

1 **CAPTIVE INSURANCE COMPANY**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: Kevin T. VanTassell

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Captive Insurance Companies Act and enacts the Special Purpose
11 Financial Captive Insurance Company Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ addresses fee amounts that are nonlapsing;
- 15 ▶ modifies and enacts definitions;
- 16 ▶ makes changes related to a captive insurance company formed as a limited liability
17 company;
- 18 ▶ addresses applicable law;
- 19 ▶ addresses the applicability of reorganization, receivership, and injunction statutes;
- 20 ▶ addresses permissive areas of insurance;
- 21 ▶ addresses sponsored captive insurance companies;
- 22 ▶ addresses reporting to the commissioner;
- 23 ▶ enacts the Special Purpose Financial Captive Insurance Company Act including:
 - 24 • defining terms;
 - 25 • outlining applicable law;
 - 26 • imposing reporting requirements;
 - 27 • imposing requirements related to books and records;
 - 28 • providing for a transition to the new certificate of authority;
 - 29 • establishing a process to issue a certificate of authority;

- 30 • addressing revocation, suspension, amendment, or modification of a certificate of
- 31 authority;
- 32 • requiring commissioner approval of certain actions;
- 33 • addressing sponsored captives;
- 34 • addressing the formation, assets, investments, and securities of a special purpose
- 35 financial captive insurance company;
- 36 • addressing reinsurance; and
- 37 • providing for enforcement and delinquency; and
- 38 ▶ makes technical and conforming amendments.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill has multiple effective dates.

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45 **31A-3-304**, as last amended by Laws of Utah 2006, Chapter 320
- 46 **31A-37-102**, as last amended by Laws of Utah 2004, Chapter 312
- 47 **31A-37-103**, as enacted by Laws of Utah 2003, Chapter 251
- 48 **31A-37-104**, as last amended by Laws of Utah 2004, Chapter 312
- 49 **31A-37-106**, as last amended by Laws of Utah 2004, Chapter 312
- 50 **31A-37-202**, as last amended by Laws of Utah 2004, Chapter 312
- 51 **31A-37-402**, as last amended by Laws of Utah 2004, Chapter 312
- 52 **31A-37-501**, as last amended by Laws of Utah 2006, Chapter 177
- 53 **31A-37-502**, as last amended by Laws of Utah 2007, Chapter 307
- 54 **31A-37-602**, as enacted by Laws of Utah 2004, Chapter 312
- 55 **31A-37-603**, as enacted by Laws of Utah 2004, Chapter 312

56 ENACTS:

- 57 **31A-37a-101**, Utah Code Annotated 1953

- 58 **31A-37a-102**, Utah Code Annotated 1953
- 59 **31A-37a-103**, Utah Code Annotated 1953
- 60 **31A-37a-104**, Utah Code Annotated 1953
- 61 **31A-37a-105**, Utah Code Annotated 1953
- 62 **31A-37a-201**, Utah Code Annotated 1953
- 63 **31A-37a-202**, Utah Code Annotated 1953
- 64 **31A-37a-203**, Utah Code Annotated 1953
- 65 **31A-37a-204**, Utah Code Annotated 1953
- 66 **31A-37a-205**, Utah Code Annotated 1953
- 67 **31A-37a-301**, Utah Code Annotated 1953
- 68 **31A-37a-302**, Utah Code Annotated 1953
- 69 **31A-37a-303**, Utah Code Annotated 1953
- 70 **31A-37a-304**, Utah Code Annotated 1953
- 71 **31A-37a-401**, Utah Code Annotated 1953
- 72 **31A-37a-402**, Utah Code Annotated 1953
- 73 **31A-37a-501**, Utah Code Annotated 1953
- 74 **31A-37a-502**, Utah Code Annotated 1953



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

77 Section 1. Section **31A-3-304** is amended to read:

78 **31A-3-304. Annual fees -- Other taxes or fees prohibited.**

79 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
80 to obtain or renew a certificate of authority.

81 (b) The commissioner shall:

82 (i) determine the annual fee pursuant to Sections 31A-3-103 and 63-38-3.2; and

83 (ii) consider whether the annual fee is competitive with fees imposed by other states on
84 captive insurance companies.

85 (2) A captive insurance company that fails to pay the fee required by this section is

86 subject to the relevant sanctions of this title.

87 (3) (a) Except as provided in Subsection (3)(b) and notwithstanding Title 59, Chapter
88 9, Taxation of Admitted Insurers, the fee provided for in this section constitutes the sole tax or
89 fee under the laws of this state that may be otherwise levied or assessed on a captive insurance
90 company, and no other occupation tax or other tax or fee may be levied or collected from a
91 captive insurance company by the state or a county, city, or municipality within this state.

92 (b) Notwithstanding Subsection (3)(a), a captive insurance company is subject to real
93 and personal property taxes.

94 (4) A captive insurance company shall pay the fee imposed by this section to the
95 department by March 31 of each year.

96 (5) (a) The funds received pursuant to Subsection (2) shall be deposited into the
97 General Fund as a dedicated credit to be used by the department to:

- 98 (i) administer and enforce Chapter 37, Captive Insurance Companies Act; and
- 99 (ii) promote the captive insurance industry in Utah.

100 (b) At the end of each fiscal year, funds received by the department in excess of
101 [~~\$250,000~~] \$750,000 shall be treated as free revenue in the General Fund.

102 Section 2. Section **31A-37-102** is amended to read:

103 **31A-37-102. Definitions.**

104 As used in this chapter:

105 (1) "Affiliated company" means a [~~company~~] business entity that because of common
106 ownership, control, operation, or management is in the same corporate system as:

- 107 (a) a parent;
- 108 (b) an industrial insured; or
- 109 (c) a member organization.

110 (2) "Alien captive insurance company" means an [~~insurance company~~] insurer:

111 (a) formed to write insurance business for [~~its parents and affiliates~~] a parent or affiliate
112 of the insurer; and

113 (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or

114 regulatory standards:

115 (i) on [~~companies~~] a business entity transacting the business of insurance in the alien
116 jurisdiction; and

117 (ii) in a form acceptable to the commissioner.

118 (3) "Association" means a legal association of [~~individuals, corporations, partnerships,~~
119 ~~or associations~~] two or more persons that has been in continuous existence for at least one year
120 if:

121 (a) the association or its member organizations:

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

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

126 (b) the association's member organizations collectively constitute all of the subscribers
127 of an association captive insurance company formed as a reciprocal insurer[~~;~~]; or

128 (c) the association or its member organizations have complete voting control over an
129 association captive insurance company formed as a limited liability company.

130 (4) "Association captive insurance company" means a [~~company~~] business entity that
131 insures risks of [~~the~~]:

132 (a) a member [~~organizations~~] organization of the association; [~~and~~]

133 (b) [~~affiliates of the~~] an affiliate of a member [~~organizations~~] organization of the
134 association[~~;~~]; and

135 (c) the association.

136 (5) "Branch business" means [~~any~~] an insurance business transacted by a branch captive
137 insurance company in this state.

138 (6) "Branch captive insurance company" means an alien captive insurance company that
139 has [~~obtained~~] a certificate of authority [~~by~~] from the commissioner to transact the business of
140 insurance in this state through a business unit with a principal place of business in this state.

141 (7) "Branch [~~operations~~] operation" means [~~any~~] a business [~~operations~~] operation of a

142 branch captive insurance company in this state.

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

- 145 (a) a branch captive insurance company;
- 146 (b) a pure captive insurance company;
- 147 (c) an association captive insurance company;
- 148 (d) a sponsored captive insurance company;
- 149 (e) an industrial insured captive insurance company;
- 150 (f) a captive reinsurance company; ~~or~~
- 151 (g) a special purpose captive insurance company~~[-]; or~~
- 152 (h) a special purpose financial captive insurance company.

153 (9) "Captive reinsurance company" means a ~~[reinsurance company]~~ reinsurer that is:

- 154 (a) formed or ~~[licensed]~~ has a certificate of authority pursuant to this chapter;
- 155 (b) wholly owned by a qualifying ~~[reinsurance]~~ reinsurer parent company; and
- 156 (c) a stock corporation.

157 (10) "Common ownership and control" means that two or more captive insurance
158 companies are owned or controlled by the same person or group of persons as follows:

159 (a) in the case of a captive insurance company that is a stock ~~[corporations]~~
160 corporation, the direct or indirect ownership ~~[by the same shareholder or shareholders]~~ of 80%
161 or more of the outstanding voting stock of ~~[two or more corporations]~~ the stock corporation;
162 ~~[and]~~

163 (b) in the case of a captive insurance company that is a mutual ~~[corporations]~~
164 corporation, the direct or indirect ownership ~~[by the same member or members]~~ of 80% or more
165 of the surplus and the voting power of ~~[two or more corporations:]~~ the mutual corporation;

166 (c) in the case of a captive insurance company that is a limited liability company, the
167 direct or indirect ownership by the same member or members of 80% or more of the
168 membership interests in the limited liability company; or

169 (d) in the case of a sponsored captive insurance company, a protected cell is a separate

170 captive insurance company owned and controlled by the protected cell's participant, only if:

171 (i) the participant is the only participant with respect to the protected cell; and

172 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored

173 captive insurance company through common ownership and control.

174 (11) "Commissioner" means the Insurance Commissioner or the commissioner's
175 designee.

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

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

180 (i) all borrowings from depository institutions;

181 (ii) all senior debt;

182 (iii) all subordinated debts;

183 (iv) all trust preferred shares; and

184 (v) all other hybrid capital instruments that are not included in the determination of
185 consolidated GAAP net worth issued and outstanding.

186 (b) This Subsection (12)(b) is an amount equal to the sum of:

187 (i) total capital consisting of all debts and hybrid capital instruments as described in
188 Subsection (12)(a); and

189 (ii) shareholders' equity determined in accordance with generally accepted accounting
190 principles for reporting to the United States Securities and Exchange Commission.

191 (13) "Consolidated GAAP net worth" means the consolidated shareholders' equity
192 determined in accordance with generally accepted accounting principles for reporting to the
193 United States Securities and Exchange Commission.

194 (14) "Controlled unaffiliated business" means a [company] business entity:

195 (a) (i) in the case of a pure captive insurance company, that is not in the corporate
196 system of a parent [and affiliates;] or the parent's affiliate; or

197 (ii) in the case of an industrial insured captive insurance company, that is not in the

198 corporate system of an industrial insured or an affiliated company of the industrial insured;

199 (b) (i) in the case of a pure captive insurance company, that has [an existing] a
200 contractual relationship with a parent or affiliate; [and] or

201 (ii) in the case of an industrial insured captive insurance company, that has a contractual
202 relationship with an industrial insured or an affiliated company of the industrial insured; and

203 (c) whose risks are managed by [a pure captive insurance company] one of the
204 following in accordance with [Section 31A-37-504.] Subsection 31A-37-106(1)(k):

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

207 (15) "Department" means the Insurance Department.

208 (16) "Industrial insured" means an insured:

209 (a) that produces insurance:

210 (i) by the services of a full-time employee acting as a risk manager or insurance
211 manager; or

212 (ii) using the services of a regularly and continuously qualified insurance consultant;

213 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;

214 and

215 (c) that has at least 25 full-time employees.

216 (17) "Industrial insured captive insurance company" means a [company] business entity

217 that:

218 (a) insures risks of[:(a)] the industrial insureds that comprise the industrial insured
219 group; and

220 [:(b) the affiliates of the industrial insured group.]

221 (b) may insure the risks of:

222 (i) an affiliated company of an industrial insured; or

223 (ii) a controlled unaffiliated business of:

224 (A) an industrial insured; or

225 (B) an affiliated company of an industrial insured.

- 226 (18) "Industrial insured group" means:
- 227 (a) a group of industrial insureds that collectively:
- 228 (i) own, control, or hold with power to vote all of the outstanding voting securities of
- 229 an industrial insured captive insurance company incorporated as a stock insurer; or
- 230 (ii) have complete voting control over an industrial insured captive insurance company
- 231 incorporated as a mutual insurer; ~~or~~
- 232 (b) a group that is:
- 233 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section
- 234 3901 et seq., as amended, as a corporation or other limited liability association; and
- 235 (ii) taxable under this title as a:
- 236 (A) stock corporation; or
- 237 (B) mutual insurer~~[-]; or~~
- 238 (c) a group that has complete voting control over an industrial captive insurance
- 239 company formed as a limited liability company.
- 240 (19) "Member organization" means ~~[an individual, corporation, partnership, or~~
- 241 ~~association]~~ a person that belongs to an association.
- 242 (20) "Parent" means a ~~[corporation, partnership, or individual]~~ person that directly or
- 243 indirectly owns, controls, or holds with power to vote more than 50% of:
- 244 (a) the outstanding voting securities of a pure captive insurance company[-]; or
- 245 (b) the pure captive insurance company, if the pure captive insurance company is
- 246 formed as a limited liability company.
- 247 (21) "Participant" means ~~[any of the following]~~ an entity that ~~[are]~~ is insured by a
- 248 sponsored captive insurance company~~[-];~~
- 249 (a) if the losses of the participant are limited through a participant contract to the assets
- 250 of a protected cell[-]; and
- 251 ~~[(a) an]~~ (b)(i) the entity is permitted to be a participant under Section 31A-37-403;
- 252 ~~[and]~~ or
- 253 ~~[(b) any]~~ (ii) the entity is an affiliate of an entity permitted to be a participant under

254 Section 31A-37-403.

255 (22) "Participant contract" means a contract by which a sponsored captive insurance
256 company:

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

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

261 (24) "Pure captive insurance company" means a ~~[company]~~ business entity that insures
262 risks of ~~[its parent and affiliates]~~ a parent or affiliate of the business entity.

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

- 264 (a) authorized to write reinsurance by this state; and
- 265 (b) that has:
 - 266 (i) a consolidated GAAP net worth of not less than \$500,000,000; and
 - 267 (ii) a consolidated debt to total capital ratio not greater than .50.

268 (26) "Special purpose financial captive insurance company" is as defined in Section
269 31A-37a-102.

270 ~~[(26)]~~ (27) "Sponsor" means an entity that:

- 271 (a) meets the requirements of Section 31A-37-402; and
- 272 (b) is approved by the commissioner to:
 - 273 (i) provide all or part of the capital and surplus required by applicable law; and
 - 274 (ii) organize and operate a sponsored captive insurance company.

275 ~~[(27)]~~ (28) "Sponsored captive insurance company" means a captive insurance
276 company:

277 (a) in which the minimum capital and surplus required by applicable law is provided by
278 one or more sponsors;

- 279 (b) that is formed or holding a certificate of authority under this chapter;
- 280 (c) that insures the risks of a separate [participants] participant through the contract;

281 and

282 (d) that segregates each participant's liability through one or more protected cells.

283 [~~(28)~~] (29) "Treasury rates" means the United States Treasury strip asked yield as
284 published in the Wall Street Journal as of a balance sheet date.

285 Section 3. Section 31A-37-103 is amended to read:

286 **31A-37-103. Chapter exclusivity.**

287 (1) Except as provided in Subsection (2) or otherwise provided in this chapter, [~~no~~
288 ~~provisions~~] a provision of this title other than this chapter does not apply to a captive insurance
289 company.

290 (2) In addition to this chapter, and subject to Section 31A-37a-103:

291 (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to
292 a special purpose financial captive insurance company; and

293 (b) for purposes of a special purpose financial captive insurance company, a reference in
294 this chapter to "this chapter" includes a reference to Chapter 37a.

295 Section 4. Section 31A-37-104 is amended to read:

296 **31A-37-104. Applicability of reorganization, receivership, and injunction**
297 **authority.**

298 (1) Except as provided in Chapter 37a, Special Purpose Financial Captive Insurance
299 Company Act, and Subsection (2), [~~the provisions of this title pertaining to insurance~~
300 ~~reorganizations, receiverships, and injunctions apply~~] Chapter 27a, Insurer Receivership Act,
301 applies to a captive insurance company formed or holding a certificate of authority under this
302 chapter.

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

304 (a) the assets of [~~the~~] a protected cell may not be used to pay [~~any expenses or claims~~]
305 an expense or claim other than [~~those~~] one attributable to the protected cell; and

306 (b) the capital and surplus of the sponsored captive insurance company:

307 (i) shall at all times be available to pay [~~any~~]:

308 (A) [~~expenses~~] an expense of the sponsored captive insurance company; or

309 (B) [~~claims~~] a claim against the sponsored captive insurance company; and

310 (ii) may not be used to pay [~~expenses or claims~~] an expense or claim attributable to a
311 protected cell.

312 Section 5. Section **31A-37-106** is amended to read:

313 **31A-37-106. Authority to make rules -- Authority to issue orders.**

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

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

318 (b) [~~determine any~~] require a statement, document, or information that a captive
319 insurance company must provide to the commissioner to obtain a certificate of authority;

320 (c) determine [~~any factors~~] a factor a captive insurance company shall provide evidence
321 of under Subsection 31A-37-202(4)(c);

322 (d) prescribe one or more capital requirements for a captive insurance company in
323 addition to those required under Section 31A-37-204 based on the type, volume, and nature of
324 insurance business transacted by the captive insurance company;

325 (e) establish:

326 (i) the amount of capital or surplus required to be retained under Subsection
327 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance
328 company; or

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

330 (f) waive or modify [~~the requirements~~] a requirement for public notice and hearing for
331 [~~any of~~] the following by a captive insurance company:

332 (i) merger;

333 (ii) consolidation;

334 (iii) conversion;

335 (iv) mutualization; or

336 (v) redomestication;

337 (g) approve the use of [~~alternative~~] one or more reliable methods of valuation and rating

338 for:

339 (i) an association captive insurance company;

340 (ii) a sponsored captive insurance company; or

341 (iii) an industrial insured group;

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

343 (i) a pure captive insurance company; or

344 (ii) an industrial insured captive insurance company;

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

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

348 (k) establish one or more standards to ensure that ~~[a parent or affiliate of a pure captive~~
349 ~~insurance company]~~;

350 (i) one of the following is able to exercise control of the risk management function of
351 ~~[any]~~ a controlled unaffiliated business to be insured by ~~[the]~~ a pure captive insurance
352 company[~~;~~];

353 (A) a parent; or

354 (B) an affiliated company of a parent; or

355 (ii) one of the following is able to exercise control of the risk management function of a
356 controlled unaffiliated business to be insured by an industrial insured captive insurance
357 company;

358 (A) an industrial insured; or

359 (B) an affiliated company of the industrial insured.

360 (2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules
361 authorized under Subsection (1)(k), the commissioner may by temporary order grant authority
362 to insure risks to:

363 (a) a pure captive insurance company ~~[to insure risks.]; or~~

364 (b) an industrial insured captive insurance company.

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

366 captive insurance [~~companies~~] company as necessary to enable the commissioner to secure
367 compliance with this chapter.

368 Section 6. Section **31A-37-202** is amended to read:

369 **31A-37-202. Permissive areas of insurance.**

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

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

375 (i) a pure captive insurance company may not insure [~~any risks~~] a risk other than [~~those~~]
376 a risk of [~~its~~]:

377 (A) its parent [~~and affiliates~~] or affiliate;

378 (B) a controlled unaffiliated business; or

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

380 (ii) an association captive insurance company may not insure [~~any risks~~] a risk other
381 than [~~those~~] a risk of [~~the~~]:

382 (A) an affiliate;

383 [~~(A)~~] (B) a member [~~organizations~~] organization of its association; and

384 [~~(B) affiliates of the member organizations~~]

385 (C) an affiliate of a member organization of its association;

386 (iii) an industrial insured captive insurance company may not insure [~~any risks~~] a risk
387 other than [~~those~~] a risk of [~~the~~]:

388 (A) an industrial [~~insureds~~] insured that [~~comprise~~] is part of the industrial insured
389 group; [~~and~~]

390 [~~(B) affiliates of the industrial insureds that comprise~~]

391 (B) an affiliate of an industrial insured that is part of the industrial insured group; and

392 (C) a controlled unaffiliated business of:

393 (I) an industrial insured that is part of the industrial insured group; or

394 (II) an affiliate of an industrial insured that is part of the industrial insured group;
395 (iv) a special purpose captive insurance company may only insure ~~[the]~~ a risk of its
396 parent;
397 (v) a captive insurance company may not provide:
398 (A) personal motor vehicle [or] insurance coverage;
399 (B) homeowner's insurance coverage; or [any]
400 (C) a component of [~~these coverages~~] a coverage described in this Subsection (1)(b)(v);
401 and
402 (vi) a captive insurance company may not accept or cede reinsurance except as
403 provided in Section 31A-37-303.
404 (c) Notwithstanding Subsection (1)(b)(iv), for ~~[risks]~~ a risk approved by the
405 commissioner a special purpose captive insurance company may provide:
406 (i) insurance;
407 (ii) reinsurance; or
408 (iii) both insurance and reinsurance.
409 (2) To conduct insurance business in this state a captive insurance company shall:
410 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
411 insurance business in this state;
412 (b) hold at least once each year in this state:
413 (i) a board of directors meeting; or
414 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;
415 (c) maintain in this state:
416 (i) the principal place of business of the captive insurance company; or
417 (ii) in the case of a branch captive insurance company, the principal place of business
418 for the branch operations of the branch captive insurance company; and
419 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
420 service of process and to otherwise act on behalf of the captive insurance company in this state.
421 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company

422 formed as a corporation or a reciprocal insurer, [~~whenever~~] if the registered agent cannot with
423 reasonable diligence be found at the registered office of the captive insurance company, the
424 commissioner [~~shall be an~~] is the agent of the captive insurance company upon whom [~~any~~]
425 process, notice, or demand may be served.

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

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

428 (A) a certified copy of:

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

430 (II) bylaws of the corporation;

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

433 (C) any other statement or document required by the commissioner under Section
434 31A-37-106;

435 (ii) formed as a reciprocal shall:

436 (A) file with the commissioner:

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

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

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

441 (IV) any other statement or document required by the commissioner under Section
442 31A-37-106; and

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

444 (I) coverages;

445 (II) deductibles;

446 (III) coverage limits;

447 (IV) rates; and

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

449 (b) (i) If there is a subsequent material change in an item in the description required

450 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive
451 insurance company shall submit to the commissioner for approval an appropriate revision to the
452 description required under Subsection (4)(a)(ii)(B).

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

456 (iii) A reciprocal captive insurance company shall inform the commissioner of [~~any~~] a
457 material change in [~~rates~~] a rate within 30 days of the adoption of the change.

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

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

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

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

466 (iv) the adequacy of the loss prevention programs [~~of~~] for the following of the applicant
467 captive insurance [~~company's~~] company:

468 (A) a parent[-];

469 (B) a member [~~organizations,~~] organization; or

470 (C) an industrial [~~insureds, as applicable~~] insured; and

471 (v) any other [~~factors~~] factor the commissioner:

472 (A) adopts by rule under Section 31A-37-106; and

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

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

477 (i) a business plan at the level of detail required by the commissioner under Section

478 31A-37-106 demonstrating:

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

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

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

487 (iii) [any] a contract or sample contract between the applicant sponsored captive
488 insurance company and [any] a participant; and

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

491 ~~[(e)]~~ (5) (a) Information submitted pursuant to ~~[this]~~ Subsection (4) ~~[shall be]~~ is
492 classified as a protected record under Title 63, Chapter 2, Government Records Access and
493 Management Act.

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

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

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

502 ~~[(g) Subsections (4)(e) and (4)(f) do]~~

503 (c) This Subsection (5) does not apply to information provided by an industrial insured
504 captive insurance company insuring the risks of an industrial insured group.

505 ~~[(5)]~~ (6) (a) A captive insurance company shall pay to the department the following

506 nonrefundable fees established by the department under Sections 31A-3-103 and 63-38-3.2:

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

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

511 (iii) a certificate of authority renewal fee.

512 (b) The commissioner may:

513 (i) retain legal, financial, and examination services from outside the department to
514 perform the services [~~under~~] described in:

515 (A) Subsection [~~(5)(a)~~] (6)(a); and

516 (B) Section 31A-37-502; and

517 (ii) charge the reasonable cost of [~~those~~] services [~~against~~] described in Subsection
518 (6)(b)(i) to the applicant captive insurance company.

519 [~~(6)~~] (7) If the commissioner is satisfied that the documents and statements filed by the
520 applicant captive insurance company comply with [~~the provisions of~~] this chapter, the
521 commissioner may grant a certificate of authority authorizing the company to do insurance
522 business in this state.

523 [~~(7)~~] (8) A certificate of authority granted under this section expires annually and must
524 be renewed by July 1 of each year.

525 Section 7. Section **31A-37-402** is amended to read:

526 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
527 **mandatory.**

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

529 (a) an insurer authorized or approved under the laws of [~~any~~] a state;

530 (b) a reinsurer authorized or approved under the laws of [~~any~~] a state;

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

532 [~~or~~]

533 (d) an insurance holding company that:

534 (i) controls an insurer licensed pursuant to the laws of ~~[any]~~ a state; and
535 (ii) is subject to registration pursuant to the holding company system of laws of the
536 state of domicile of the insurer described in Subsection (1)(d)(i)~~[-]; or~~
537 (e) another person approved by the commissioner after finding that the approval of the
538 person as a sponsor is not inconsistent with the purposes of this chapter.

539 (2) (a) The business written by a sponsored captive insurance company with respect to
540 ~~[each]~~ a protected cell shall be fronted by an ~~[insurance company]~~ insurer that is:

- 541 (i) authorized or approved:
 - 542 (A) under the laws of ~~[any]~~ a state; or
 - 543 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
544 insurance company licensed pursuant to the laws of ~~[any]~~ a state;
- 545 (ii) reinsured by a reinsurer authorized or approved by this state; or
- 546 (iii) subject to Subsection (2)(b), secured by a trust fund:
 - 547 (A) in the United States;
 - 548 (B) for the benefit of policyholders and claimants; and
 - 549 (C) funded by an irrevocable letter of credit or other asset acceptable to the
550 commissioner.

551 (b) (i) The amount of security provided by the trust fund described in Subsection
552 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,
553 including:

- 554 (A) reserves for losses;
- 555 (B) allocated loss adjustment expenses;
- 556 (C) incurred but unreported losses; and
- 557 (D) unearned premiums for business written through the participant's protected cell.

558 (ii) The commissioner may require the sponsored captive insurance company to increase
559 the funding of a trust established pursuant to this Subsection (2).

560 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of
561 credit, the letter of credit must be established, issued, or confirmed by a bank that is:

562 (A) chartered in this state;
563 (B) a member of the federal reserve system; or
564 (C) chartered by another state if that state-chartered bank is acceptable to the
565 commissioner.

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

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

570 Section 8. Section **31A-37-501** is amended to read:

571 **31A-37-501. Reports to commissioner.**

572 (1) A captive insurance company is not required to make ~~[any]~~ a report except those
573 provided in this chapter.

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

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

579 (i) ~~[unless the commissioner approves the use of statutory accounting principles;]~~ using
580 generally accepted accounting principles, except to the extent that the commissioner requires,
581 approves, or accepts the use of a statutory accounting principle;

582 (ii) using ~~[any]~~ a useful or necessary ~~[modifications or adaptations to accounting~~
583 ~~principles]~~ modification or adaptation to an accounting principle that is required, approved, or
584 accepted by the commissioner for the type of insurance and ~~[kinds of insurers]~~ kind of insurer to
585 be reported upon; and

586 (iii) ~~[any]~~ supplemental or additional information required by the commissioner.

587 (c) Except as otherwise provided:

588 (i) an association captive insurance company and an industrial insured group shall file
589 the report required by Section 31A-4-113; and

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

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

594 (b) If the commissioner grants an alternative reporting date for a pure captive insurance
595 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal
596 year end.

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

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

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

608 (i) shall be in writing; and

609 (ii) is subject to public inspection.

610 Section 9. Section **31A-37-502** is amended to read:

611 **31A-37-502. Examination.**

612 (1) (a) As provided in this section, the commissioner or a person appointed by the
613 commissioner, shall examine each captive insurance company in each three-year period.

614 (b) The three-year period described in Subsection (1)(a) shall be determined on the
615 basis of three full annual accounting periods of operation.

616 (c) The examination is to be made as of:

617 (i) December 31 of the full three-year period; or

618 (ii) the last day of the month of an annual accounting period authorized for a captive
619 insurance company under this section.

620 (d) In addition to an examination required under this Subsection (1), the commissioner,
621 or a person appointed by the commissioner may examine a captive insurance company whenever
622 the commissioner determines it to be prudent.

623 (2) During an examination under this section the commissioner, or a person appointed
624 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance
625 company to ascertain:

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

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

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

630 (3) The commissioner upon application may enlarge the three-year period described in
631 Subsection (1) to five years, if a captive insurance company is subject to a comprehensive
632 annual audit during that period:

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

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

635 (4) A captive insurance company that is inspected and examined under this section shall
636 pay, as provided in Subsection 31A-37-202~~(5)~~(6)(b), the expenses and charges of an
637 inspection and examination.

638 Section 10. Section **31A-37-602** is amended to read:

639 **31A-37-602. Requirements of a captive reinsurance company.**

640 (1) (a) If permitted by its articles of incorporation or charter, a captive reinsurance
641 company may apply to the commissioner for a [~~license~~] certificate of authority to write
642 reinsurance covering:

643 (i) property and casualty insurance; or

644 (ii) reinsurance contracts.

645 (b) A captive reinsurance company authorized by the commissioner may write

646 reinsurance contracts covering risks in any state.

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

648 (a) obtain from the commissioner a [~~license~~] certificate of authority authorizing [it] the
649 captive reinsurance company to conduct business as a captive reinsurance company in this state;

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

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

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

654 (3) Before receiving a [~~license~~] certificate of authority, a captive reinsurance company
655 shall file with the commissioner:

656 (a) a certified copy of [its] the captive reinsurance company's:

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

658 (B) charter; and

659 (ii) bylaws;

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

661 and

662 (c) other documents required by the commissioner.

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

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

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

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

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

672 (5) (a) Notwithstanding Title 63, Chapter 2, Government Records Access and
673 Management Act, information submitted pursuant to this section is confidential and may not be

674 made public by the commissioner or an agent or employee of the commissioner without the
675 written consent of the company, except that:

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

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

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

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

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

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

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

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

692 Section 11. Section **31A-37-603** is amended to read:

693 **31A-37-603. Minimum capitalization or reserves for a captive reinsurance**
694 **company.**

695 (1) (a) The commissioner may not issue a [~~license~~] certificate of authority to a captive
696 reinsurance company unless [~~the~~] a captive reinsurance company possesses and maintains capital
697 or free surplus of not less than the greater of:

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

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

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

701 (i) cash; or

702 (ii) securities.

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

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

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

711 Section 12. Section **31A-37a-101** is enacted to read:

712 **CHAPTER 37a. SPECIAL PURPOSE FINANCIAL CAPTIVE INSURANCE**
713 **COMPANY ACT**

714 **Part 1. General Provisions**

715 **31A-37a-101. Title.**

716 This chapter is known as the "Special Purpose Financial Captive Insurance Company
717 Act."

718 Section 13. Section **31A-37a-102** is enacted to read:

719 **31A-37a-102. Definitions.**

720 (1) For purposes of this chapter:

721 (a) "Ceding insurer" means an insurer that:

722 (i) is approved by the commissioner;

723 (ii) is licensed or otherwise authorized to transact the business of insurance or
724 reinsurance in the insurer's state or country of domicile; and

725 (iii) cedes risk to a special purpose financial captive insurance company pursuant to a
726 reinsurance contract.

727 (b) Notwithstanding Section 31A-27a-102, "insolvency" or "insolvent" for purposes of
728 applying Chapter 27a, Insurer Receivership Act, to a special purpose financial captive insurance
729 company, means that a special purpose financial captive insurance company:

730 (i) is unable to pay an obligation when the obligation is due, unless the obligation is the
731 subject of a bona fide dispute; or

732 (ii) fails to meet the criteria and conditions for solvency of the special purpose financial
733 captive insurance company established by the commissioner by rule or order.

734 (c) (i) "Insurance securitization" means a transaction or a group of related transactions:

735 (A) that may include a capital market offering;

736 (B) that is effected through one or more related risk transfer instruments and facilitating
737 administrative agreements;

738 (C) where all or part of the result of the transaction or group of related transactions is
739 used to fund the special purpose financial captive insurance company's obligations under a
740 reinsurance contract with a ceding insurer;

741 (D) by which:

742 (I) proceeds are obtained by a special purpose financial captive insurance company,
743 directly or indirectly, through the issuance of one or more securities by the special purpose
744 financial captive insurance company or another person; or

745 (II) a person provides one or more letters of credit or other assets for the benefit of the
746 special purpose financial captive insurance company if the commissioner authorizes the special
747 purpose financial captive insurance company to treat the letter of credit or asset as an admitted
748 asset for purposes of the special purpose financial captive insurance company's annual report;
749 and

750 (E) if all or a part of the proceeds, a letter of credit, or asset described in this
751 Subsection (1)(c) is used to fund the special purpose financial captive insurance company's
752 obligations under a reinsurance contract with a ceding insurer.

753 (ii) "Insurance securitization" does not include the issuance of a letter of credit for the
754 benefit of the commissioner to satisfy all or part of the special purpose financial captive
755 insurance company's capital and surplus requirements under Section 31A-37a-302.

756 (d) "Management" means:

757 (i) a board of directors of a special purpose financial captive insurance company;

758 (ii) a managing board of a special purpose financial captive insurance company; or
759 (iii) one or more individuals with the overall responsibility for the management of the
760 affairs of the special purpose financial captive insurance company, including:

761 (A) an officer elected or appointed to act on behalf of the special purpose financial
762 captive insurance company; or

763 (B) an agent elected or appointed to act on behalf of the special purpose financial
764 captive insurance company.

765 (e) "Organizational document" means:

766 (i) in the case of a special purpose financial captive insurance company formed as a
767 stock corporation, the special purpose financial captive insurance company's:

768 (A) articles of incorporation; and

769 (B) bylaws; and

770 (ii) in the case of a special purpose financial captive insurance company formed as a
771 limited liability company, the special purpose financial captive insurance company's:

772 (A) articles of organization; and

773 (B) operating agreement.

774 (f) "Reinsurance contract" means a contract between a special purpose financial captive
775 insurance company and a ceding insurer pursuant to which the special purpose financial captive
776 insurance company agrees to provide reinsurance to the ceding insurer for risks associated with
777 the ceding insurer's insurance or reinsurance business.

778 (g) "Security" means:

779 (i) a security as defined in Section 31A-1-301; or

780 (ii) one or more of the following that the commissioner designates, by rule or order, as
781 a "security" for purposes of this chapter:

782 (A) a debt obligation;

783 (B) equity;

784 (C) a surplus certificate;

785 (D) a surplus note;

786 (E) a funding agreement;

787 (F) a derivative; or

788 (G) another financial instrument.

789 (h) "Special purpose financial captive insurance company" means a captive insurance
 790 company has a certificate of authority under this chapter from the commissioner to operate as a
 791 special purpose financial captive insurance company pursuant to this chapter.

792 (i) "Special purpose financial captive insurance company security" means:

793 (i) a security issued by a special purpose financial captive insurance company; or

794 (ii) a security issued by a third party, the proceeds of which are obtained directly or
 795 indirectly by a special purpose financial captive insurance company.

796 (j) "Surplus note" means an unsecured subordinated debt obligation that has one or
 797 more characteristics that are consistent with paragraph 3 of the National Association of
 798 Insurance Commissioners Statement of Statutory Accounting Principals No. 41, as amended
 799 from time to time and as modified or supplemented by rule or order of the commissioner.

800 (2) The terms defined in Section 31A-37-102 shall have the same meaning for purposes
 801 of this chapter.

802 Section 14. Section **31A-37a-103** is enacted to read:

803 **31A-37a-103. Applicable law.**

804 (1) (a) A special purpose financial captive insurance company is subject to:

805 (i) this chapter; and

806 (ii) Chapter 37, Captive Insurance Companies Act.

807 (b) If there is a conflict between this chapter and Chapter 37, this chapter controls.

808 (2) A special purpose financial captive insurance company is subject to a rule made
 809 under Section 31A-37-106 that is in effect on or after May 5, 2008.

810 (3) The commissioner may, by order, exempt a special purpose financial captive
 811 insurance company from a provision of Chapter 37 or a rule made under Section 31A-37-106 if
 812 the commissioner determines that the application of the provision or rule is inappropriate on the
 813 basis of the special purpose financial captive insurance company's plan of operation.

814 Section 15. Section **31A-37a-104** is enacted to read:

815 **31A-37a-104. Reporting -- Books and records.**

816 (1) For purposes of Section 31A-37-501:

817 (a) the commissioner shall, by rule or order, establish the form and content of the annual
818 report to be filed by a special purpose financial captive insurance company; and

819 (b) a special purpose financial captive insurance company shall report:

820 (i) using statutory accounting principles, unless the commissioner requires, approves, or
821 accepts the use of a generally accepted accounting principle; and

822 (ii) with an appropriate or necessary modification or adaptation of the statutory or
823 generally accepted accounting principle:

824 (A) required, approved, or accepted by the commissioner; and

825 (B) as supplemented by additional information required by the commissioner.

826 (2) (a) A special purpose financial captive insurance company may make written
827 application to file its annual report on a fiscal-year basis.

828 (b) If an alternative reporting date is granted, the commissioner shall establish the due
829 date and content of the filing required by the special purpose financial captive insurance
830 company in addition to its annual report.

831 (3) (a) Unless the commissioner approves a variance before the special purpose
832 financial captive insurance company implements the variance, a special purpose financial captive
833 insurance company shall maintain in the state the following of the special purpose financial
834 captive insurance company:

835 (i) a book;

836 (ii) record;

837 (iii) a document;

838 (iv) an account;

839 (v) a voucher; or

840 (vi) an agreement.

841 (b) A special purpose financial captive insurance company shall make an item listed in

842 Subsection (3)(a) available for inspection by the commissioner at any time.

843 (c) A special purpose financial captive insurance company shall keep an item listed in
844 Subsection (3)(a) in a manner so that:

845 (i) the special purpose financial captive insurance company's financial condition, affairs,
846 and operations can be readily ascertained; and

847 (ii) the commissioner may readily:

848 (A) verify a financial statement of the special purpose financial captive insurance
849 company; and

850 (B) determine the special purpose financial captive insurance company's compliance
851 with this chapter and Chapter 37, Captive Insurance Companies Act.

852 (4) (a) Unless the commissioner approves a variance before the special purpose
853 financial captive insurance company implements the variance, a special purpose financial captive
854 insurance company shall preserve and keep an item listed in Subsection (3)(a) available in this
855 state:

856 (i) for the purpose of examination and inspection; and

857 (ii) until the commissioner approves the destruction or other disposition.

858 (b) If the commissioner approves the keeping of an item listed in Subsection (3)(a)
859 outside this state, the special purpose financial captive insurance company shall maintain a
860 complete copy of the original in the state.

861 (c) An item listed in Subsection (3)(a) may be photographed, reproduced on film, or
862 stored and reproduced electronically.

863 Section 16. Section **31A-37a-105** is enacted to read:

864 **31A-37a-105. Transition.**

865 (1) (a) Except as otherwise determined by the commissioner, a captive insurance
866 company that on May 5, 2008 has a certificate of authority from the commissioner pursuant to
867 Chapter 37, Captive Insurance Companies Act, and engages in insurance securitization:

868 (i) is subject to this chapter as a special purpose financial captive insurance company;
869 and

870 (ii) is considered to have a certificate of authority issued under this chapter.

871 (b) The commissioner may require a captive insurance company described in Subsection
872 (1)(a) to take an action that the commissioner determines is reasonably necessary to bring the
873 captive insurance company into compliance with this chapter.

874 (2) The commissioner may issue an order described in Section 31A-37a-201 with
875 respect to a captive insurance company described in Subsection (1)(a) if the captive insurance
876 company is not in compliance with this chapter.

877 Section 17. Section **31A-37a-201** is enacted to read:

878 **Part 2. Certificate of Authority and Operations**

879 **31A-37a-201. Certificate of authority requirements.**

880 (1) A person may not reinsure the risks of a ceding insurer unless the person has a
881 certificate of authority under this chapter as a special purpose financial captive insurance
882 company.

883 (2) To apply for a certificate of authority under this chapter as a special purpose
884 financial captive insurance company, a special purpose financial captive insurance company shall
885 submit an application for the certificate of authority that, in addition to complying with Chapter
886 37, Captive Insurance Companies Act, complies with the following:

887 (a) A special purpose financial captive insurance company shall submit to the
888 commissioner a plan of operation that includes:

889 (i) a complete description of:

890 (A) a significant transaction including:

891 (I) reinsurance;

892 (II) a reinsurance security arrangement;

893 (III) an insurance securitization; or

894 (IV) a transaction or arrangement related to a transaction described in Subsections

895 (2)(a)(i)(A)(I) through (III);

896 (B) to the extent not included in Subsection (2)(a)(i)(A), a party other than the special
897 purpose financial captive insurance company and the ceding insurer that is involved in the

898 issuance of a special purpose financial captive insurance company security; and
899 (C) a pledge, hypothecation, or grant of a security interest in:
900 (I) an asset of the special purpose financial captive insurance company; or
901 (II) stock or a limited liability company interest in the special purpose financial captive
902 insurance company;
903 (ii) the source and form of the special purpose financial captive insurance company's
904 capital and surplus;
905 (iii) the proposed investment policy of the special purpose financial captive insurance
906 company;
907 (iv) a description of an underwriting, reporting, and claims payment method by which
908 losses covered by a reinsurance contract are reported, accounted for, and settled;
909 (v) pro forma balance sheets and income statements illustrating one or more adverse
910 case scenarios, as determined under criteria required by the commissioner, for the performance
911 of the special purpose financial captive insurance company under a reinsurance contract; and
912 (vi) the proposed rate and method for discounting reserves, if the special purpose
913 financial captive insurance company is requesting authority to discount its reserves.
914 (b) The special purpose financial captive insurance company shall submit an affidavit:
915 (i) of the following of the special purpose financial captive insurance company:
916 (A) president;
917 (B) vice president;
918 (C) treasurer; or
919 (D) chief financial officer; and
920 (ii) that includes the following statements, to the best of knowledge and belief of the
921 person submitting the affidavit after reasonable inquiry:
922 (A) the proposed organization and operation of the special purpose financial captive
923 insurance company complies with this chapter and the applicable provisions of Chapter 37,
924 Captive Insurance Companies Act;
925 (B) the special purpose financial captive insurance company's investment policy reflects

926 and takes into account:
927 (I) the liquidity of assets; and
928 (II) the reasonable preservation, administration, and management of those assets with
929 respect to the risks associated with:
930 (Aa) a reinsurance contract; and
931 (Bb) an insurance securitization transaction; and
932 (C) the following comply with this chapter:
933 (I) a reinsurance contract; and
934 (II) an arrangement for securing an obligation of the special purpose financial captive
935 insurance company under the reinsurance contract, including an agreement or other
936 documentation to implement the arrangement.
937 (c) A special purpose financial captive insurance company shall submit to the
938 commissioner:
939 (i) a copy of an agreement or documentation described in Subsection (2)(b), unless
940 otherwise approved by the commissioner; and
941 (ii) a statement or document required by the commissioner to evaluate the special
942 purpose financial captive insurance company's application for a certificate of authority.
943 (d) (i) Subject to Subsection (2)(d)(ii), a special purpose financial captive insurance
944 company shall submit with the application an opinion of a licensed attorney, in a form
945 acceptable to the commissioner, that:
946 (A) the offer and sale of a special purpose financial captive insurance company security
947 complies with:
948 (I) the registration requirements of federal securities laws; or
949 (II) the exemptions from or exceptions to a requirement of the federal securities laws;
950 and
951 (B) the offer and sale of a security by the special purpose financial captive insurance
952 company complies with:
953 (I) the registration requirements of this state's securities laws; or

954 (II) the exemptions from or exceptions to a requirement of this state's securities laws.

955 (ii) A special purpose financial captive insurance company is not required to submit an
956 opinion described in Subsection (2)(d)(i) with an application if the special purpose financial
957 captive insurance company includes a specific statement in its plan of operation that the opinion
958 described in Subsection (2)(d)(i) will be provided to the commissioner before the offer or sale of
959 a special purpose financial captive insurance company security.

960 (3) (a) The commissioner may issue a certificate of authority to a special purpose
961 financial captive insurance company that complies with Subsection (2) authorizing the special
962 purpose financial captive insurance company to transact reinsurance business as a special
963 purpose financial captive insurance company in this state if the commissioner finds that:

964 (i) the proposed plan of operation provides for a reasonable and expected successful
965 operation;

966 (ii) the terms of the reinsurance contract or related transaction comply with this chapter;

967 (iii) the proposed plan of operation is not hazardous to a ceding insurer; and

968 (iv) subject to Subsection (3)(b), the insurance regulator of the state of domicile of a
969 ceding insurer has notified the commissioner in writing or otherwise provided assurance
970 satisfactory to the commissioner that the regulator of the state has approved or has not
971 disapproved the transaction.

972 (b) Notwithstanding Subsection (3)(a)(iv), the commissioner may issue a certificate of
973 authority to a special purpose financial captive insurance company if the insurance regulator of
974 the state of domicile of a ceding insurer does not respond with respect to all or a part of the
975 transaction.

976 (c) (i) A certificate of authority issued under this section is valid through the June 30
977 after the day on which the certificate of authority is issued.

978 (ii) A special purpose financial captive insurance company may renew its certificate of
979 authority annually by, before the certificate of authority expires:

980 (A) submitting the affidavit required by Subsection (2); and

981 (B) paying a renewal fee.

982 (4) In conjunction with issuing a certificate of authority to a special purpose financial
983 captive insurance company, the commissioner may issue an order that includes a provision,
984 term, or condition regarding the organization, issuance of a certificate of authority, and
985 operation of the special purpose financial captive insurance company that:

- 986 (a) the commissioner considers appropriate; and
- 987 (b) is not inconsistent with this chapter and Chapter 37, Captive Insurance Companies
988 Act.

989 Section 18. Section **31A-37a-202** is enacted to read:

990 **31A-37a-202. Revocation, suspension, amendment, or modification of a certificate**
991 **of authority.**

992 Except as provided in Sections 31A-37a-501 and 31A-37a-502, the commissioner may
993 not revoke, suspend, amend, or modify a certificate of authority issued to a special purpose
994 financial captive insurance company under this chapter or an order issued under Subsection
995 31A-37a-201(4) unless:

996 (1) the special purpose financial captive insurance company consents to the revocation,
997 suspension, amendment, or modification; or

998 (2) the commissioner shows by clear and convincing evidence that the revocation,
999 suspension, amendment, or modification is necessary to avoid irreparable harm to:

1000 (a) a special purpose financial captive insurance company; or

1001 (b) a ceding insurer.

1002 Section 19. Section **31A-37a-203** is enacted to read:

1003 **31A-37a-203. Reporting related to transactions.**

1004 (1) A special purpose financial captive insurance company shall provide the
1005 commissioner with a copy of a complete set of executed documentation of an insurance
1006 securitization no later than 30 days after the day on which the insurance securitization
1007 transaction closes.

1008 (2) Section 31A-37-503 applies to:

1009 (a) information submitted pursuant to Subsection (1);

1010 (b) information submitted pursuant to Subsection 31A-37a-201(2); or
1011 (c) an order issued to a special purpose financial captive insurance company pursuant to
1012 Subsection 31A-37a-201(4).

1013 Section 20. Section **31A-37a-204** is enacted to read:

1014 **31A-37a-204. Prior approval of a change in plan of operation and other**
1015 **transactions.**

1016 (1) A special purpose financial captive insurance company may not change its plan of
1017 operation without the prior approval of the commissioner.

1018 (2) (a) Subject to Subsection (2)(b), a special purpose financial captive insurance
1019 company may not engage in a transaction or series of transactions without the prior approval of
1020 the commissioner if the transaction or series of transactions:

1021 (i) is undertaken to dissolve the special purpose financial captive insurance company; or

1022 (ii) results in the termination of all or a part of a special purpose financial captive
1023 insurance company's business.

1024 (b) A special purpose financial captive insurance company is not required to obtain the
1025 prior approval of the commissioner for a transaction or series of transactions described in
1026 Subsection (2)(a)(ii) if:

1027 (i) the transaction or series of transactions is done in accordance with a document or
1028 agreement described in the special purpose financial captive insurance company's plan of
1029 operation; and

1030 (ii) the special purpose financial captive insurance company notifies the commissioner
1031 prior to the transaction or series of transactions.

1032 (3) A special purpose financial captive insurance company shall notify the commissioner
1033 before a change in the legal ownership of a security issued by the special purpose financial
1034 captive insurance company.

1035 Section 21. Section **31A-37a-205** is enacted to read:

1036 **31A-37a-205. Sponsored captives.**

1037 In addition to the other provisions of this chapter, this section applies to a sponsored

1038 captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a
1039 certificate of authority as a special purpose financial captive insurance company pursuant to this
1040 chapter.

1041 (1) A sponsored captive insurance company may have a certificate of authority as a
1042 special purpose financial captive insurance company under this chapter.

1043 (2) (a) For purposes of a sponsored captive insurance company having a certificate of
1044 authority as a special purpose financial captive insurance company, "general account" means the
1045 assets and liabilities of the sponsored captive insurance company not attributable to a protected
1046 cell.

1047 (b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored
1048 captive insurance company having a certificate of authority as a special purpose financial captive
1049 insurance company, the definition of "insolvency" and "insolvent" in Section 31A-37a-102 shall
1050 be applied separately to:

1051 (i) each protected cell; and

1052 (ii) the special purpose financial captive insurance company's general account.

1053 (3) (a) A participant in a sponsored captive insurance company having a certificate of
1054 authority as a special purpose financial captive insurance company must be a ceding insurer,
1055 unless approved by the commissioner before a person becomes a participant.

1056 (b) A change in a participant in a sponsored captive insurance company having a
1057 certificate of authority as a special purpose financial captive insurance company is subject to
1058 prior approval by the commissioner.

1059 (4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance
1060 company that is a sponsored captive insurance company may issue a security to a person not
1061 described in Section 31A-37-401 if the issuance to that person is approved by the commissioner
1062 before the issuance of the security.

1063 (5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company
1064 having a certificate of authority as a special purpose financial captive insurance company shall:

1065 (a) at the time of initial application for a certificate of authority as a special purpose

1066 financial captive insurance company, possess unimpaired paid-in capital and surplus of not less
1067 than \$500,000; and

1068 (b) maintain at least \$500,000 of unimpaired paid-in capital and surplus of not less than
1069 \$500,000 during the time that it holds a certificate of authority under this chapter.

1070 (6) (a) For purposes of a sponsored captive insurance company having a certificate of
1071 authority as a special purpose financial captive insurance company, this Subsection (6) applies
1072 to:

1073 (i) a security issued by the special purpose financial captive insurance company with
1074 respect to a protected cell; or

1075 (ii) a contract or obligation of the special purpose financial captive insurance company
1076 with respect to a protected cell.

1077 (b) A sponsored captive insurance company having a certificate of authority as a special
1078 purpose financial captive insurance company shall include with a security, contract, or
1079 obligation described in Subsection (6)(a):

1080 (i) the designation of the protected cell; and

1081 (ii) a disclosure in a form and content satisfactory to the commissioner to the effect that
1082 the holder of the security or a counterparty to the contract or obligation has no right or recourse
1083 against the special purpose financial captive insurance company and its assets other than against
1084 an asset properly attributable to the protected cell.

1085 (c) Notwithstanding the requirements of this Subsection (6) and subject to other
1086 statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a
1087 creditor, ceding insurer, or another person may not use a failure to include a disclosure
1088 described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

1089 (i) the general account of the special purpose financial captive insurance company; or

1090 (ii) the assets of another protected cell of the special financial captive insurance
1091 company.

1092 (7) In addition to Section 31A-37-401, a sponsored captive insurance company having
1093 a certificate of authority as a special purpose financial captive insurance company is subject to

1094 the following with respect to a protected cell:

1095 (a) (i) A sponsored captive insurance company having a certificate of authority as a
1096 special purpose financial captive insurance company shall establish a protected cell only for the
1097 purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding
1098 insurer with the intent of facilitating an insurance securitization.

1099 (ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a
1100 certificate of authority as a special purpose financial captive insurance company shall establish a
1101 separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

1102 (iii) A sponsored captive insurance company having a certificate of authority as a
1103 special purpose financial captive insurance company shall establish a separate protected cell with
1104 respect to each reinsurance contract that is funded in whole or in part by a separate insurance
1105 securitization transaction.

1106 (b) A sponsored captive insurance company having a certificate of authority as a special
1107 purpose financial captive insurance company may not sale, exchange, or transfer an asset by,
1108 between, or among any of its protected cells without the prior approval of the commissioner.

1109 (8) (a) A sponsored captive insurance company having a certificate of authority as a
1110 special purpose financial captive insurance company shall attribute an asset or liability to a
1111 protected cell and to the general account in accordance with the plan of operation approved by
1112 the commissioner.

1113 (b) Except as provided by Subsection (8)(a), a sponsored captive insurance company
1114 having a certificate of authority as a special purpose financial captive insurance company may
1115 not attribute an asset or liability between:

1116 (i) its general account and a protected cell; or

1117 (ii) its protected cells.

1118 (c) A sponsored captive insurance company having a certificate of authority as a special
1119 purpose financial captive insurance company shall attribute:

1120 (i) an insurance obligation, asset, or liability relating to a reinsurance contract entered
1121 into with respect to a protected cell; and

1122 (ii) an insurance securitization transaction related to the obligation, asset, or liability
1123 described in Subsection (8)(c)(i), including a security issued by the special purpose financial
1124 captive insurance company as part of the insurance securitization, to the protected cell.

1125 (d) The following shall reflect an insurance obligation, asset, or liability relating to a
1126 reinsurance contract and the insurance securitization transaction that are attributed to a
1127 protected cell:

1128 (i) a right, benefit, obligation, or a liability of a security attributable to a protected cell
1129 described in Subsection (8)(c);

1130 (ii) the performance under a reinsurance contract and the related insurance
1131 securitization transaction; and

1132 (iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation agreement
1133 to which the special purpose financial captive insurance company is a party, including a payment
1134 made by or due to be made to the special purpose financial captive insurance company pursuant
1135 to the terms of the tax allocation agreement.

1136 (9) In addition to Section 31A-37a-502:

1137 (a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored
1138 captive insurance company having a certificate of authority as a special purpose financial captive
1139 insurance company.

1140 (b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer
1141 Receivership Act, with respect to a protected cell of a sponsored captive insurance company
1142 having a certificate of authority as a special purpose financial captive insurance company may
1143 not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with
1144 respect to:

1145 (i) another protected cell of the special purpose financial captive insurance company; or

1146 (ii) the special purpose financial captive insurance company's general account.

1147 (c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose
1148 financial captive insurance company shall ensure that the assets attributable to one protected cell
1149 are not applied to the liabilities attributable to:

1178 issued.

1179 (2) A special purpose financial captive insurance company shall maintain unimpaired
1180 paid-in capital and surplus of not less than \$250,000 at all times when having a certificate of
1181 authority under this chapter.

1182 Section 24. Section **31A-37a-303** is enacted to read:

1183 **31A-37a-303. Disposition of assets -- Investments.**

1184 (1) A special purpose financial captive insurance company or a person on its behalf shall
1185 preserve and administer an asset of the special purpose financial captive insurance company to
1186 satisfy the liabilities and obligations of the special purpose financial captive insurance company
1187 incident to:

- 1188 (a) the reinsurance contract;
- 1189 (b) an insurance securitization; and
- 1190 (c) an agreement related to Subsection (1)(a) or (b).

1191 (2) In a special purpose financial captive insurance company insurance securitization, a
1192 security offering memorandum or other document issued to a prospective investor regarding the
1193 offer and sale of a surplus note or other security shall include a disclosure that all or part of the
1194 proceeds of the insurance securitization will be used to fund the special purpose financial
1195 captive insurance company's obligations to the ceding insurer.

1196 (3) A special purpose financial captive insurance company is not subject to a restriction
1197 on investments other than the following:

1198 (a) A special purpose financial captive insurance company may not make a loan to a
1199 person other than:

- 1200 (i) as permitted under its plan of operation; or
- 1201 (ii) as otherwise approved in advance of the loan by the commissioner.

1202 (b) The commissioner may prohibit or limit an investment that threatens the solvency or
1203 liquidity of a special purpose financial captive insurance company unless the investment is
1204 otherwise approved in:

- 1205 (i) the special purpose financial captive insurance company's plan of operation; or

1206 (ii) an order issued to the special purpose financial captive insurance company pursuant
1207 to Section 31A-37a-201.

1208 Section 25. Section **31A-37a-304** is enacted to read:

1209 **31A-37a-304. Securities.**

1210 (1) (a) A special purpose financial captive insurance company may:

1211 (i) subject to the prior approval of the commissioner, account for the proceeds of a
1212 surplus note issued by the special purpose financial captive insurance company as surplus; and

1213 (ii) except as provided in Subsection (1)(b), submit for prior approval of the
1214 commissioner a periodic written request for authorization to make a payment of interest on or a
1215 repayment of principal of a surplus note or other debt obligation issued by the special purpose
1216 financial captive insurance company.

1217 (b) (i) The commissioner may not approve a payment described in Subsection (1)(a)(i)
1218 if the commissioner determines that the payment would jeopardize the ability of the special
1219 purpose financial captive insurance company or another person to fulfill its respective
1220 obligations pursuant to a special purpose financial captive insurance company insurance
1221 securitization agreement, reinsurance contract, or a related transaction.

1222 (ii) In lieu of approval of a periodic written request for authorization to make a payment
1223 of interest on or repayment of principal of a surplus note or other debt obligation issued by the
1224 special purpose financial captive insurance company, the commissioner may approve a formula
1225 or plan for payment of interest, principal, or both with respect to the surplus note or debt
1226 obligation.

1227 (iii) A special purpose financial captive insurance company shall include a formula or
1228 plan approved under Subsection (1)(b)(ii) in the special purpose financial captive insurance
1229 company's plan of operation.

1230 (2) In addition to Section 31A-37-302, a special purpose financial captive insurance
1231 company may not declare or pay a dividend or distribution if the dividend or distribution
1232 jeopardizes the ability of the special purpose financial captive insurance company or another
1233 person to fulfill the special purpose financial captive insurance company's or other person's

1234 respective obligations pursuant to a special purpose financial captive insurance company
1235 insurance securitization agreement, a reinsurance contract, or a related transaction.

1236 (3) (a) A special purpose financial captive insurance company security is not subject to
1237 regulation as an insurance or reinsurance contract.

1238 (b) An investor in a special purpose financial captive insurance company security or a
1239 holder of a special purpose financial captive insurance company security may not be considered
1240 to be transacting the business of insurance in this state solely by reason of having an interest in
1241 the security.

1242 (c) The following people involved in an insurance securitization by a special purpose
1243 financial captive insurance company may not be considered to be an insurance producer or
1244 broker, or to be conducting business as an insurer, reinsurer, insurance agency, brokerage,
1245 intermediary, advisory, or consulting business solely by virtue of the person's underwriting
1246 activities in connection with the insurance securitization:

1247 (i) an underwriter's placement;

1248 (ii) a selling agent; or

1249 (iii) a partner, commissioner, officer, member, manager, employee, agent,
1250 representative, or advisor of a person listed in Subsection (3)(c)(i) or (ii).

1251 Section 26. Section **31A-37a-401** is enacted to read:

1252 **Part 4. Reinsurance**

1253 **31A-37a-401. Purchase of reinsurance.**

1254 Subject to the prior approval of the commissioner, a special purpose financial captive
1255 insurance company may purchase reinsurance to cede the risks assumed under a reinsurance
1256 contract.

1257 Section 27. Section **31A-37a-402** is enacted to read:

1258 **31A-37a-402. Permitted reinsurance.**

1259 (1) (a) A special purpose financial captive insurance company may reinsure only the
1260 risks of a ceding insurer, pursuant to a reinsurance contract.

1261 (b) A special purpose financial captive insurance company may not issue a contract of

1262 insurance or a contract for assumption of risk or indemnification of loss other than a reinsurance
1263 contract described in Subsection (1)(a).

1264 (2) Unless otherwise approved in advance by the commissioner, a special purpose
1265 financial captive insurance company may not assume or retain exposure to insurance or
1266 reinsurance losses for its own account that are not funded by:

1267 (a) proceeds from a special purpose financial captive insurance company insurance
1268 securitization;

1269 (b) a letter of credit; or

1270 (c) an asset described in Subsection 31A-37a-102(1)(c);

1271 (d) a premium or another amount payable by the ceding insurer to the special purpose
1272 financial captive insurance company pursuant to the reinsurance contract; and

1273 (e) a return on investment of an item described in Subsections (2)(a) through (d).

1274 (3) (a) A reinsurance contract shall contain a provision reasonably required or approved
1275 by the commissioner.

1276 (b) A requirement described in Subsection (3)(a) shall take into account the laws
1277 applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance
1278 provided under the reinsurance contract.

1279 (4) Subject to the prior approval of the commissioner, a special purpose financial
1280 captive insurance company may cede risks assumed through a reinsurance contract to one or
1281 more reinsurers through the purchase of reinsurance.

1282 (5) (a) This Subsection (5) applies to a contract or commercial activity that:

1283 (i) relates to or is incidental to a reinsurance contract; and

1284 (ii) is necessary to fulfill the purposes of:

1285 (A) a reinsurance contract;

1286 (B) insurance securitization; and

1287 (C) this chapter.

1288 (b) A special purpose financial captive insurance company may engage in a contract or
1289 commercial activity described in Subsection (5)(a) if the contract or commercial activity is:

1290 (i) in the special purpose financial captive insurance company's plan of operation; or
1291 (ii) approved in advance by the commissioner.
1292 (c) A contract or commercial activity described in Subsection (5)(a) includes:
1293 (i) entering into a reinsurance contract;
1294 (ii) issuing a special purpose financial captive insurance company security;
1295 (iii) complying with a term of a contract or security described in Subsection (5)(c)(i) or
1296 (ii);
1297 (iv) entering into:
1298 (A) a trust;
1299 (B) a guaranteed investment contract;
1300 (C) a swap;
1301 (D) a derivative transaction;
1302 (E) a tax transaction;
1303 (F) an administration transaction;
1304 (G) a reimbursement transaction; or
1305 (H) a fiscal agent transaction;
1306 (v) complying with a trust indenture, reinsurance, or retrocession; and
1307 (vi) another agreement necessary or incidental to effect an insurance securitization in
1308 compliance with:
1309 (A) the special purpose financial captive insurance company's plan of operation; and
1310 (B) this chapter.
1311 (6) Unless otherwise approved in advance by the commissioner, a reinsurance contract
1312 may not contain a provision for payment by the special purpose financial captive insurance
1313 company in discharge of its obligations under the reinsurance contract to a person other than the
1314 ceding insurer or any receiver of the ceding insurer.
1315 (7) A special purpose financial captive insurance company shall notify the commissioner
1316 immediately of an action by a ceding insurer or another person to foreclose on or otherwise take
1317 possession of collateral provided by the special purpose financial captive insurance company to

1318 secure an obligation of the special purpose financial captive insurance company.

1319 Section 28. Section **31A-37a-501** is enacted to read:

1320 **Part 5. Enforcement and Delinquency**

1321 **31A-37a-501. Suspension and revocation.**

1322 (1) (a) The commissioner shall notify a special purpose financial captive insurance
1323 company not less than 30 days before suspending or revoking the special purpose financial
1324 captive insurance company's certificate of authority pursuant to Section 31A-37-505.

1325 (b) In the notice required by Subsection (1)(a) the commissioner shall state the basis for
1326 the suspension or revocation.

1327 (c) The commissioner shall give a special purpose financial captive insurance company
1328 described in this Subsection (1) an opportunity for a hearing pursuant to Title 63, Chapter 46b,
1329 Administrative Procedures Act.

1330 (2) Notwithstanding Subsection (1) and Title 63, Chapter 46b, Administrative
1331 Procedures Act, the commissioner is not required to provide prior notice or a hearing if the
1332 grounds for suspension or revocation of a special purpose financial captive insurance company's
1333 certificate of authority pursuant to Section 31A-37-505 relate primarily to:

1334 (a) the financial condition or soundness of the special purpose financial captive
1335 insurance company; or

1336 (b) a deficiency in the assets of the special purpose financial captive insurance company.

1337 Section 29. Section **31A-37a-502** is enacted to read:

1338 **31A-37a-502. Delinquency.**

1339 (1) Except as otherwise provided in this section, Chapter 27a, Insurer Receivership Act,
1340 applies to a special purpose financial captive insurance company.

1341 (2) Upon an order of supervision, rehabilitation, or liquidation of a special purpose
1342 financial captive insurance company, the receiver shall manage the assets and liabilities of the
1343 special purpose financial captive insurance company pursuant to this chapter.

1344 (3) An amount recoverable by the receiver of a special purpose financial captive
1345 insurance company under a reinsurance contract may not be reduced or diminished as a result of

1346 the entry of an order of conservation, rehabilitation, or liquidation with respect to a ceding
1347 insurer, notwithstanding a contract or other documentation governing the special purpose
1348 financial captive insurance company insurance securitization.

1349 (4) The following applies notwithstanding Chapter 27a, Insurer Receivership Act, or
1350 another law of this state:

1351 (a) An application, petition, a temporary restraining order, or injunction issued pursuant
1352 to Chapter 27a, Insurer Receivership Act, with respect to a ceding insurer does not prohibit the
1353 transaction of business by a special purpose financial captive insurance company, including:

1354 (i) a payment by a special purpose financial captive insurance company made with
1355 respect to a special purpose financial captive insurance company security; or

1356 (ii) an action or proceeding against a special purpose financial captive insurance
1357 company or its assets.

1358 (b) (i) Subject to Subsection (4)(b)(ii), the commencement of a summary proceeding
1359 with respect to a special purpose financial captive insurance company and an order issued by the
1360 court in the summary proceeding may not prohibit:

1361 (A) a payment by a special purpose financial captive insurance company; or

1362 (B) the special purpose financial captive insurance company from taking an action
1363 required to make a payment described in this Subsection (4)(b)(i).

1364 (ii) Subsection (4)(b)(i) applies only if the payment is made:

1365 (A) pursuant to a special purpose financial captive insurance company security or
1366 reinsurance contract; and

1367 (B) consistent with the special purpose financial captive insurance company's plan of
1368 operation and any order issued to the special purpose financial captive insurance company
1369 pursuant to Section 31A-37a-201.

1370 (c) A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding
1371 insurer to a special purpose financial captive insurance company of money or other property
1372 made pursuant to a reinsurance contract.

1373 (d) A receiver of a special purpose financial captive insurance company may not void a

1374 nonfraudulent transfer by the special purpose financial captive insurance company of money or
1375 other property:

1376 (i) (A) made to a ceding insurer pursuant to a reinsurance contract; or

1377 (B) made to or for the benefit of a holder of a special purpose financial captive
1378 insurance company security with respect to the special purpose financial captive insurance
1379 company security; and

1380 (ii) made consistent with the special purpose financial captive insurance company's plan
1381 of operation and an order issued to the special purpose financial captive insurance company
1382 pursuant to Section 31A-37a-201.

1383 (5) (a) Except to fulfill an obligation under a reinsurance contract and notwithstanding
1384 another provision of this chapter, Chapter 37, Captive Insurance Companies Act, or other laws
1385 of this state, the assets of a special purpose financial captive insurance company may not be
1386 consolidated with or included in the estate of a ceding insurer in a delinquency proceeding
1387 against the ceding insurer pursuant to this chapter for any purpose including a distribution to a
1388 creditor of the ceding insurer.

1389 (b) This Subsection (5) applies to assets that include an asset held in trust:

1390 (i) on a funds-withheld basis; or

1391 (ii) under another arrangement to secure the special purpose financial captive insurance
1392 company's obligations under a reinsurance contract.

1393 **Section 30. Effective date.**

1394 This bill takes effect on May 5, 2008, except that the amendments to Section 31A-3-304
1395 in this bill takes effect on July 1, 2010.