored captive insurance company shall

253 annually file with the commissioner;

254 [~~(i)~~] (j) determine the required forms and reports under Section 31A-37-501; and

255 [~~(j)~~] (k) establish standards to ensure that a parent or affiliate of a pure captive

256 insurance company is able to exercise control of the risk management function of any

257 controlled unaffiliated business to be insured by the pure captive insurance company.

258 (2) Notwithstanding Subsection (1)[~~(j)~~](k), until the commissioner adopts the rules

259 authorized under Subsection (1)[~~(j)~~](k), the commissioner may by temporary order grant

260 authority to a pure captive insurance company to insure risks.

261 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to

262 captive insurance companies as necessary to enable the commissioner to secure compliance

263 with this chapter.

264 Section 4. Section **31A-37-202** is amended to read:

265 **31A-37-202. Permissive areas of insurance.**

266 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of

267 incorporation or charter, a captive insurance company may apply to the commissioner for a

268 certificate of authority to do all insurance authorized by this title except workers' compensation

269 insurance.

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

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

272 (A) parent and affiliates; [~~or~~]

273 (B) controlled unaffiliated business; or

274 (C) a combination of Subsections (1)(b)(i)(A) and (B);

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

276 of the:

277 (A) member organizations of its association; and

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

279 (iii) an industrial insured captive insurance company may not insure any risks other

280 than those of the:

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

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

283 (iv) a special purpose captive insurance company may only insure the risk of its parent;

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

286 [~~(v)~~] (vi) a captive insurance company may not accept or cede reinsurance except as
287 provided in Section 31A-37-303.

288 (c) Notwithstanding Subsection (1)(b)(iv), for risks approved by the commissioner a
289 special purpose captive insurance company may provide:

290 (i) insurance;

291 (ii) reinsurance; or

292 (iii) both insurance and reinsurance.

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

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

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

297 (i) a board of directors meeting; or

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

299 (c) maintain in this state:

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

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

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

305 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
306 formed as a corporation or a reciprocal insurer, whenever the registered agent cannot with

307 reasonable diligence be found at the registered office of the captive insurance company, the
308 [~~director must~~] commissioner shall be an agent of the captive insurance company upon whom
309 any process, notice, or demand may be served.

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

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

312 (A) a certified copy of:

313 (I) articles of incorporation or the charter of the corporation; and

314 (II) bylaws of the corporation;

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

317 (C) any other statement or document required by the commissioner under Section
318 31A-37-106;

319 (ii) formed as a reciprocal shall:

320 (A) file with the commissioner:

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

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

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

325 (IV) any other statement or document required by the commissioner under Section
326 31A-37-106; and

327 (B) submit to the commissioner for approval a description of the:

328 (I) coverages[;];

329 (II) deductibles[;];

330 (III) coverage limits[;];

331 (IV) rates[;]; and

332 (V) any other information the commissioner requires under Section 31A-37-106.

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

337 (ii) A reciprocal captive insurance company that is required to submit a revision under

338 Subsection (4)(b)(i) may not offer any additional kinds of insurance until the commissioner
339 approves a revision of the description.

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

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

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

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

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

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

352 (v) any other factors the commissioner:

353 (A) ~~requires~~ adopted by rule under Section 31A-37-106; and

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

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

358 (i) a business plan at the level of detail required by the commissioner under Section
359 31A-37-106 demonstrating:

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

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

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

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

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

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

373 (f) ~~[The]~~ Notwithstanding Title 63, Chapter 2, Government Records Access and
374 Management Act, the commissioner may disclose information submitted pursuant to this
375 Subsection (4) to a public official having jurisdiction over the regulation of insurance in
376 another state if:

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

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

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

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

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

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

390 (iii) a certificate of authority renewal fee.

391 (b) The commissioner may retain legal, financial, and examination services from
392 outside the department to perform the services under Subsection (5)(a) and Section
393 31A-37-502 and charge the reasonable cost of those services against the applicant captive
394 insurance company.

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

399 (7) A certificate of authority granted under this section expires annually and must be

400 renewed by July 1 of each year.

401 Section 5. Section **31A-37-204** is amended to read:

402 **31A-37-204. Paid-in capital.**

403 (1) (a) The commissioner may not issue a certificate of authority to [~~a pure captive~~
404 ~~insurance company, sponsored captive insurance company, association captive insurance~~
405 ~~company incorporated as a stock insurer, or industrial insured captive insurance company~~
406 ~~incorporated as a stock insurer]~~ a company described in Subsection (1)(c) unless the company
407 possesses and thereafter maintains unimpaired paid-in capital of:

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

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

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

413 (iv) in the case of a sponsored captive insurance company, not less than \$500,000[~~-~~]; or

414 (v) in the case of a special purpose captive insurance company, an amount determined
415 by the commissioner after giving due consideration to the company's business plan, feasibility
416 study, and pro-formas, including the nature of the risks to be insured.

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

418 (i) (A) cash; or

419 (B) cash equivalent; or

420 (ii) an irrevocable letter of credit:

421 (A) issued by:

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

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

424 (B) approved by the commissioner.

425 (c) This Subsection (1) applies to:

426 (i) a pure captive insurance company;

427 (ii) a sponsored captive insurance company;

428 (iii) a special purpose captive insurance company;

429 (iv) an association captive insurance company incorporated as a stock insurer; or

430 (v) an industrial insured captive insurance company incorporated as a stock insurer.

431 (2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital
432 based on the type, volume, and nature of insurance business transacted.

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

435 (i) cash; or

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

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

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

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

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

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

444 (A) United States policyholders; and

445 (B) United States ceding insurers under:

446 (I) insurance policies issued; or

447 (II) reinsurance contracts issued or assumed.

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

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

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

451 (A) reserves for losses;

452 (B) allocated loss adjustment expenses;

453 (C) incurred but not reported losses; and

454 (D) unearned premiums with regard to business written through branch operations.

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

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

461 (i) a dividend out of capital or surplus in excess of the limits under Section

462 16-10a-640; or

463 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
464 16-10a-640.

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

468 (i) amounts specified by the commissioner under Section 31A-37-106; or

469 (ii) determined in accordance with formulas approved by the commissioner under
470 Section 31A-37-106.

471 Section 6. Section **31A-37-205** is amended to read:

472 **31A-37-205. Free surplus.**

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

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

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

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

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

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

485 (vi) in the case of a sponsored captive insurance company, not less than \$500,000[-];
486 and

487 (vii) in the case of a special purpose captive insurance company, an amount determined
488 by the commissioner after giving due consideration to the company's business plan, feasibility
489 study, and pro-formas, including the nature of the risks to be insured.

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

491 (i) cash; or

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

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

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

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

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

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

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

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

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

507 (i) a dividend out of capital or surplus in excess of the limits under Section
508 16-10a-640; or

509 (ii) a distribution with respect to capital or surplus in excess of the limits under Section
510 16-10a-640.

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

514 (i) specified by the commissioner; or

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

516 Section 7. Section **31A-37-301** is amended to read:

517 **31A-37-301. Incorporation.**

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

521 (a) divided into shares; and

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

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

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

528 (i) divided into shares; and
529 (ii) held by the stockholders of the association captive insurance company or industrial
530 insured captive insurance company;

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

534 (c) organized as a reciprocal.

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

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

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

544 (i) the character, reputation, financial standing, and purposes of the incorporators;
545 (ii) the character, reputation, financial responsibility, insurance experience, business
546 qualifications of the officers and directors;

547 (iii) any information in:
548 (A) the application for a certificate of authority; or
549 (B) the department's files; and
550 (iv) other aspects the commissioner considers advisable.

551 (5) (a) [The] A captive insurance company formed as a corporation shall file with the
552 Division of Corporations and Commercial Code:

553 (i) the captive insurance company's articles of incorporation[;];
554 (ii) the certificate issued pursuant to Subsection (4)[;]; and

555 (iii) the ~~[organization]~~ fees required by ~~[Subsection 31A-37-202(5)]~~ shall be filed with
556 ~~the Division of Corporations and Commercial Code]~~ the Division of Corporations and
557 Commercial Code.

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

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

564 (b) In considering a ~~[petition]~~ request for a certificate under Subsection (6)(a), the
565 commissioner shall consider:

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

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

569 (iii) any information in:

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

571 (B) the department's files; and

572 (iv) other aspects the commissioner considers advisable.

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

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

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

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

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

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

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

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

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

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

601 (d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the
602 requirements for public notice and hearing in accordance with rules adopted under Section
603 31A-37-106.

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

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

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

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

615 (d) In addition to the provisions of this Subsection (12), a captive insurance company
616 organized as a reciprocal insurer that is an industrial insured group has the privileges of Section

617 31A-4-114 in addition to applicable provisions of this title.

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

621 Section 8. Section **31A-37-306** is amended to read:

622 **31A-37-306. Conversion.**

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

625 (a) converted to a reciprocal insurer in accordance with a plan and [~~the provisions of~~]
626 this section; or

627 (b) merged with and into a reciprocal insurer in accordance with a plan and [~~the~~
628 ~~provisions of~~] this section.

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

630 (a) shall be fair and equitable to:

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

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

633 (b) shall provide for the purchase of:

634 (i) the shares of any nonconsenting shareholder of a stock insurer [~~of the policyholder~~
635 ~~interest of any nonconsenting policyholder of a mutual insurer~~] in substantially the same
636 manner and subject to the same rights and conditions as are provided[~~-(i)~~] a dissenting
637 shareholder; or

638 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in
639 substantially the same manner and subject to the same rights and conditions as are provided a
640 dissenting policyholder.

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

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

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

646 (i) satisfies [~~the provisions of~~] Subsections (2) and (6);

647 (ii) provides for the conversion of existing stockholder or policyholder interests into

648 subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or
649 policyholder interests in the stock or mutual insurer; and

650 (iii) is approved:

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

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

657 (c) the commissioner shall approve a plan of conversion if the commissioner finds that
658 the conversion will promote the general good of the state in conformity with the standards
659 under Subsection 31A-37-301(4);

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

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

665 (f) upon the effectiveness of the conversion[;]:

666 (i) the corporate existence of the converting insurer shall cease; and

667 (ii) the resulting reciprocal insurer shall notify the Division of Corporations and
668 Commercial Code of the conversion.

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

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

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

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

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

679 of the committee;

680 (e) the commissioner shall approve the articles of merger if the commissioner finds that
681 the merger will promote the general good of the state in conformity with the standards under
682 Subsection 31A-37-301(4);

683 (f) notwithstanding [~~Section~~] Sections 31A-37-204 and 31A-37-205, the
684 commissioner may permit the formation, without capital and surplus, of a captive insurance
685 company organized as a reciprocal insurer, into which an existing captive insurance company
686 may be merged to facilitate a transaction under this section, if there is no more than one
687 authorized insurance company surviving the merger; and

688 (g) an [~~out-of-state~~] alien insurer may be a party to a merger authorized under
689 Subsection (1)[;] if:

690 (i) the requirements for the merger between a domestic and a foreign insurer under
691 Chapter 16, Insurance Holding Companies, are applied to the merger; and

692 (ii) the [~~out-of-state~~] alien insurer [~~shall be~~] is treated as [an alien] a foreign insurer
693 under Chapter 16, Insurance Holding Companies.

694 (5) If the commissioner approves the articles of merger under this section[;]:

695 (a) the commissioner shall endorse the commissioner's approval on the articles[;]; and

696 (b) the surviving insurer shall present the name to the Division of Corporations and
697 Commercial Code.

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

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

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

706 Section 9. Section **31A-37-402** is amended to read:

707 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
708 **mandatory.**

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

710 (a) an insurer authorized or approved under the laws of any state;
711 (b) a reinsurer authorized or approved under the laws of any state; [~~or~~]
712 (c) a captive insurance company holding a certificate of authority under this chapter[~~;~~];
713 or
714 (d) an insurance holding company that:
715 (i) controls an insurer licensed pursuant to the laws of any state; and
716 (ii) is subject to registration pursuant to the holding company system of laws of the
717 state of domicile of the insurer described in Subsection (1)(d)(i).
718 (2) (a) The business written by a sponsored captive insurance company with respect to
719 each protected cell shall be fronted by an insurance company:
720 (i) authorized or approved;
721 (A) under the laws of any state[~~;~~]; or
722 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
723 insurance company licensed pursuant to the laws of any state;
724 (ii) reinsured by a reinsurer authorized or approved by this state; or
725 (iii) subject to Subsection (2)(b), secured by a trust fund:
726 (A) in the United States;
727 (B) for the benefit of policyholders and claimants; and
728 (C) funded by an irrevocable letter of credit or other asset acceptable to the
729 commissioner.
730 (b) (i) The amount of security provided by the trust fund described in Subsection
731 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,
732 including:
733 (A) reserves for losses;
734 (B) allocated loss adjustment expenses;
735 (C) incurred but unreported losses; and
736 (D) unearned premiums for business written through the participant's protected cell.
737 (ii) The commissioner may require the sponsored captive insurance company to
738 increase the funding of a trust established pursuant to this Subsection (2).
739 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of
740 credit, the letter of credit must be established, issued, or confirmed by a bank that is:

741 (A) chartered in this state;

742 (B) a member of the federal reserve system; or

743 (C) chartered by another state if that state-chartered bank is acceptable to the
744 commissioner.

745 (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a
746 form and upon terms approved by the commissioner.

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

749 Section 10. Section **31A-37-403** is amended to read:

750 **31A-37-403. Participants in sponsored captive insurance companies.**

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

753 (a) an association;

754 (b) a corporation;

755 (c) a limited liability company;

756 (d) a partnership;

757 (e) a trust; or

758 (f) any other business entity.

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

760 (3) A participant need not be:

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

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

763 (4) A participant shall insure only the participant's own risks through a sponsored
764 captive insurance company unless otherwise approved by the commissioner.

765 Section 11. Section **31A-37-404** is enacted to read:

766 **31A-37-404. Discounting of loss and loss adjustment expense reserves.**

767 (1) The following may discount its loss and loss adjustment expense reserves at
768 treasury rates applied to the applicable payments projected through the use of the expected
769 payment pattern associated with the reserves:

770 (a) a sponsored captive insurance company; and

771 (b) a captive reinsurance company.

772 (2) (a) The following shall annually file with the department an actuarial opinion
773 provided by an independent actuary on loss and loss adjustment expense reserves:

774 (i) a sponsored captive insurance company; and

775 (ii) a captive reinsurance company.

776 (b) The independent actuary described in Subsection (2)(a) may not be an employee of:

777 (i) the company filing the actuarial opinion; or

778 (ii) an affiliate of the company filing the actuarial opinion.

779 (3) The commissioner may disallow the discounting of reserves by the following if the
780 company violates this title:

781 (a) a sponsored captive insurance company; or

782 (b) a captive reinsurance company.

783 Section 12. Section **31A-37-501** is amended to read:

784 **31A-37-501. Reports to commissioner.**

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

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

790 (b) Except as provided in Sections 31A-37-204 and 31A-37-205, a captive insurance
791 company shall report:

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

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

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

798 (c) Except as otherwise provided[;]:

799 (i) an association captive insurance company and an industrial insured group shall file
800 the report required [~~under this section using the form required by the commissioner under~~
801 Section ~~31A-37-106.~~] by Section 31A-4-113; and

802 (ii) each industrial insured group shall comply with Section 31A-4-113.5.

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

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

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

809 (ii) the pure captive insurance company shall file before March 1 of each year for each
810 calendar year end, a report required by the commissioner under Section 31A-37-106 to provide
811 sufficient detail to support the premium tax return of the pure captive insurance company.

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

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

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

823 (i) in writing; and

824 (ii) subject to public inspection.

825 Section 13. Section **31A-37-504** is amended to read:

826 **31A-37-504. Business written by a captive insurance company -- Examinations --**
827 **Application of code provisions.**

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

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

832 (a) provides annually to the commissioner a certificate of compliance, or an equivalent,
833 issued by or filed with the licensing authority of the jurisdiction in which the branch captive

834 insurance company is formed; and

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

838 (3) As a condition of obtaining a certificate of authority, an ~~[out-of-state]~~ alien captive
839 insurance company shall grant authority to the commissioner to examine the affairs of the
840 ~~[out-of-state]~~ alien captive insurance company in the jurisdiction in which the ~~[out-of-state]~~
841 alien captive insurance company is formed.

842 (4) To the extent that the provisions of [~~Sections 31A-2-203, 31A-2-203.5, 31A-2-204,~~
843 ~~and 31A-2-205]~~ Chapters 2, 4, 5, 14, 16, 17, 18, 19a, and 27 do not contradict [~~the provisions~~
844 ~~of]~~ this section, [~~this section applies]~~ these chapters apply to captive insurance companies that
845 have received a certificate of authority under this chapter.

846 Section 14. Section **31A-37-601** is enacted to read:

847 **Part 6. Captive Reinsurance Companies**

848 **31A-37-601. Incorporation of a captive reinsurance company.**

849 (1) A captive reinsurance company shall be incorporated as a stock insurer with its
850 capital:

851 (a) divided into shares; and

852 (b) held by the captive reinsurance company's shareholders.

853 (2) (a) A captive reinsurance company may not have fewer than three incorporators.

854 (b) At least two of the incorporators of a captive reinsurance company must be
855 residents of this state.

856 (3) (a) Before the articles of incorporation are filed with the Division of Corporations
857 and Commercial Code, the incorporators shall obtain from the commissioner a certificate of
858 finding that the establishment and maintenance of the proposed corporation promotes the
859 general good of this state.

860 (b) In considering a request for a certificate under Subsection (3)(a), the commissioner
861 shall consider:

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

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

865 (iii) other factors the commissioner considers advisable.

866 (4) The capital stock of a captive reinsurance company must be issued at par value or
867 greater.

868 (5) At least one of the members of the board of directors of a captive reinsurance
869 company incorporated in this state must be a resident of this state.

870 Section 15. Section **31A-37-602** is enacted to read:

871 **31A-37-602. Requirements of a captive reinsurance company.**

872 (1) (a) If permitted by its articles of incorporation or charter, a captive reinsurance
873 company may apply to the commissioner for a license to write reinsurance covering:

874 (i) property and casualty insurance; or

875 (ii) reinsurance contracts.

876 (b) A captive reinsurance company authorized by the commissioner may write
877 reinsurance contracts covering risks in any state.

878 (2) To conduct business in this state, a captive reinsurance company shall:

879 (a) obtain from the commissioner a license authorizing it to conduct business as a
880 captive reinsurance company in this state;

881 (b) hold at least one board of directors' meeting each year in this state;

882 (c) maintain its principal place of business in this state; and

883 (d) appoint a registered agent to accept service of process and act otherwise on its
884 behalf in this state.

885 (3) Before receiving a license, a captive reinsurance company shall file with the
886 commissioner:

887 (a) a certified copy of its:

888 (i) (A) articles of incorporation; or

889 (B) charter; and

890 (ii) bylaws;

891 (b) a statement under oath of its president and secretary showing its financial
892 condition; and

893 (c) other documents required by the commissioner.

894 (4) In addition to the information required by Subsection (3), the applicant captive
895 reinsurance company shall file with the commissioner evidence of:

896 (a) the amount and liquidity of the captive reinsurance company's assets relative to the
897 risks to be assumed;

898 (b) the adequacy of the expertise, experience, and character of the person who manages
899 the captive reinsurance company;

900 (c) the overall soundness of the captive reinsurance company's plan of operation; and

901 (d) other overall factors considered relevant by the commissioner in ascertaining if the
902 proposed captive reinsurance company is able to meet its policy obligations.

903 (5) (a) Notwithstanding Title 63, Chapter 2, Government Records Access and
904 Management Act, information submitted pursuant to this section is confidential and may not be
905 made public by the commissioner or an agent or employee of the commissioner without the
906 written consent of the company, except that:

907 (i) information may be discoverable by a party in a civil action or contested case to
908 which the submitting captive reinsurance company is a party, upon a showing by the party
909 seeking to discover the information that:

910 (A) the information sought is relevant to and necessary for the furtherance of the action
911 or case;

912 (B) the information sought is unavailable from other nonconfidential sources; and

913 (C) a subpoena issued by a judicial or administrative law officer of competent
914 jurisdiction has been submitted to the commissioner; and

915 (ii) the commissioner may disclose the information to the public officer having
916 jurisdiction over the regulation of insurance in another state if:

917 (A) the public official agrees in writing to maintain the confidentiality of the
918 information; and

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

921 (b) This Subsection (5) does not apply to an industrial insured captive reinsurance
922 company insuring the risks of an industrial insured group.

923 Section 16. Section **31A-37-603** is enacted to read:

924 **31A-37-603. Minimum capitalization or reserves for a captive reinsurance**
925 **company.**

926 (1) (a) The commissioner may not issue a license to a captive reinsurance company

927 unless the company possesses and maintains capital or free surplus of not less than the greater
 928 of:

929 (i) \$300,000,000; or

930 (ii) 10% of the reserves of the captive reinsurance company.

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

932 (i) cash; or

933 (ii) securities.

934 (2) The commissioner may prescribe additional capital or surplus based upon the type,
 935 volume, and nature of the insurance business transacted.

936 (3) (a) A captive reinsurance company may not pay a dividend out of, or other
 937 distribution with respect to capital or surplus without the prior approval of the commissioner.

938 (b) Approval of an ongoing plan for the payment of dividends or other distributions
 939 shall be conditioned upon the retention at the time of each payment of capital or surplus in
 940 excess of amounts specified by, or determined in accordance with formulas approved by, the
 941 commissioner.

942 Section 17. Section **31A-37-604** is enacted to read:

943 **31A-37-604. Management of assets of a captive reinsurance company.**

944 At least 35% of the assets of a captive reinsurance company shall be managed by an
 945 asset manager domiciled in this state.

Legislative Review Note
as of 10-29-03 3:07 PM

This bill has certain residency or in-state requirements. These requirements might raise issues under trade agreements and constitutional principles. These requirements might be challenged as violating equal protection, substantive due process, or privileges and immunities because it limits a person's ability to be a incorporator or director of the corporation based on residency. However, states may impose such requirements if the requirements are narrowly tailored to further a substantial state interest. These requirements might also be challenged under the commerce clause because they favor in-state companies. In this context, the state may impose such restrictions if they further a legitimate local purpose that cannot be adequately served by means less restrictive on out-of-state interests.

Office of Legislative Research and General Counsel

**Interim Committee Note
as of 12-10-03 10:09 AM**

The Business and Labor Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0017

Captive Insurance Companies Act Amendments

27-Jan-04

1:50 PM

AMENDED NOTE

State Impact

No fiscal impact. This bill has a Legislative Review Note. If the bill is challenged in court there could be additional costs to the state.

Individual and Business Impact

This bill will allow large holding company systems to obtain insurance coverage through their own captive insurance companies at reduced premium rates.

Office of the Legislative Fiscal Analyst