

**CAPTIVE INSURANCE COMPANY**

**AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**Committee Note:**

The Business and Labor Interim Committee recommended this bill.

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ addresses fee amounts that are nonlapsing;
- ▶ modifies and enacts definitions;
- ▶ makes changes related to a captive insurance company formed as a limited liability company;
- ▶ addresses applicable law;
- ▶ addresses the applicability of reorganization, receivership, and injunction statutes;
- ▶ addresses permissive areas of insurance;
- ▶ addresses sponsored captive insurance companies;
- ▶ addresses reporting to the commissioner;
- ▶ enacts the Special Purpose Financial Captive Insurance Company Act including:
  - defining terms;
  - outlining applicable law;



- 28 • imposing reporting requirements;
- 29 • imposing requirements related to books and records;
- 30 • providing for a transition to the new certificate of authority;
- 31 • establishing a process to issue a certificate of authority;
- 32 • addressing revocation, suspension, amendment, or modification of a certificate
- 33 of authority;
- 34 • requiring commissioner approval of certain actions;
- 35 • addressing sponsored captives;
- 36 • addressing the formation, assets, investments, and securities of a special purpose
- 37 financial captive insurance company;
- 38 • addressing reinsurance; and
- 39 • providing for enforcement and delinquency; and
- 40 ▶ makes technical and conforming amendments.

**41 Monies Appropriated in this Bill:**

42 None

**43 Other Special Clauses:**

44 None

**45 Utah Code Sections Affected:**

46 AMENDS:

- 47 **31A-3-304**, as last amended by Laws of Utah 2006, Chapter 320
- 48 **31A-37-102**, as last amended by Laws of Utah 2004, Chapter 312
- 49 **31A-37-103**, as enacted by Laws of Utah 2003, Chapter 251
- 50 **31A-37-104**, as last amended by Laws of Utah 2004, Chapter 312
- 51 **31A-37-106**, as last amended by Laws of Utah 2004, Chapter 312
- 52 **31A-37-202**, as last amended by Laws of Utah 2004, Chapter 312
- 53 **31A-37-402**, as last amended by Laws of Utah 2004, Chapter 312
- 54 **31A-37-501**, as last amended by Laws of Utah 2006, Chapter 177
- 55 **31A-37-502**, as last amended by Laws of Utah 2007, Chapter 307
- 56 **31A-37-602**, as enacted by Laws of Utah 2004, Chapter 312
- 57 **31A-37-603**, as enacted by Laws of Utah 2004, Chapter 312

58 ENACTS:

- 59           **31A-37a-101**, Utah Code Annotated 1953
- 60           **31A-37a-102**, Utah Code Annotated 1953
- 61           **31A-37a-103**, Utah Code Annotated 1953
- 62           **31A-37a-104**, Utah Code Annotated 1953
- 63           **31A-37a-105**, Utah Code Annotated 1953
- 64           **31A-37a-201**, Utah Code Annotated 1953
- 65           **31A-37a-202**, Utah Code Annotated 1953
- 66           **31A-37a-203**, Utah Code Annotated 1953
- 67           **31A-37a-204**, Utah Code Annotated 1953
- 68           **31A-37a-205**, Utah Code Annotated 1953
- 69           **31A-37a-301**, Utah Code Annotated 1953
- 70           **31A-37a-302**, Utah Code Annotated 1953
- 71           **31A-37a-303**, Utah Code Annotated 1953
- 72           **31A-37a-304**, Utah Code Annotated 1953
- 73           **31A-37a-401**, Utah Code Annotated 1953
- 74           **31A-37a-402**, Utah Code Annotated 1953
- 75           **31A-37a-501**, Utah Code Annotated 1953
- 76           **31A-37a-502**, Utah Code Annotated 1953



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

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

80           **31A-3-304. Annual fees -- Other taxes or fees prohibited.**

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

83           (b) The commissioner shall:

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

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

87           (2) A captive insurance company that fails to pay the fee required by this section is  
88 subject to the relevant sanctions of this title.

89           (3) (a) Except as provided in Subsection (3)(b) and notwithstanding Title 59, Chapter

90 9, Taxation of Admitted Insurers, the fee provided for in this section constitutes the sole tax or  
91 fee under the laws of this state that may be otherwise levied or assessed on a captive insurance  
92 company, and no other occupation tax or other tax or fee may be levied or collected from a  
93 captive insurance company by the state or a county, city, or municipality within this state.

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

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

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

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

102 (b) At the end of each fiscal year, funds received by the department in excess of  
103 [~~\$250,000~~] \$750,000 shall be treated as free revenue in the General Fund.

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

105 **31A-37-102. Definitions.**

106 As used in this chapter:

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

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

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

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

115 (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or  
116 regulatory standards:

- 117 (i) on [~~companies~~] a business entity transacting the business of insurance in the alien  
118 jurisdiction; and
- 119 (ii) in a form acceptable to the commissioner.

120 (3) "Association" means a legal association of [~~individuals, corporations, partnerships,~~

121 ~~or associations]~~ two or more persons that has been in continuous existence for at least one year  
122 if:

123 (a) the association or its member organizations:

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

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

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

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

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

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

135 (b) ~~[affiliates of the]~~ an affiliate of a member ~~[organizations]~~ organization of the  
136 association~~[-]; and~~

137 (c) the association.

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

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

143 (7) "Branch ~~[operations]"~~ operation" means ~~[any]~~ a business ~~[operations]~~ operation of a  
144 branch captive insurance company in this state.

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

147 (a) a branch captive insurance company;

148 (b) a pure captive insurance company;

149 (c) an association captive insurance company;

150 (d) a sponsored captive insurance company;

151 (e) an industrial insured captive insurance company;

- 152 (f) a captive reinsurance company; ~~[or]~~
- 153 (g) a special purpose captive insurance company~~[-]; or~~
- 154 (h) a special purpose financial captive insurance company.
- 155 (9) "Captive reinsurance company" means a ~~[reinsurance company]~~ reinsurer that is:
- 156 (a) formed or ~~[licensed]~~ has a certificate of authority pursuant to this chapter;
- 157 (b) wholly owned by a qualifying ~~[reinsurance]~~ reinsurer parent company; and
- 158 (c) a stock corporation.

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

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

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

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

172 (d) in the case of a sponsored captive insurance company, a protected cell is a separate  
 173 captive insurance company owned and controlled by the protected cell's participant, only if:

- 174 (i) the participant is the only participant with respect to the protected cell; and
- 175 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored  
 176 captive insurance company through common ownership and control.

177 (11) "Commissioner" means the Insurance Commissioner or the commissioner's  
 178 designee.

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

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

- 183 (i) all borrowings from depository institutions;  
184 (ii) all senior debt;  
185 (iii) all subordinated debts;  
186 (iv) all trust preferred shares; and  
187 (v) all other hybrid capital instruments that are not included in the determination of  
188 consolidated GAAP net worth issued and outstanding.
- 189 (b) This Subsection (12)(b) is an amount equal to the sum of:
- 190 (i) total capital consisting of all debts and hybrid capital instruments as described in  
191 Subsection (12)(a); and  
192 (ii) shareholders' equity determined in accordance with generally accepted accounting  
193 principles for reporting to the United States Securities and Exchange Commission.
- 194 (13) "Consolidated GAAP net worth" means the consolidated shareholders' equity  
195 determined in accordance with generally accepted accounting principles for reporting to the  
196 United States Securities and Exchange Commission.
- 197 (14) "Controlled unaffiliated business" means a ~~[company]~~ business entity:
- 198 (a) (i) in the case of a pure captive insurance company, that is not in the corporate  
199 system of a parent ~~[and affiliates;]~~ or the parent's affiliate; or
- 200 (ii) in the case of an industrial insured captive insurance company, that is not in the  
201 corporate system of an industrial insured or an affiliated company of the industrial insured;
- 202 (b) (i) in the case of a pure captive insurance company, that has ~~[an existing]~~ a  
203 contractual relationship with a parent or affiliate; ~~[and]~~ or
- 204 (ii) in the case of an industrial insured captive insurance company, that has a  
205 contractual relationship with an industrial insured or an affiliated company of the industrial  
206 insured; and
- 207 (c) whose risks are managed by ~~[a pure captive insurance company]~~ one of the  
208 following in accordance with ~~[Section 31A-37-504.]~~ Subsection 31A-37-106(1)(k):
- 209 (i) a pure captive insurance company; or  
210 (ii) an industrial insured captive insurance company.
- 211 (15) "Department" means the Insurance Department.
- 212 (16) "Industrial insured" means an insured:
- 213 (a) that produces insurance:

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

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

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

218 and

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

220 (17) "Industrial insured captive insurance company" means a [~~company~~] business  
221 entity that:

222 (a) insures risks of[~~-(a)~~] the industrial insureds that comprise the industrial insured  
223 group; and

224 [~~(b) the affiliates of the industrial insured group.~~]

225 (b) may insure the risks of:

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

227 (ii) a controlled unaffiliated business of:

228 (A) an industrial insured; or

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

230 (18) "Industrial insured group" means:

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

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

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

236 (b) a group that is:

237 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section  
238 3901 et seq., as amended, as a corporation or other limited liability association; and

239 (ii) taxable under this title as a:

240 (A) stock corporation; or

241 (B) mutual insurer[~~-~~]; or

242 (c) a group that has complete voting control over an industrial captive insurance  
243 company formed as a limited liability company.

244 (19) "Member organization" means [~~an individual, corporation, partnership, or~~



245 ~~association]~~ a person that belongs to an association.

246 (20) "Parent" means a [~~corporation, partnership, or individual]~~ person that directly or  
247 indirectly owns, controls, or holds with power to vote more than 50% of:

248 (a) the outstanding voting securities of a pure captive insurance company[;]; or

249 (b) the pure captive insurance company, if the pure captive insurance company is  
250 formed as a limited liability company.

251 (21) "Participant" means [~~any of the following]~~ an entity that [~~are]~~ is insured by a  
252 sponsored captive insurance company[;]:

253 (a) if the losses of the participant are limited through a participant contract to the assets  
254 of a protected cell[;]; and

255 [~~(a) an]~~ (b)(i) the entity is permitted to be a participant under Section 31A-37-403;  
256 [~~and]~~ or

257 [~~(b) any]~~ (ii) the entity is an affiliate of an entity permitted to be a participant under  
258 Section 31A-37-403.

259 (22) "Participant contract" means a contract by which a sponsored captive insurance  
260 company:

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

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

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

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

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

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

269 (b) that has:

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

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

272 (26) "Special purpose financial captive insurance company" is as defined in Section  
273 31A-37a-102.

274 [~~(26)] (27) "Sponsor" means an entity that:~~

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

- 276 (b) is approved by the commissioner to:
- 277 (i) provide all or part of the capital and surplus required by applicable law; and
- 278 (ii) organize and operate a sponsored captive insurance company.
- 279 ~~[(27)]~~ (28) "Sponsored captive insurance company" means a captive insurance
- 280 company:
- 281 (a) in which the minimum capital and surplus required by applicable law is provided by
- 282 one or more sponsors;
- 283 (b) that is formed or holding a certificate of authority under this chapter;
- 284 (c) that insures the risks of a separate ~~[participants]~~ participant through the contract;
- 285 and
- 286 (d) that segregates each participant's liability through one or more protected cells.
- 287 ~~[(28)]~~ (29) "Treasury rates" means the United States Treasury strip asked yield as
- 288 published in the Wall Street Journal as of a balance sheet date.

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

290 **31A-37-103. Chapter exclusivity.**

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

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

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

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

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

300 **31A-37-104. Applicability of reorganization, receivership, and injunction**  
301 **authority.**

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

- 307 (2) In the case of a sponsored captive insurance company:
- 308 (a) the assets of ~~[the]~~ a protected cell may not be used to pay ~~[any expenses or claims]~~
- 309 an expense or claim other than ~~[those]~~ one attributable to the protected cell; and
- 310 (b) the capital and surplus of the sponsored captive insurance company:
- 311 (i) shall at all times be available to pay ~~[any]~~:
- 312 (A) ~~[expenses]~~ an expense of the sponsored captive insurance company; or
- 313 (B) ~~[claims]~~ a claim against the sponsored captive insurance company; and
- 314 (ii) may not be used to pay ~~[expenses or claims]~~ an expense or claim attributable to a
- 315 protected cell.

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

317 **31A-37-106. Authority to make rules -- Authority to issue orders.**

318 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

319 commissioner may adopt rules to:

- 320 (a) determine circumstances under which a branch captive insurance company is not
- 321 required to be a pure captive insurance company;
- 322 (b) ~~[determine any]~~ require a statement, document, or information that a captive
- 323 insurance company must provide to the commissioner to obtain a certificate of authority;
- 324 (c) determine ~~[any factors]~~ a factor a captive insurance company shall provide evidence
- 325 of under Subsection 31A-37-202(4)(c);
- 326 (d) prescribe one or more capital requirements for a captive insurance company in
- 327 addition to those required under Section 31A-37-204 based on the type, volume, and nature of
- 328 insurance business transacted by the captive insurance company;
- 329 (e) establish:
- 330 (i) the amount of capital or surplus required to be retained under Subsection
- 331 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance
- 332 company; or
- 333 (ii) a formula to determine the amount described in Subsection 31A-37-205(4);
- 334 (f) waive or modify ~~[the requirements]~~ a requirement for public notice and hearing for
- 335 ~~[any of]~~ the following by a captive insurance company:
- 336 (i) merger;
- 337 (ii) consolidation;

- 338 (iii) conversion;
- 339 (iv) mutualization; or
- 340 (v) redomestication;
- 341 (g) approve the use of ~~[alternative]~~ one or more reliable methods of valuation and
- 342 rating for:
- 343 (i) an association captive insurance company;
- 344 (ii) a sponsored captive insurance company; or
- 345 (iii) an industrial insured group;
- 346 (h) prohibit or limit an investment that threatens the solvency or liquidity of:
- 347 (i) a pure captive insurance company; or
- 348 (ii) an industrial insured captive insurance company;
- 349 (i) determine the financial reports a sponsored captive insurance company shall
- 350 annually file with the commissioner;
- 351 (j) ~~[determine]~~ prescribe the required forms and reports under Section 31A-37-501; and
- 352 (k) establish one or more standards to ensure that ~~[a parent or affiliate of a pure captive~~
- 353 ~~insurance company]~~:
- 354 (i) one of the following is able to exercise control of the risk management function of
- 355 ~~[any]~~ a controlled unaffiliated business to be insured by ~~[the]~~ a pure captive insurance
- 356 company~~[-]~~:
- 357 (A) a parent; or
- 358 (B) an affiliated company of a parent; or
- 359 (ii) one of the following is able to exercise control of the risk management function of
- 360 a controlled unaffiliated business to be insured by an industrial insured captive insurance
- 361 company:
- 362 (A) an industrial insured; or
- 363 (B) an affiliated company of the industrial insured.
- 364 (2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules
- 365 authorized under Subsection (1)(k), the commissioner may by temporary order grant authority
- 366 to insure risks to:
- 367 (a) a pure captive insurance company ~~[to insure risks.];~~ or
- 368 (b) an industrial insured captive insurance company.

369 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a  
 370 captive insurance [~~companies~~] company as necessary to enable the commissioner to secure  
 371 compliance with this chapter.

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

373 **31A-37-202. Permissive areas of insurance.**

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

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

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

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

382 (B) a controlled unaffiliated business; or

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

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

386 (A) an affiliate;

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

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

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

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

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

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

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

396 (C) a controlled unaffiliated business of:

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

398 (II) an affiliate of an industrial insured that is part of the industrial insured group;

399 (iv) a special purpose captive insurance company may only insure [~~the~~] a risk of its

400 parent;

401 (v) a captive insurance company may not provide:

402 (A) personal motor vehicle ~~[or]~~ insurance coverage;

403 (B) homeowner's insurance coverage; or ~~[any]~~

404 (C) a component of ~~[these coverages]~~ a coverage described in this Subsection (1)(b)(v);

405 and

406 (vi) a captive insurance company may not accept or cede reinsurance except as  
407 provided in Section 31A-37-303.

408 (c) Notwithstanding Subsection (1)(b)(iv), for ~~[risks]~~ a risk approved by the  
409 commissioner a special purpose captive insurance company may provide:

410 (i) insurance;

411 (ii) reinsurance; or

412 (iii) both insurance and reinsurance.

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

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

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

417 (i) a board of directors meeting; or

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

419 (c) maintain in this state:

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

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

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

425 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company  
426 formed as a corporation or a reciprocal insurer, ~~[whenever]~~ if the registered agent cannot with  
427 reasonable diligence be found at the registered office of the captive insurance company, the  
428 commissioner ~~[shall be an]~~ is the agent of the captive insurance company upon whom ~~[any]~~  
429 process, notice, or demand may be served.

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

- 431 (i) formed as a corporation shall file with the commissioner:  
432 (A) a certified copy of:  
433 (I) articles of incorporation or the charter of the corporation; and  
434 (II) bylaws of the corporation;  
435 (B) a statement under oath of the president and secretary of the corporation showing  
436 the financial condition of the corporation; and  
437 (C) any other statement or document required by the commissioner under Section  
438 31A-37-106;
- 439 (ii) formed as a reciprocal shall:  
440 (A) file with the commissioner:  
441 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;  
442 (II) a certified copy of the subscribers' agreement of the reciprocal;  
443 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the  
444 financial condition of the reciprocal; and  
445 (IV) any other statement or document required by the commissioner under Section  
446 31A-37-106; and  
447 (B) submit to the commissioner for approval a description of the:  
448 (I) coverages;  
449 (II) deductibles;  
450 (III) coverage limits;  
451 (IV) rates; and  
452 (V) any other information the commissioner requires under Section 31A-37-106.
- 453 (b) (i) If there is a subsequent material change in an item in the description required  
454 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal  
455 captive insurance company shall submit to the commissioner for approval an appropriate  
456 revision to the description required under Subsection (4)(a)(ii)(B).
- 457 (ii) A reciprocal captive insurance company that is required to submit a revision under  
458 Subsection (4)(b)(i) may not offer any additional [~~kinds~~] types of insurance until the  
459 commissioner approves a revision of the description.
- 460 (iii) A reciprocal captive insurance company shall inform the commissioner of [~~any~~] a  
461 material change in [~~rates~~] a rate within 30 days of the adoption of the change.

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

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

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

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

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

472 (A) a parent~~[-];~~;

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

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

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

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

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

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

481 (i) a business plan at the level of detail required by the commissioner under Section  
482 31A-37-106 demonstrating:

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

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

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

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



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

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

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

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

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

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

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

509 ~~[(5)]~~ (6) (a) A captive insurance company shall pay to the department the following  
510 nonrefundable fees established by the department under Sections 31A-3-103 and 63-38-3.2:

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

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

515 (iii) a certificate of authority renewal fee.

516 (b) The commissioner may:

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

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

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

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

523 ~~[(6)]~~ (7) If the commissioner is satisfied that the documents and statements filed by the

524 applicant captive insurance company comply with ~~[the provisions of]~~ this chapter, the  
525 commissioner may grant a certificate of authority authorizing the company to do insurance  
526 business in this state.

527 ~~[(7)]~~ (8) A certificate of authority granted under this section expires annually and must  
528 be renewed by July 1 of each year.

529 Section 7. Section ~~31A-37-402~~ is amended to read:

530 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**  
531 **mandatory.**

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

- 533 (a) an insurer authorized or approved under the laws of ~~[any]~~ a state;
- 534 (b) a reinsurer authorized or approved under the laws of ~~[any]~~ a state;
- 535 (c) a captive insurance company holding a certificate of authority under this chapter;

536 ~~[or]~~

537 (d) an insurance holding company that:

- 538 (i) controls an insurer licensed pursuant to the laws of ~~[any]~~ a state; and
- 539 (ii) is subject to registration pursuant to the holding company system of laws of the  
540 state of domicile of the insurer described in Subsection (1)(d)(i)~~[-]; or~~

541 (e) another person approved by the commissioner after finding that the approval of the  
542 person as a sponsor is not inconsistent with the purposes of this chapter.

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

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

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

- 558 (A) reserves for losses;
- 559 (B) allocated loss adjustment expenses;
- 560 (C) incurred but unreported losses; and
- 561 (D) unearned premiums for business written through the participant's protected cell.

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

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

- 566 (A) chartered in this state;
- 567 (B) a member of the federal reserve system; or
- 568 (C) chartered by another state if that state-chartered bank is acceptable to the  
569 commissioner.

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

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

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

575 **31A-37-501. Reports to commissioner.**

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

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

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

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

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

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

591 (c) Except as otherwise provided:

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

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

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

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

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

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

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

612 (i) shall be in writing; and

613 (ii) is subject to public inspection.

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

615 **31A-37-502. Examination.**

616 (1) (a) As provided in this section, the commissioner or a person appointed by the

617 commissioner, shall examine each captive insurance company in each three-year period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

643 **31A-37-602. Requirements of a captive reinsurance company.**

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

647 (i) property and casualty insurance; or

648 (ii) reinsurance contracts.

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

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

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

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

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

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

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

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

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

663 (B) charter; and

664 (ii) bylaws;

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

667 (c) other documents required by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

698 **31A-37-603. Minimum capitalization or reserves for a captive reinsurance**  
699 **company.**

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

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

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

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

706 (i) cash; or

707 (ii) securities.

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

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

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

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

717 **CHAPTER 37a. SPECIAL PURPOSE FINANCIAL CAPTIVE INSURANCE**

718 **COMPANY ACT**

719 **Part 1. General Provisions**

720 **31A-37a-101. Title.**

721 This chapter is known as the "Special Purpose Financial Captive Insurance Company  
722 Act."

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

724 **31A-37a-102. Definitions.**

725 (1) For purposes of this chapter:

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

727 (i) is approved by the commissioner;

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

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

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

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

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

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

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



- 741 (B) that is effected through one or more related risk transfer instruments and  
742 facilitating administrative agreements;
- 743 (C) where all or part of the result of the transaction or group of related transactions is  
744 used to fund the special purpose financial captive insurance company's obligations under a  
745 reinsurance contract with a ceding insurer;
- 746 (D) by which:
- 747 (I) proceeds are obtained by a special purpose financial captive insurance company,  
748 directly or indirectly, through the issuance of one or more securities by the special purpose  
749 financial captive insurance company or another person; or
- 750 (II) a person provides one or more letters of credit or other assets for the benefit of the  
751 special purpose financial captive insurance company if the commissioner authorizes the special  
752 purpose financial captive insurance company to treat the letter of credit or asset as an admitted  
753 asset for purposes of the special purpose financial captive insurance company's annual report;  
754 and
- 755 (E) if all or a part of the proceeds, a letter of credit, or asset described in this  
756 Subsection (1)(c) is used to fund the special purpose financial captive insurance company's  
757 obligations under a reinsurance contract with a ceding insurer.
- 758 (ii) "Insurance securitization" does not include the issuance of a letter of credit for the  
759 benefit of the commissioner to satisfy all or part of the special purpose financial captive  
760 insurance company's capital and surplus requirements under Section 31A-37a-302.
- 761 (d) "Management" means:
- 762 (i) a board of directors of a special purpose financial captive insurance company;  
763 (ii) a managing board of a special purpose financial captive insurance company; or  
764 (iii) one or more individuals with the overall responsibility for the management of the  
765 affairs of the special purpose financial captive insurance company, including:
- 766 (A) an officer elected or appointed to act on behalf of the special purpose financial  
767 captive insurance company; or
- 768 (B) an agent elected or appointed to act on behalf of the special purpose financial  
769 captive insurance company.
- 770 (e) "Organizational document" means:
- 771 (i) in the case of a special purpose financial captive insurance company formed as a

772 stock corporation, the special purpose financial captive insurance company's:  
773 (A) articles of incorporation; and  
774 (B) bylaws; and  
775 (ii) in the case of a special purpose financial captive insurance company formed as a  
776 limited liability company, the special purpose financial captive insurance company's:  
777 (A) articles of organization; and  
778 (B) operating agreement.  
779 (f) "Reinsurance contract" means a contract between a special purpose financial captive  
780 insurance company and a ceding insurer pursuant to which the special purpose financial captive  
781 insurance company agrees to provide reinsurance to the ceding insurer for risks associated with  
782 the ceding insurer's insurance or reinsurance business.  
783 (g) "Security" means:  
784 (i) a security as defined in Section 31A-1-301; or  
785 (ii) one or more of the following that the commissioner designates, by rule or order, as  
786 a "security" for purposes of this chapter:  
787 (A) a debt obligation;  
788 (B) equity;  
789 (C) a surplus certificate;  
790 (D) a surplus note;  
791 (E) a funding agreement;  
792 (F) a derivative; or  
793 (G) another financial instrument.  
794 (h) "Special purpose financial captive insurance company" means a captive insurance  
795 company has a certificate of authority under this chapter from the commissioner to operate as a  
796 special purpose financial captive insurance company pursuant to this chapter.  
797 (i) "Special purpose financial captive insurance company security" means:  
798 (i) a security issued by a special purpose financial captive insurance company; or  
799 (ii) a security issued by a third party, the proceeds of which are obtained directly or  
800 indirectly by a special purpose financial captive insurance company.  
801 (j) "Surplus note" means an unsecured subordinated debt obligation that has one or  
802 more characteristics that are consistent with paragraph 3 of the National Association of

803 Insurance Commissioners Statement of Statutory Accounting Principals No. 41, as amended  
804 from time to time and as modified or supplemented by rule or order of the commissioner.

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

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

808 **31A-37a-103. Applicable law.**

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

810 (i) this chapter; and

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

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

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

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

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

820 **31A-37a-104. Reporting -- Books and records.**

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

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

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

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

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

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

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

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

833 (b) If an alternative reporting date is granted, the commissioner shall establish the due

834 date and content of the filing required by the special purpose financial captive insurance  
835 company in addition to its annual report.

836 (3) (a) Unless the commissioner approves a variance before the special purpose  
837 financial captive insurance company implements the variance, a special purpose financial  
838 captive insurance company shall maintain in the state the following of the special purpose  
839 financial captive insurance company:

- 840 (i) a book;
- 841 (ii) record;
- 842 (iii) a document;
- 843 (iv) an account;
- 844 (vi) a voucher; or
- 845 (vii) an agreement.

846 (b) A special purpose financial captive insurance company shall make an item listed in  
847 Subsection (3)(a) available for inspection by the commissioner at any time.

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

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

852 (ii) the commissioner may readily:

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

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

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

- 861 (i) for the purpose of examination and inspection; and
- 862 (ii) until the commissioner approves the destruction or other disposition.

863 (b) If the commissioner approves the keeping of an item listed in Subsection (3)(a)  
864 outside this state, the special purpose financial captive insurance company shall maintain a

865 complete copy of the original in the state.

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

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

869 **31A-37a-105. Transition.**

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

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

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

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

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

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

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

884 **31A-37a-201. Certificate of authority requirements.**

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

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

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

894 (i) a complete description of:

895 (A) a significant transaction including:

896           (I) reinsurance;  
897           (II) a reinsurance security arrangement;  
898           (III) an insurance securitization; or  
899           (IV) a transaction or arrangement related to a transaction described in Subsections  
900 (2)(a)(i)(A)(I) through (II);  
901           (B) to the extent not included in Subsection (2)(a)(i)(A), a party other than the special  
902 purpose financial captive insurance company and the ceding insurer that is involved in the  
903 issuance of a special purpose financial captive insurance company security; and  
904           (C) a pledge, hypothecation, or grant of a security interest in:  
905           (I) an asset of the special purpose financial captive insurance company; or  
906           (II) stock or a limited liability company interest in the special purpose financial captive  
907 insurance company;  
908           (ii) the source and form of the special purpose financial captive insurance company's  
909 capital and surplus;  
910           (iii) the proposed investment policy of the special purpose financial captive insurance  
911 company;  
912           (iv) a description of an underwriting, reporting, and claims payment method by which  
913 losses covered by a reinsurance contract are reported, accounted for, and settled;  
914           (v) pro forma balance sheets and income statements illustrating one or more adverse  
915 case scenarios, as determined under criteria required by the commissioner, for the performance  
916 of the special purpose financial captive insurance company under a reinsurance contract; and  
917           (vi) the proposed rate and method for discounting reserves, if the special purpose  
918 financial captive insurance company is requesting authority to discount its reserves.  
919           (b) The special purpose financial captive insurance company shall submit an affidavit:  
920           (i) of the following of the special purpose financial captive insurance company:  
921           (A) president;  
922           (B) vice president;  
923           (C) treasurer; or  
924           (D) chief financial officer; and  
925           (ii) that includes the following statements, to the best of knowledge and belief of the  
926 person submitting the affidavit after reasonable inquiry:

927 (A) the proposed organization and operation of the special purpose financial captive  
928 insurance company complies with this chapter and the applicable provisions of Chapter 37,  
929 Captive Insurance Companies Act;

930 (B) the special purpose financial captive insurance company's investment policy  
931 reflects and takes into account:

932 (I) the liquidity of assets; and

933 (II) the reasonable preservation, administration, and management of those assets with  
934 respect to the risks associated with:

935 (Aa) a reinsurance contract; and

936 (Bb) an insurance securitization transaction; and

937 (C) the following comply with this chapter:

938 (I) a reinsurance contract; and

939 (II) an arrangement for securing an obligation of the special purpose financial captive  
940 insurance company under the reinsurance contract, including an agreement or other  
941 documentation to implement the arrangement.

942 (c) A special purpose financial captive insurance company shall submit to the  
943 commissioner:

944 (i) a copy of an agreement or documentation described in Subsection (2)(b), unless  
945 otherwise approved by the commissioner; and

946 (ii) a statement or document required by the commissioner to evaluate the special  
947 purpose financial captive insurance company's application for a certificate of authority.

948 (d) (i) Subject to Subsection (2)(d)(ii), a special purpose financial captive insurance  
949 company shall submit with the application an opinion of a licensed attorney, in a form  
950 acceptable to the commissioner, that:

951 (A) the offer and sale of a special purpose financial captive insurance company security  
952 complies with:

953 (I) the registration requirements of federal securities laws; or

954 (II) the exemptions from or exceptions to a requirement of the federal securities laws;

955 and

956 (B) the offer and sale of a security by the special purpose financial captive insurance  
957 company complies with:

- 958 (I) the registration requirements of this state's securities laws; or  
959 (II) the exemptions from or exceptions to a requirement of this state's securities laws.  
960 (ii) A special purpose financial captive insurance company is not required to submit an  
961 opinion described in Subsection (2)(d)(i) with an application if the special purpose financial  
962 captive insurance company includes a specific statement in its plan of operation that the  
963 opinion described in Subsection (2)(d)(i) will be provided to the commissioner before the offer  
964 or sale of a special purpose financial captive insurance company security.
- 965 (3) (a) The commissioner may issue a certificate of authority to a special purpose  
966 financial captive insurance company that complies with Subsection (2) authorizing the special  
967 purpose financial captive insurance company to transact reinsurance business as a special  
968 purpose financial captive insurance company in this state if the commissioner finds that:
- 969 (i) the proposed plan of operation provides for a reasonable and expected successful  
970 operation;  
971 (ii) the terms of the reinsurance contract or related transaction comply with this  
972 chapter;  
973 (iii) the proposed plan of operation is not hazardous to a ceding insurer; and  
974 (iv) subject to Subsection (3)(b), the insurance regulator of the state of domicile of a  
975 ceding insurer has notified the commissioner in writing or otherwise provided assurance  
976 satisfactory to the commissioner that the regulator of the state has approved or has not  
977 disapproved the transaction.
- 978 (b) Notwithstanding Subsection (3)(a)(iv), the commissioner may issue a certificate of  
979 authority to a special purpose financial captive insurance company if the insurance regulator of  
980 the state of domicile of a ceding insurer does not responded with respect to all or a part of the  
981 transaction.
- 982 (c) (i) A certificate of authority issued under this section is valid through the June 30  
983 after the day on which the certificate of authority is issued.
- 984 (ii) A special purpose financial captive insurance company may renew its certificate of  
985 authority annually by, before the certificate of authority expires:
- 986 (A) submitting the affidavit required by Subsection (2); and  
987 (B) paying a renewal fee.
- 988 (4) In conjunction with issuing a certificate of authority to a special purpose financial



989 captive insurance company, the commissioner may issue an order that includes a provision,  
990 term, or condition regarding the organization, issuance of a certificate of authority, and  
991 operation of the special purpose financial captive insurance company that:

992 (a) the commissioner considers appropriate; and

993 (b) is not inconsistent with this chapter and Chapter 37, Captive Insurance Companies  
994 Act.

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

996 **31A-37a-202. Revocation, suspension, amendment, or modification of a certificate**  
997 **of authority.**

998 Except as provided in Sections 31A-37a-501 and 31A-37a-502, the commissioner may  
999 not revoke, suspend, amend, or modify a certificate of authority issued to a special purpose  
1000 financial captive insurance company under this chapter or an order issued under Subsection  
1001 31A-37a-201(4) unless:

1002 (1) the special purpose financial captive insurance company consents to the revocation,  
1003 suspension, amendment, or modification; or

1004 (2) the commissioner shows by clear and convincing evidence that the revocation,  
1005 suspension, amendment, or modification is necessary to avoid irreparable harm to:

1006 (a) a special purpose financial captive insurance company; or

1007 (b) a ceding insurer.

1008 Section 19. Section **31A-37a-203** is enacted to read:

1009 **31A-37a-203. Reporting related to transactions.**

1010 (1) A special purpose financial captive insurance company shall provide the  
1011 commissioner with a copy of a complete set of executed documentation of an insurance  
1012 securitization no later than 30 days after the day on which the insurance securitization  
1013 transaction closes.

1014 (2) Section 31A-37-503 applies to:

1015 (a) information submitted pursuant to Subsection (1);

1016 (b) information submitted pursuant to Subsection 31A-37a-201(2); or

1017 (c) an order issued to a special purpose financial captive insurance company pursuant  
1018 to Subsection 31A-37a-201(4).

1019 Section 20. Section **31A-37a-204** is enacted to read:

1020 **31A-37a-204. Prior approval of a change in plan of operation and other**  
1021 **transactions.**

1022 (1) A special purpose financial captive insurance company may not change its plan of  
1023 operation without the prior approval of the commissioner.

1024 (2) (a) Subject to Subsection (2)(b), a special purpose financial captive insurance  
1025 company may not engage in a transaction or series of transactions without the prior approval of  
1026 the commissioner if the transaction or series of transactions:

1027 (i) is undertaken to dissolve the special purpose financial captive insurance company;

1028 or

1029 (ii) results in the termination of all or a part of a special purpose financial captive  
1030 insurance company's business.

1031 (b) A special purpose financial captive insurance company is not required to obtain the  
1032 prior approval of the commissioner for a transaction or series of transactions described in  
1033 Subsection (2)(a)(ii) if:

1034 (i) the transaction or series of transactions is done in accordance with a document or  
1035 agreement described in the special purpose financial captive insurance company's plan of  
1036 operation; and

1037 (ii) the special purpose financial captive insurance company notifies the commissioner  
1038 prior to the transaction or series of transactions.

1039 (3) A special purpose financial captive insurance company shall notify the  
1040 commissioner before a change in the legal ownership of a security issued by the special  
1041 purpose financial captive insurance company.

1042 Section 21. Section **31A-37a-205** is enacted to read:

1043 **31A-37a-205. Sponsored captives.**

1044 In addition to the other provisions of this chapter, this section applies to a sponsored  
1045 captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a  
1046 certificate of authority as a special purpose financial captive insurance company pursuant to  
1047 this chapter.

1048 (1) A sponsored captive insurance company may have a certificate of authority as a  
1049 special purpose financial captive insurance company under this chapter.

1050 (2) (a) For purposes of a sponsored captive insurance company having a certificate of

1051 authority as a special purpose financial captive insurance company, "general account" means  
1052 the assets and liabilities of the sponsored captive insurance company not attributable to a  
1053 protected cell.

1054 (b) For purposes of applying Title 31A, Chapter 27a, Insurer Receivership Act, to a  
1055 sponsored captive insurance company having a certificate of authority as a special purpose  
1056 financial captive insurance company, the definition of "insolvency" and "insolvent" in Section  
1057 31A-37a-102 shall be applied separately to:

1058 (i) each protected cell; and

1059 (ii) the special purpose financial captive insurance company's general account.

1060 (3) (a) A participant in a sponsored captive insurance company having a certificate of  
1061 authority as a special purpose financial captive insurance company must be a ceding insurer,  
1062 unless approved by the commissioner before a person becomes a participant.

1063 (b) A change in a participant in a sponsored captive insurance company having a  
1064 certificate of authority as a special purpose financial captive insurance company is subject to  
1065 prior approval by the commissioner.

1066 (4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance  
1067 company that is a sponsored captive insurance company may issue a security to a person not  
1068 described in Section 31A-37-401 if the issuance to that person is approved by the  
1069 commissioner before the issuance of the security.

1070 (5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company  
1071 having a certificate of authority as a special purpose financial captive insurance company shall:

1072 (a) at the time of initial application for a certificate of authority as a special purpose  
1073 financial captive insurance company, possess unimpaired paid-in capital and surplus of not less  
1074 than \$500,000; and

1075 (b) maintain at least \$500,000 of unimpaired paid-in capital and surplus of not less  
1076 than \$500,000 during the time that it holds a certificate of authority under this chapter.

1077 (6) (a) For purposes of a sponsored captive insurance company having a certificate of  
1078 authority as a special purpose financial captive insurance company, this Subsection (6) applies  
1079 to:

1080 (i) a security issued by the special purpose financial captive insurance company with  
1081 respect to a protected cell; or

1082 (ii) a contract or obligation of the special purpose financial captive insurance company  
1083 with respect to a protected cell.

1084 (b) A sponsored captive insurance company having a certificate of authority as a  
1085 special purpose financial captive insurance company shall include with a security, contract, or  
1086 obligation described in Subsection (6)(a):

1087 (i) the designation of the protected cell; and

1088 (ii) a disclosure in a form and content satisfactory to the commissioner to the effect that  
1089 the holder of the security or a counterparty to the contract or obligation has no right or recourse  
1090 against the special purpose financial captive insurance company and its assets other than  
1091 against an asset properly attributable to the protected cell.

1092 (c) Notwithstanding the requirements of this Subsection (6) and subject to other  
1093 statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a  
1094 creditor, ceding insurer, or another person may not use a failure to include a disclosure  
1095 described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

1096 (i) the general account of the special purpose financial captive insurance company; or

1097 (ii) the assets of another protected cell of the special financial captive insurance  
1098 company.

1099 (7) In addition to Section 31A-37-401, a sponsored captive insurance company having  
1100 a certificate of authority as a special purpose financial captive insurance company is subject to  
1101 the following with respect to a protected cell:

1102 (a) (i) A sponsored captive insurance company having a certificate of authority as a  
1103 special purpose financial captive insurance company shall establish a protected cell only for the  
1104 purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding  
1105 insurer with the intent of facilitating an insurance securitization.

1106 (ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a  
1107 certificate of authority as a special purpose financial captive insurance company shall establish  
1108 a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

1109 (iii) A sponsored captive insurance company having a certificate of authority as a  
1110 special purpose financial captive insurance company shall establish a separate protected cell  
1111 with respect to each reinsurance contract that is funded in whole or in part by a separate  
1112 insurance securitization transaction.

1113 (b) A sponsored captive insurance company having a certificate of authority as a  
1114 special purpose financial captive insurance company may not sale, exchange, or transfer an  
1115 asset by, between, or among any of its protected cells without the prior approval of the  
1116 commissioner.

1117 (8) (a) A sponsored captive insurance company having a certificate of authority as a  
1118 special purpose financial captive insurance company shall attribute an asset or liability to a  
1119 protected cell and to the general account in accordance with the plan of operation approved by  
1120 the commissioner.

1121 (b) Except as provided by Subsection (8)(a), a sponsored captive insurance company  
1122 having a certificate of authority as a special purpose financial captive insurance company may  
1123 not attribute an asset or liability between:

1124 (i) its general account and a protected cell; or

1125 (ii) its protected cells.

1126 (c) A sponsored captive insurance company having a certificate of authority as a  
1127 special purpose financial captive insurance company shall attribute:

1128 (i) an insurance obligation, asset, or liability relating to a reinsurance contract entered  
1129 into with respect to a protected cell; and

1130 (ii) an insurance securitization transaction related to the obligation, asset, or liability  
1131 described in Subsection (8)(c)(i), including a security issued by the special purpose financial  
1132 captive insurance company as part of the insurance securitization, to the protected cell.

1133 (d) The following shall reflect an insurance obligation, asset, or liability relating to a  
1134 reinsurance contract and the insurance securitization transaction that are attributed to a  
1135 protected cell:

1136 (i) a right, benefit, obligation, or a liability of a security attributable to a protected cell  
1137 described in Subsection (8)(c);

1138 (ii) the performance under a reinsurance contract and the related insurance  
1139 securitization transaction; and

1140 (iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation  
1141 agreement to which the special purpose financial captive insurance company is a party,  
1142 including a payment made by or due to be made to the special purpose financial captive  
1143 insurance company pursuant to the terms of the tax allocation agreement.

1144 (9) In addition to Section 31A-37a-502:

1145 (a) Title 31A, Chapter 27a, Insurer Receivership Act, applies to each protected cell of a  
1146 sponsored captive insurance company having a certificate of authority as a special purpose  
1147 financial captive insurance company.

1148 (b) A proceeding or action taken by the commissioner pursuant to Title 31A, Chapter  
1149 27a, Insurer Receivership Act, with respect to a protected cell of a sponsored captive insurance  
1150 company having a certificate of authority as a special purpose financial captive insurance  
1151 company may not be the sole basis for a proceeding pursuant to Title 31A, Chapter 27a, Insurer  
1152 Receivership Act, with respect to:

1153 (i) another protected cell of the special purpose financial captive insurance company;

1154 or

1155 (ii) the special purpose financial captive insurance company's general account.

1156 (c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose  
1157 financial captive insurance company shall ensure that the assets attributable to one protected  
1158 cell are not applied to the liabilities attributable to:

1159 (A) another protected cell; or

1160 (B) the special purpose financial captive insurance company's general account.

1161 (ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more  
1162 than one protected cell, the receiver shall deal with the asset or liability in accordance with the  
1163 terms of a relevant governing instrument or contract.

1164 (d) The insolvency of a protected cell of a sponsored captive insurance company  
1165 having a certificate of authority as a special purpose financial captive insurance company may  
1166 not be the sole basis for the commissioner to prohibit:

1167 (i) a payment by the special purpose financial captive insurance company made  
1168 pursuant to a special purpose financial captive insurance company security or reinsurance  
1169 contract with respect to another protected cell; or

1170 (ii) an action required to make a payment described in Subsection (9)(d)(i).

1171 Section 22. Section **31A-37a-301** is enacted to read:

1172 **Part 3. Formation and Assets**

1173 **31A-37a-301. Formation.**

1174 (1) A special purpose financial captive insurance company may be:

1175 (a) incorporated as a stock insurer with its capital divided into shares and held by its  
1176 stockholders; or

1177 (b) organized as a manager-managed limited liability company.

1178 (2) A special purpose financial captive insurance company's organizational documents  
1179 shall limit the special purpose financial captive insurance company's authority to transact the  
1180 business of insurance or reinsurance to those activities that the special purpose financial  
1181 captive insurance company conducts to accomplish its purposes as expressed in this chapter.

1182 Section 23. Section **31A-37a-302** is enacted to read:

1183 **31A-37a-302. Minimum capital and surplus.**

1184 (1) The commissioner may not issue a special purpose financial captive insurance  
1185 company a certificate of authority under this chapter unless it possesses unimpaired paid-in  
1186 capital and surplus of not less than \$250,000 on the day on which the certificate of authority is  
1187 issued.

1188 (2) A special purpose financial captive insurance company shall maintain unimpaired  
1189 paid-in capital and surplus of not less than \$250,000 at all times when having a certificate of  
1190 authority under this chapter.

1191 Section 24. Section **31A-37a-303** is enacted to read:

1192 **31A-37a-303. Disposition of assets -- Investments.**

1193 (1) A special purpose financial captive insurance company or a person on its behalf  
1194 shall preserve and administer an asset of the special purpose financial captive insurance  
1195 company to satisfy the liabilities and obligations of the special purpose financial captive  
1196 insurance company incident to:

1197 (a) the reinsurance contract;

1198 (b) an insurance securitization; and

1199 (c) an agreement related to Subsection (1)(a) or (b).

1200 (2) In a special purpose financial captive insurance company insurance securitization, a  
1201 security offering memorandum or other document issued to a prospective investor regarding  
1202 the offer and sale of a surplus note or other security shall include a disclosure that all or part of  
1203 the proceeds of the insurance securitization will be used to fund the special purpose financial  
1204 captive insurance company's obligations to the ceding insurer.

1205 (3) A special purpose financial captive insurance company is not subject to a restriction

1206 on investments other than the following:

1207 (a) A special purpose financial captive insurance company may not make a loan to a  
1208 person other than:

1209 (i) as permitted under its plan of operation; or

1210 (ii) as otherwise approved in advance of the loan by the commissioner.

1211 (b) The commissioner may prohibit or limit an investment that threatens the solvency  
1212 or liquidity of a special purpose financial captive insurance company unless the investment is  
1213 otherwise approved in:

1214 (i) the special purpose financial captive insurance company's plan of operation; or

1215 (ii) an order issued to the special purpose financial captive insurance company pursuant  
1216 to Section 31A-37a-201.

1217 Section 25. Section **31A-37a-304** is enacted to read:

1218 **31A-37a-304. Securities.**

1219 (1) (a) A special purpose financial captive insurance company may:

1220 (i) subject to the prior approval of the commissioner, account for the proceeds of a  
1221 surplus note issued by the special purpose financial captive insurance company as surplus; and

1222 (ii) except as provided in Subsection (1)(b), submit for prior approval of the  
1223 commissioner a periodic written request for authorization to make a payment of interest on or a  
1224 repayment of principal of a surplus note or other debt obligation issued by the special purpose  
1225 financial captive insurance company.

1226 (b) (i) The commissioner may not approve a payment described in Subsection (1)(a)(i)  
1227 if the commissioner determines that the payment would jeopardize the ability of the special  
1228 purpose financial captive insurance company or another person to fulfill its respective  
1229 obligations pursuant to a special purpose financial captive insurance company insurance  
1230 securitization agreement, reinsurance contract, or a related transaction.

1231 (ii) In lieu of approval of a periodic written request for authorization to make a  
1232 payment of interest on or repayment of principal of a surplus note or other debt obligation  
1233 issued by the special purpose financial captive insurance company, the commissioner may  
1234 approve a formula or plan for payment of interest, principal, or both with respect to the surplus  
1235 note or debt obligation.

1236 (iii) A special purpose financial captive insurance company shall include a formula or



1237 plan approved under Subsection (1)(b)(ii) in the special purpose financial captive insurance  
1238 company's plan of operation.

1239 (2) In addition to Section 31A-37-302, a special purpose financial captive insurance  
1240 company may not declare or pay a dividend or distribution if the dividend or distribution  
1241 jeopardizes the ability of the special purpose financial captive insurance company or another  
1242 person to fulfill the special purpose financial captive insurance company's or other person's  
1243 respective obligations pursuant to a special purpose financial captive insurance company  
1244 insurance securitization agreement, a reinsurance contract, or a related transaction.

1245 (3) (a) A special purpose financial captive insurance company security is not subject to  
1246 regulation as an insurance or reinsurance contract.

1247 (b) An investor in a special purpose financial captive insurance company security or a  
1248 holder of a special purpose financial captive insurance company security may not be considered  
1249 to be transacting the business of insurance in this state solely by reason of having an interest in  
1250 the security.

1251 (c) The following people involved in an insurance securitization by a special purpose  
1252 financial captive insurance company may not be considered to be an insurance producer or  
1253 broker, or to be conducting business as an insurer, reinsurer, insurance agency, brokerage,  
1254 intermediary, advisory, or consulting business solely by virtue of the person's underwriting  
1255 activities in connection with the insurance securitization:

1256 (i) an underwriter's placement;

1257 (ii) a selling agent; or

1258 (iii) a partner, commissioner, officer, member, manager, employee, agent,  
1259 representative, or advisor of a person listed in Subsection (3)(c)(i) or (ii).

1260 Section 26. Section **31A-37a-401** is enacted to read:

1261 **Part 4. Reinsurance**

1262 **31A-37a-401. Purchase of reinsurance.**

1263 Subject to the prior approval of the commissioner, a special purpose financial captive  
1264 insurance company may purchase reinsurance to cede the risks assumed under a reinsurance  
1265 contract.

1266 Section 27. Section **31A-37a-402** is enacted to read:

1267 **31A-37a-402. Permitted reinsurance.**

1268 (1) (a) A special purpose financial captive insurance company may reinsure only the  
1269 risks of a ceding insurer, pursuant to a reinsurance contract.

1270 (b) A special purpose financial captive insurance company may not issue a contract of  
1271 insurance or a contract for assumption of risk or indemnification of loss other than a  
1272 reinsurance contract described in Subsection (1)(a).

1273 (2) Unless otherwise approved in advance by the commissioner, a special purpose  
1274 financial captive insurance company may not assume or retain exposure to insurance or  
1275 reinsurance losses for its own account that are not funded by:

1276 (a) proceeds from a special purpose financial captive insurance company insurance  
1277 securitization;

1278 (b) a letter of credit; or

1279 (c) an asset described in Subsection 31A-37a-102(1)(c);

1280 (d) a premium or another amount payable by the ceding insurer to the special purpose  
1281 financial captive insurance company pursuant to the reinsurance contract; and

1282 (e) a return on investment of an item described in Subsections (2)(a) through (d).

1283 (3) (a) A reinsurance contract shall contain a provision reasonably required or  
1284 approved by the commissioner.

1285 (b) A requirement described in Subsection (3)(a) shall take into account the laws  
1286 applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance  
1287 provided under the reinsurance contract.

1288 (4) Subject to the prior approval of the commissioner, a special purpose financial  
1289 captive insurance company may cede risks assumed through a reinsurance contract to one or  
1290 more reinsurers through the purchase of reinsurance.

1291 (5) (a) This Subsection (5) applies to a contract or commercial activity that:

1292 (i) relates to or is incidental to a reinsurance contract; and

1293 (ii) is necessary to fulfill the purposes of:

1294 (A) a reinsurance contract;

1295 (B) insurance securitization; and

1296 (C) this chapter.

1297 (b) A special purpose financial captive insurance company may engage in a contract or  
1298 commercial activity described in Subsection (5)(a) if the contract or commercial activity is:

- 1299 (i) in the special purpose financial captive insurance company's plan of operation; or  
1300 (ii) approved in advance by the commissioner.
- 1301 (c) A contract or commercial activity described in Subsection (5)(a) include:  
1302 (i) entering into a reinsurance contract;  
1303 (ii) issuing a special purpose financial captive insurance company security;  
1304 (iii) complying with a term of a contract or security described in Subsection (5)(c)(i) or  
1305 (ii);  
1306 (iv) entering into:  
1307 (A) a trust;  
1308 (B) a guaranteed investment contract;  
1309 (C) a swap;  
1310 (D) a derivative transaction;  
1311 (E) a tax transaction;  
1312 (F) an administration transaction;  
1313 (G) a reimbursement transaction; or  
1314 (H) a fiscal agent transaction;  
1315 (v) complying with a trust indenture, reinsurance, or retrocession; and  
1316 (vi) another agreement necessary or incidental to effect an insurance securitization in  
1317 compliance with:  
1318 (A) the special purpose financial captive insurance company's plan of operation; and  
1319 (B) this chapter.
- 1320 (6) Unless otherwise approved in advance by the commissioner, a reinsurance contract  
1321 may not contain a provision for payment by the special purpose financial captive insurance  
1322 company in discharge of its obligations under the reinsurance contract to a person other than  
1323 the ceding insurer or any receiver of the ceding insurer.
- 1324 (7) A special purpose financial captive insurance company shall notify the  
1325 commissioner immediately of an action by a ceding insurer or another person to foreclose on or  
1326 otherwise take possession of collateral provided by the special purpose financial captive  
1327 insurance company to secure an obligation of the special purpose financial captive insurance  
1328 company.
- 1329 Section 28. Section **31A-37a-501** is enacted to read:

Part 5. Enforcement and Delinquency

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

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

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

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

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

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

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

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

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

(1) Except as otherwise provided in this section, Title 31A, Chapter 27a, Insurer Receivership Act, applies to a special purpose financial captive insurance company.

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

(3) An amount recoverable by the receiver of a special purpose financial captive insurance company under a reinsurance contract may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to a ceding insurer, notwithstanding a contract or other documentation governing the special purpose financial captive insurance company insurance securitization.

(4) The following applies notwithstanding Title 31A, Chapter 27a, Insurer

1361 Receivership Act, or another law of this state:

1362 (a) An application or petition or a temporary restraining order or injunction issued  
1363 pursuant to Title 31A, Chapter 27a, Insurer Receivership Act, with respect to a ceding insurer  
1364 does not prohibit the transaction of business by a special purpose financial captive insurance  
1365 company, including:

1366 (i) a payment by a special purpose financial captive insurance company made with  
1367 respect to a special purpose financial captive insurance company security; or

1368 (ii) an action or proceeding against a special purpose financial captive insurance  
1369 company or its assets.

1370 (b) (i) Subject to Subsection (4)(b)(ii), the commencement of a summary proceeding  
1371 with respect to a special purpose financial captive insurance company and an order issued by  
1372 the court in the summary proceeding may not prohibit:

1373 (A) a payment by a special purpose financial captive insurance company; or

1374 (B) the special purpose financial captive insurance company from taking an action  
1375 required to make a payment described in this Subsection (4)(b)(i).

1376 (ii) Subsection (4)(b)(i) applies only if the payment is made:

1377 (A) pursuant to a special purpose financial captive insurance company security or  
1378 reinsurance contract; and

1379 (B) consistent with the special purpose financial captive insurance company's plan of  
1380 operation and any order issued to the special purpose financial captive insurance company  
1381 pursuant to Section 31A-37a-201.

1382 (c) A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding  
1383 insurer to a special purpose financial captive insurance company of money or other property  
1384 made pursuant to a reinsurance contract.

1385 (d) A receiver of a special purpose financial captive insurance company may not void a  
1386 nonfraudulent transfer by the special purpose financial captive insurance company of money or  
1387 other property:

1388 (i) (A) made to a ceding insurer pursuant to a reinsurance contract; or

1389 (B) made to or for the benefit of a holder of a special purpose financial captive  
1390 insurance company security with respect to the special purpose financial captive insurance  
1391 company security; and

1392           (ii) made consistent with the special purpose financial captive insurance company's  
1393 plan of operation and an order issued to the special purpose financial captive insurance  
1394 company pursuant to Section 31A-37a-201.

1395           (5) (a) Except to fulfill an obligation under a reinsurance contract and notwithstanding  
1396 another provision of this chapter, Chapter 37, Captive Insurance Companies Act, or other laws  
1397 of this state, the assets of a special purpose financial captive insurance company may not be  
1398 consolidated with or included in the estate of a ceding insurer in a delinquency proceeding  
1399 against the ceding insurer pursuant to this chapter for any purpose including a distribution to a  
1400 creditor of the ceding insurer.

1401           (b) This Subsection (5) applies to assets that include an asset held in trust:

1402           (i) on a funds-withheld basis; or

1403           (ii) under another arrangement to secure the special purpose financial captive insurance  
1404 company's obligations under a reinsurance contract.

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**Legislative Review Note**  
**as of 11-15-07 8:48 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 55 - Captive Insurance Company Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

This bill increases a threshold on the amount of revenue the Department of Insurance is authorized to retain before depositing proceeds into the General Fund. This will result in decreased General Fund revenue. Anticipated increases in the number of captive insurers may require additional resources in future years.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	(\$80,000)	(\$257,200)	(\$257,200)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$80,000)</b>	<b>(\$257,200)</b>	<b>(\$257,200)</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.