

Representative James A. Dunnigan proposes the following substitute bill:

CAPTIVE INSURANCE COMPANY

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Kevin T. VanTassell

LONG TITLE

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;



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

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill has multiple effective dates.

43 **Utah Code Sections Affected:**

44 AMENDS:

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

56 ENACTS:

- 57 **31A-37a-101**, Utah Code Annotated 1953
- 58 **31A-37a-102**, Utah Code Annotated 1953
- 59 **31A-37a-103**, Utah Code Annotated 1953
- 60 **31A-37a-104**, Utah Code Annotated 1953
- 61 **31A-37a-105**, Utah Code Annotated 1953
- 62 **31A-37a-201**, Utah Code Annotated 1953
- 63 **31A-37a-202**, Utah Code Annotated 1953
- 64 **31A-37a-203**, Utah Code Annotated 1953
- 65 **31A-37a-204**, Utah Code Annotated 1953
- 66 **31A-37a-205**, Utah Code Annotated 1953
- 67 **31A-37a-301**, Utah Code Annotated 1953
- 68 **31A-37a-302**, Utah Code Annotated 1953
- 69 **31A-37a-303**, Utah Code Annotated 1953
- 70 **31A-37a-304**, Utah Code Annotated 1953
- 71 **31A-37a-401**, Utah Code Annotated 1953
- 72 **31A-37a-402**, Utah Code Annotated 1953
- 73 **31A-37a-501**, Utah Code Annotated 1953
- 74 **31A-37a-502**, Utah Code Annotated 1953



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

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

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

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

81 (b) The commissioner shall:

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

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

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

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

88 9, Taxation of Admitted Insurers, the fee provided for in this section constitutes the sole tax or
89 fee under the laws of this state that may be otherwise levied or assessed on a captive insurance
90 company, and no other occupation tax or other tax or fee may be levied or collected from a
91 captive insurance company by the state or a county, city, or municipality within this state.

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

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

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

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

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

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

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

104 As used in this chapter:

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

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

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

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

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

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

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

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

121 (a) the association or its member organizations:

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

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

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

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

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

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

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

135 (c) the association.

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

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

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

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

145 (a) a branch captive insurance company;

146 (b) a pure captive insurance company;

147 (c) an association captive insurance company;

148 (d) a sponsored captive insurance company;

149 (e) an industrial insured captive insurance company;

- 150 (f) a captive reinsurance company; ~~[or]~~
- 151 (g) a special purpose captive insurance company~~[-]; or~~
- 152 (h) a special purpose financial captive insurance company.
- 153 (9) "Captive reinsurance company" means a ~~[reinsurance company]~~ reinsurer that is:
- 154 (a) formed or ~~[licensed]~~ has a certificate of authority pursuant to this chapter;
- 155 (b) wholly owned by a qualifying ~~[reinsurance]~~ reinsurer parent company; and
- 156 (c) a stock corporation.
- 157 (10) "Common ownership and control" means that two or more captive insurance
- 158 companies are owned or controlled by the same person or group of persons as follows:
- 159 (a) in the case of a captive insurance company that is a stock ~~[corporations]~~
- 160 corporation, the direct or indirect ownership ~~[by the same shareholder or shareholders]~~ of 80%
- 161 or more of the outstanding voting stock of ~~[two or more corporations]~~ the stock corporation;
- 162 ~~[and]~~
- 163 (b) in the case of a captive insurance company that is a mutual ~~[corporations]~~
- 164 corporation, the direct or indirect ownership ~~[by the same member or members]~~ of 80% or
- 165 more of the surplus and the voting power of ~~[two or more corporations:]~~ the mutual
- 166 corporation;
- 167 (c) in the case of a captive insurance company that is a limited liability company, the
- 168 direct or indirect ownership by the same member or members of 80% or more of the
- 169 membership interests in the limited liability company; or
- 170 (d) in the case of a sponsored captive insurance company, a protected cell is a separate
- 171 captive insurance company owned and controlled by the protected cell's participant, only if:
- 172 (i) the participant is the only participant with respect to the protected cell; and
- 173 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored
- 174 captive insurance company through common ownership and control.
- 175 (11) "Commissioner" means the Insurance Commissioner or the commissioner's
- 176 designee.
- 177 (12) "Consolidated debt to total capital ratio" means the ratio of Subsection (12)(a) to
- 178 (b).
- 179 (a) This Subsection (12)(a) is an amount equal to the sum of all debts and hybrid
- 180 capital instruments including:

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

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

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

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

216 and

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

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

220 (a) insures risks of[~~:(a)~~] the industrial insureds that comprise the industrial insured
221 group; and

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

223 (b) may insure the risks of:

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

225 (ii) a controlled unaffiliated business of:

226 (A) an industrial insured; or

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

228 (18) "Industrial insured group" means:

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

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

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

234 (b) a group that is:

235 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section
236 3901 et seq., as amended, as a corporation or other limited liability association; and

237 (ii) taxable under this title as a:

238 (A) stock corporation; or

239 (B) mutual insurer[~~;~~]; or

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

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

243 association] a person that belongs to an association.

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

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

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

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

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

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

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

257 (22) "Participant contract" means a contract by which a sponsored captive insurance
258 company:

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

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

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

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

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

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

267 (b) that has:

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

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

270 (26) "Special purpose financial captive insurance company" is as defined in Section
271 31A-37a-102.

272 [~~(26)~~] (27) "Sponsor" means an entity that:

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

274 (b) is approved by the commissioner to:

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

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

277 [~~(27)~~] (28) "Sponsored captive insurance company" means a captive insurance

278 company:

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

280 one or more sponsors;

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

282 (c) that insures the risks of a separate [~~participants~~] participant through the contract;

283 and

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

285 [~~(28)~~] (29) "Treasury rates" means the United States Treasury strip asked yield as

286 published in the Wall Street Journal as of a balance sheet date.

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

288 **31A-37-103. Chapter exclusivity.**

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

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

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

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

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

298 **31A-37-104. Applicability of reorganization, receivership, and injunction**
299 **authority.**

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

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

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

315 **31A-37-106. Authority to make rules -- Authority to issue orders.**

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

317 commissioner may adopt rules to:

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

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

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

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

371 **31A-37-202. Permissive areas of insurance.**

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

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

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

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

380 (B) a controlled unaffiliated business; or

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

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

384 (A) an affiliate;

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

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

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

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

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

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

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

394 (C) a controlled unaffiliated business of:

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

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

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

398 parent;

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

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

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

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

403 and

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

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

408 (i) insurance;

409 (ii) reinsurance; or

410 (iii) both insurance and reinsurance.

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

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

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

415 (i) a board of directors meeting; or

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

417 (c) maintain in this state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

479 (i) a business plan at the level of detail required by the commissioner under Section
480 31A-37-106 demonstrating:

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

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

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

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

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

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

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

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

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

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

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

507 ~~[(5)]~~ (6) (a) A captive insurance company shall pay to the department the following
508 nonrefundable fees established by the department under Sections 31A-3-103 and 63-38-3.2:

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

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

513 (iii) a certificate of authority renewal fee.

514 (b) The commissioner may:

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

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

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

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

521 ~~[(6)]~~ (7) If the commissioner is satisfied that the documents and statements filed by the

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

525 ~~[(7)]~~ (8) A certificate of authority granted under this section expires annually and must
 526 be renewed by July 1 of each year.

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

528 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
 529 **mandatory.**

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

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

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

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

534 ~~[or]~~

535 (d) an insurance holding company that:

536 (i) controls an insurer licensed pursuant to the laws of ~~[any]~~ a state; and

537 (ii) is subject to registration pursuant to the holding company system of laws of the

538 state of domicile of the insurer described in Subsection (1)(d)(i)~~[-]; or~~

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

541 (2) (a) The business written by a sponsored captive insurance company with respect to

542 ~~[each]~~ a protected cell shall be fronted by an ~~[insurance company]~~ insurer that is:

543 (i) authorized or approved:

544 (A) under the laws of ~~[any]~~ a state; or

545 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
 546 insurance company licensed pursuant to the laws of ~~[any]~~ a state;

547 (ii) reinsured by a reinsurer authorized or approved by this state; or

548 (iii) subject to Subsection (2)(b), secured by a trust fund:

549 (A) in the United States;

550 (B) for the benefit of policyholders and claimants; and

551 (C) funded by an irrevocable letter of credit or other asset acceptable to the

552 commissioner.

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

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

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

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

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

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

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

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

573 **31A-37-501. Reports to commissioner.**

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

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

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

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

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

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

589 (c) Except as otherwise provided:

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

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

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

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

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

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

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

610 (i) shall be in writing; and

611 (ii) is subject to public inspection.

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

613 **31A-37-502. Examination.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

641 **31A-37-602. Requirements of a captive reinsurance company.**

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

645 (i) property and casualty insurance; or

646 (ii) reinsurance contracts.

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

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

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

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

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

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

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

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

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

661 (B) charter; and

662 (ii) bylaws;

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

665 (c) other documents required by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

696 **31A-37-603. Minimum capitalization or reserves for a captive reinsurance**
697 **company.**

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

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

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

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

704 (i) cash; or

705 (ii) securities.

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

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

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

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

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

716 **COMPANY ACT**

717 **Part 1. General Provisions**

718 **31A-37a-101. Title.**

719 This chapter is known as the "Special Purpose Financial Captive Insurance Company
720 Act."

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

722 **31A-37a-102. Definitions.**

723 (1) For purposes of this chapter:

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

725 (i) is approved by the commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

806 **31A-37a-103. Applicable law.**

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

808 (i) this chapter; and

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

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

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

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

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

818 **31A-37a-104. Reporting -- Books and records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

850 (ii) the commissioner may readily:

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

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

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

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

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

863 complete copy of the original in the state.

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

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

867 **31A-37a-105. Transition.**

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

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

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

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

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

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

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

882 **31A-37a-201. Certificate of authority requirements.**

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

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

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

892 (i) a complete description of:

893 (A) a significant transaction including:

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

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

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

930 (I) the liquidity of assets; and

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

933 (Aa) a reinsurance contract; and

934 (Bb) an insurance securitization transaction; and

935 (C) the following comply with this chapter:

936 (I) a reinsurance contract; and

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

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

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

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

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

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

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

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

953 and

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

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

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

990 (a) the commissioner considers appropriate; and

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

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

994 **31A-37a-202. Revocation, suspension, amendment, or modification of a certificate**
995 **of authority.**

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

1000 (1) the special purpose financial captive insurance company consents to the revocation,
1001 suspension, amendment, or modification; or

1002 (2) the commissioner shows by clear and convincing evidence that the revocation,
1003 suspension, amendment, or modification is necessary to avoid irreparable harm to:

1004 (a) a special purpose financial captive insurance company; or

1005 (b) a ceding insurer.

1006 Section 19. Section **31A-37a-203** is enacted to read:

1007 **31A-37a-203. Reporting related to transactions.**

1008 (1) A special purpose financial captive insurance company shall provide the
1009 commissioner with a copy of a complete set of executed documentation of an insurance
1010 securitization no later than 30 days after the day on which the insurance securitization
1011 transaction closes.

1012 (2) Section 31A-37-503 applies to:

1013 (a) information submitted pursuant to Subsection (1);

1014 (b) information submitted pursuant to Subsection 31A-37a-201(2); or

1015 (c) an order issued to a special purpose financial captive insurance company pursuant
1016 to Subsection 31A-37a-201(4).

1017 Section 20. Section **31A-37a-204** is enacted to read:

1018 **31A-37a-204. Prior approval of a change in plan of operation and other**
1019 **transactions.**

1020 (1) A special purpose financial captive insurance company may not change its plan of
1021 operation without the prior approval of the commissioner.

1022 (2) (a) Subject to Subsection (2)(b), a special purpose financial captive insurance
1023 company may not engage in a transaction or series of transactions without the prior approval of
1024 the commissioner if the transaction or series of transactions:

1025 (i) is undertaken to dissolve the special purpose financial captive insurance company;

1026 or

1027 (ii) results in the termination of all or a part of a special purpose financial captive
1028 insurance company's business.

1029 (b) A special purpose financial captive insurance company is not required to obtain the
1030 prior approval of the commissioner for a transaction or series of transactions described in
1031 Subsection (2)(a)(ii) if:

1032 (i) the transaction or series of transactions is done in accordance with a document or
1033 agreement described in the special purpose financial captive insurance company's plan of
1034 operation; and

1035 (ii) the special purpose financial captive insurance company notifies the commissioner
1036 prior to the transaction or series of transactions.

1037 (3) A special purpose financial captive insurance company shall notify the
1038 commissioner before a change in the legal ownership of a security issued by the special
1039 purpose financial captive insurance company.

1040 Section 21. Section **31A-37a-205** is enacted to read:

1041 **31A-37a-205. Sponsored captives.**

1042 In addition to the other provisions of this chapter, this section applies to a sponsored
1043 captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a
1044 certificate of authority as a special purpose financial captive insurance company pursuant to
1045 this chapter.

1046 (1) A sponsored captive insurance company may have a certificate of authority as a
1047 special purpose financial captive insurance company under this chapter.

1048 (2) (a) For purposes of a sponsored captive insurance company having a certificate of

1049 authority as a special purpose financial captive insurance company, "general account" means
1050 the assets and liabilities of the sponsored captive insurance company not attributable to a
1051 protected cell.

1052 (b) For purposes of applying Title 31A, Chapter 27a, Insurer Receivership Act, to a
1053 sponsored captive insurance company having a certificate of authority as a special purpose
1054 financial captive insurance company, the definition of "insolvency" and "insolvent" in Section
1055 31A-37a-102 shall be applied separately to:

1056 (i) each protected cell; and

1057 (ii) the special purpose financial captive insurance company's general account.

1058 (3) (a) A participant in a sponsored captive insurance company having a certificate of
1059 authority as a special purpose financial captive insurance company must be a ceding insurer,
1060 unless approved by the commissioner before a person becomes a participant.

1061 (b) A change in a participant in a sponsored captive insurance company having a
1062 certificate of authority as a special purpose financial captive insurance company is subject to
1063 prior approval by the commissioner.

1064 (4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance
1065 company that is a sponsored captive insurance company may issue a security to a person not
1066 described in Section 31A-37-401 if the issuance to that person is approved by the
1067 commissioner before the issuance of the security.

1068 (5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company
1069 having a certificate of authority as a special purpose financial captive insurance company shall:

1070 (a) at the time of initial application for a certificate of authority as a special purpose
1071 financial captive insurance company, possess unimpaired paid-in capital and surplus of not less
1072 than \$500,000; and

1073 (b) maintain at least \$500,000 of unimpaired paid-in capital and surplus of not less
1074 than \$500,000 during the time that it holds a certificate of authority under this chapter.

1075 (6) (a) For purposes of a sponsored captive insurance company having a certificate of
1076 authority as a special purpose financial captive insurance company, this Subsection (6) applies
1077 to:

1078 (i) a security issued by the special purpose financial captive insurance company with
1079 respect to a protected cell; or

1080 (ii) a contract or obligation of the special purpose financial captive insurance company
1081 with respect to a protected cell.

1082 (b) A sponsored captive insurance company having a certificate of authority as a
1083 special purpose financial captive insurance company shall include with a security, contract, or
1084 obligation described in Subsection (6)(a):

1085 (i) the designation of the protected cell; and

1086 (ii) a disclosure in a form and content satisfactory to the commissioner to the effect that
1087 the holder of the security or a counterparty to the contract or obligation has no right or recourse
1088 against the special purpose financial captive insurance company and its assets other than
1089 against an asset properly attributable to the protected cell.

1090 (c) Notwithstanding the requirements of this Subsection (6) and subject to other
1091 statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a
1092 creditor, ceding insurer, or another person may not use a failure to include a disclosure
1093 described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

1094 (i) the general account of the special purpose financial captive insurance company; or

1095 (ii) the assets of another protected cell of the special financial captive insurance
1096 company.

1097 (7) In addition to Section 31A-37-401, a sponsored captive insurance company having
1098 a certificate of authority as a special purpose financial captive insurance company is subject to
1099 the following with respect to a protected cell:

1100 (a) (i) A sponsored captive insurance company having a certificate of authority as a
1101 special purpose financial captive insurance company shall establish a protected cell only for the
1102 purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding
1103 insurer with the intent of facilitating an insurance securitization.

1104 (ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a
1105 certificate of authority as a special purpose financial captive insurance company shall establish
1106 a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

1107 (iii) A sponsored captive insurance company having a certificate of authority as a
1108 special purpose financial captive insurance company shall establish a separate protected cell
1109 with respect to each reinsurance contract that is funded in whole or in part by a separate
1110 insurance securitization transaction.

1111 (b) A sponsored captive insurance company having a certificate of authority as a
1112 special purpose financial captive insurance company may not sale, exchange, or transfer an
1113 asset by, between, or among any of its protected cells without the prior approval of the
1114 commissioner.

1115 (8) (a) A sponsored captive insurance company having a certificate of authority as a
1116 special purpose financial captive insurance company shall attribute an asset or liability to a
1117 protected cell and to the general account in accordance with the plan of operation approved by
1118 the commissioner.

1119 (b) Except as provided by Subsection (8)(a), a sponsored captive insurance company
1120 having a certificate of authority as a special purpose financial captive insurance company may
1121 not attribute an asset or liability between:

1122 (i) its general account and a protected cell; or

1123 (ii) its protected cells.

1124 (c) A sponsored captive insurance company having a certificate of authority as a
1125 special purpose financial captive insurance company shall attribute:

1126 (i) an insurance obligation, asset, or liability relating to a reinsurance contract entered
1127 into with respect to a protected cell; and

1128 (ii) an insurance securitization transaction related to the obligation, asset, or liability
1129 described in Subsection (8)(c)(i), including a security issued by the special purpose financial
1130 captive insurance company as part of the insurance securitization, to the protected cell.

1131 (d) The following shall reflect an insurance obligation, asset, or liability relating to a
1132 reinsurance contract and the insurance securitization transaction that are attributed to a
1133 protected cell:

1134 (i) a right, benefit, obligation, or a liability of a security attributable to a protected cell
1135 described in Subsection (8)(c);

1136 (ii) the performance under a reinsurance contract and the related insurance
1137 securitization transaction; and

1138 (iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation
1139 agreement to which the special purpose financial captive insurance company is a party,
1140 including a payment made by or due to be made to the special purpose financial captive
1141 insurance company pursuant to the terms of the tax allocation agreement.

1142 (9) In addition to Section 31A-37a-502:

1143 (a) Title 31A, Chapter 27a, Insurer Receivership Act, applies to each protected cell of a
1144 sponsored captive insurance company having a certificate of authority as a special purpose
1145 financial captive insurance company.

1146 (b) A proceeding or action taken by the commissioner pursuant to Title 31A, Chapter
1147 27a, Insurer Receivership Act, with respect to a protected cell of a sponsored captive insurance
1148 company having a certificate of authority as a special purpose financial captive insurance
1149 company may not be the sole basis for a proceeding pursuant to Title 31A, Chapter 27a, Insurer
1150 Receivership Act, with respect to:

1151 (i) another protected cell of the special purpose financial captive insurance company;

1152 or

1153 (ii) the special purpose financial captive insurance company's general account.

1154 (c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose
1155 financial captive insurance company shall ensure that the assets attributable to one protected
1156 cell are not applied to the liabilities attributable to:

1157 (A) another protected cell; or

1158 (B) the special purpose financial captive insurance company's general account.

1159 (ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more
1160 than one protected cell, the receiver shall deal with the asset or liability in accordance with the
1161 terms of a relevant governing instrument or contract.

1162 (d) The insolvency of a protected cell of a sponsored captive insurance company
1163 having a certificate of authority as a special purpose financial captive insurance company may
1164 not be the sole basis for the commissioner to prohibit:

1165 (i) a payment by the special purpose financial captive insurance company made
1166 pursuant to a special purpose financial captive insurance company security or reinsurance
1167 contract with respect to another protected cell; or

1168 (ii) an action required to make a payment described in Subsection (9)(d)(i).

1169 Section 22. Section **31A-37a-301** is enacted to read:

1170 **Part 3. Formation and Assets**

1171 **31A-37a-301. Formation.**

1172 (1) A special purpose financial captive insurance company may be:

1173 (a) incorporated as a stock insurer with its capital divided into shares and held by its
1174 stockholders; or

1175 (b) organized as a manager-managed limited liability company.

1176 (2) A special purpose financial captive insurance company's organizational documents
1177 shall limit the special purpose financial captive insurance company's authority to transact the
1178 business of insurance or reinsurance to those activities that the special purpose financial
1179 captive insurance company conducts to accomplish its purposes as expressed in this chapter.

1180 Section 23. Section **31A-37a-302** is enacted to read:

1181 **31A-37a-302. Minimum capital and surplus.**

1182 (1) The commissioner may not issue a special purpose financial captive insurance
1183 company a certificate of authority under this chapter unless it possesses unimpaired paid-in
1184 capital and surplus of not less than \$250,000 on the day on which the certificate of authority is
1185 issued.

1186 (2) A special purpose financial captive insurance company shall maintain unimpaired
1187 paid-in capital and surplus of not less than \$250,000 at all times when having a certificate of
1188 authority under this chapter.

1189 Section 24. Section **31A-37a-303** is enacted to read:

1190 **31A-37a-303. Disposition of assets -- Investments.**

1191 (1) A special purpose financial captive insurance company or a person on its behalf
1192 shall preserve and administer an asset of the special purpose financial captive insurance
1193 company to satisfy the liabilities and obligations of the special purpose financial captive
1194 insurance company incident to:

1195 (a) the reinsurance contract;

1196 (b) an insurance securitization; and

1197 (c) an agreement related to Subsection (1)(a) or (b).

1198 (2) In a special purpose financial captive insurance company insurance securitization, a
1199 security offering memorandum or other document issued to a prospective investor regarding
1200 the offer and sale of a surplus note or other security shall include a disclosure that all or part of
1201 the proceeds of the insurance securitization will be used to fund the special purpose financial
1202 captive insurance company's obligations to the ceding insurer.

1203 (3) A special purpose financial captive insurance company is not subject to a restriction

1204 on investments other than the following:

1205 (a) A special purpose financial captive insurance company may not make a loan to a
1206 person other than:

1207 (i) as permitted under its plan of operation; or

1208 (ii) as otherwise approved in advance of the loan by the commissioner.

1209 (b) The commissioner may prohibit or limit an investment that threatens the solvency
1210 or liquidity of a special purpose financial captive insurance company unless the investment is
1211 otherwise approved in:

1212 (i) the special purpose financial captive insurance company's plan of operation; or

1213 (ii) an order issued to the special purpose financial captive insurance company pursuant
1214 to Section 31A-37a-201.

1215 Section 25. Section **31A-37a-304** is enacted to read:

1216 **31A-37a-304. Securities.**

1217 (1) (a) A special purpose financial captive insurance company may:

1218 (i) subject to the prior approval of the commissioner, account for the proceeds of a
1219 surplus note issued by the special purpose financial captive insurance company as surplus; and

1220 (ii) except as provided in Subsection (1)(b), submit for prior approval of the
1221 commissioner a periodic written request for authorization to make a payment of interest on or a
1222 repayment of principal of a surplus note or other debt obligation issued by the special purpose
1223 financial captive insurance company.

1224 (b) (i) The commissioner may not approve a payment described in Subsection (1)(a)(i)
1225 if the commissioner determines that the payment would jeopardize the ability of the special
1226 purpose financial captive insurance company or another person to fulfill its respective
1227 obligations pursuant to a special purpose financial captive insurance company insurance
1228 securitization agreement, reinsurance contract, or a related transaction.

1229 (ii) In lieu of approval of a periodic written request for authorization to make a
1230 payment of interest on or repayment of principal of a surplus note or other debt obligation
1231 issued by the special purpose financial captive insurance company, the commissioner may
1232 approve a formula or plan for payment of interest, principal, or both with respect to the surplus
1233 note or debt obligation.

1234 (iii) A special purpose financial captive insurance company shall include a formula or

1235 plan approved under Subsection (1)(b)(ii) in the special purpose financial captive insurance
1236 company's plan of operation.

1237 (2) In addition to Section 31A-37-302, a special purpose financial captive insurance
1238 company may not declare or pay a dividend or distribution if the dividend or distribution
1239 jeopardizes the ability of the special purpose financial captive insurance company or another
1240 person to fulfill the special purpose financial captive insurance company's or other person's
1241 respective obligations pursuant to a special purpose financial captive insurance company
1242 insurance securitization agreement, a reinsurance contract, or a related transaction.

1243 (3) (a) A special purpose financial captive insurance company security is not subject to
1244 regulation as an insurance or reinsurance contract.

1245 (b) An investor in a special purpose financial captive insurance company security or a
1246 holder of a special purpose financial captive insurance company security may not be considered
1247 to be transacting the business of insurance in this state solely by reason of having an interest in
1248 the security.

1249 (c) The following people involved in an insurance securitization by a special purpose
1250 financial captive insurance company may not be considered to be an insurance producer or
1251 broker, or to be conducting business as an insurer, reinsurer, insurance agency, brokerage,
1252 intermediary, advisory, or consulting business solely by virtue of the person's underwriting
1253 activities in connection with the insurance securitization:

1254 (i) an underwriter's placement;

1255 (ii) a selling agent; or

1256 (iii) a partner, commissioner, officer, member, manager, employee, agent,
1257 representative, or advisor of a person listed in Subsection (3)(c)(i) or (ii).

1258 Section 26. Section **31A-37a-401** is enacted to read:

Part 4. Reinsurance

1260 **31A-37a-401. Purchase of reinsurance.**

1261 Subject to the prior approval of the commissioner, a special purpose financial captive
1262 insurance company may purchase reinsurance to cede the risks assumed under a reinsurance
1263 contract.

1264 Section 27. Section **31A-37a-402** is enacted to read:

1265 **31A-37a-402. Permitted reinsurance.**

1266 (1) (a) A special purpose financial captive insurance company may reinsure only the
1267 risks of a ceding insurer, pursuant to a reinsurance contract.

1268 (b) A special purpose financial captive insurance company may not issue a contract of
1269 insurance or a contract for assumption of risk or indemnification of loss other than a
1270 reinsurance contract described in Subsection (1)(a).

1271 (2) Unless otherwise approved in advance by the commissioner, a special purpose
1272 financial captive insurance company may not assume or retain exposure to insurance or
1273 reinsurance losses for its own account that are not funded by:

1274 (a) proceeds from a special purpose financial captive insurance company insurance
1275 securitization;

1276 (b) a letter of credit; or

1277 (c) an asset described in Subsection 31A-37a-102(1)(c);

1278 (d) a premium or another amount payable by the ceding insurer to the special purpose
1279 financial captive insurance company pursuant to the reinsurance contract; and

1280 (e) a return on investment of an item described in Subsections (2)(a) through (d).

1281 (3) (a) A reinsurance contract shall contain a provision reasonably required or
1282 approved by the commissioner.

1283 (b) A requirement described in Subsection (3)(a) shall take into account the laws
1284 applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance
1285 provided under the reinsurance contract.

1286 (4) Subject to the prior approval of the commissioner, a special purpose financial
1287 captive insurance company may cede risks assumed through a reinsurance contract to one or
1288 more reinsurers through the purchase of reinsurance.

1289 (5) (a) This Subsection (5) applies to a contract or commercial activity that:

1290 (i) relates to or is incidental to a reinsurance contract; and

1291 (ii) is necessary to fulfill the purposes of:

1292 (A) a reinsurance contract;

1293 (B) insurance securitization; and

1294 (C) this chapter.

1295 (b) A special purpose financial captive insurance company may engage in a contract or
1296 commercial activity described in Subsection (5)(a) if the contract or commercial activity is:

- 1297 (i) in the special purpose financial captive insurance company's plan of operation; or
1298 (ii) approved in advance by the commissioner.
1299 (c) A contract or commercial activity described in Subsection (5)(a) include:
1300 (i) entering into a reinsurance contract;
1301 (ii) issuing a special purpose financial captive insurance company security;
1302 (iii) complying with a term of a contract or security described in Subsection (5)(c)(i) or
1303 (ii);
1304 (iv) entering into:
1305 (A) a trust;
1306 (B) a guaranteed investment contract;
1307 (C) a swap;
1308 (D) a derivative transaction;
1309 (E) a tax transaction;
1310 (F) an administration transaction;
1311 (G) a reimbursement transaction; or
1312 (H) a fiscal agent transaction;
1313 (v) complying with a trust indenture, reinsurance, or retrocession; and
1314 (vi) another agreement necessary or incidental to effect an insurance securitization in
1315 compliance with:
1316 (A) the special purpose financial captive insurance company's plan of operation; and
1317 (B) this chapter.
1318 (6) Unless otherwise approved in advance by the commissioner, a reinsurance contract
1319 may not contain a provision for payment by the special purpose financial captive insurance
1320 company in discharge of its obligations under the reinsurance contract to a person other than
1321 the ceding insurer or any receiver of the ceding insurer.
1322 (7) A special purpose financial captive insurance company shall notify the
1323 commissioner immediately of an action by a ceding insurer or another person to foreclose on or
1324 otherwise take possession of collateral provided by the special purpose financial captive
1325 insurance company to secure an obligation of the special purpose financial captive insurance
1326 company.
1327 Section 28. Section **31A-37a-501** is enacted to read:

1328 **Part 5. Enforcement and Delinquency**

1329 **31A-37a-501. Suspension and revocation.**

1330 (1) (a) The commissioner shall notify a special purpose financial captive insurance
1331 company not less than 30 days before suspending or revoking the special purpose financial
1332 captive insurance company's certificate of authority pursuant to Section 31A-37-505.

1333 (b) In the notice required by Subsection (1)(a) the commissioner shall state the basis
1334 for the suspension or revocation.

1335 (c) The commissioner shall give a special purpose financial captive insurance company
1336 described in this Subsection (1) an opportunity for a hearing pursuant to Title 63, Chapter 46b,
1337 Administrative Procedures Act.

1338 (2) Notwithstanding Subsection (1) and Title 63, Chapter 46b, Administrative
1339 Procedures Act, the commissioner is not required to provide prior notice or a hearing if the
1340 grounds for suspension or revocation of a special purpose financial captive insurance
1341 company's certificate of authority pursuant to Section 31A-37-505 relate primarily to:

1342 (a) the financial condition or soundness of the special purpose financial captive
1343 insurance company; or

1344 (b) a deficiency in the assets of the special purpose financial captive insurance
1345 company.

1346 Section 29. Section **31A-37a-502** is enacted to read:

1347 **31A-37a-502. Delinquency.**

1348 (1) Except as otherwise provided in this section, Title 31A, Chapter 27a, Insurer
1349 Receivership Act, applies to a special purpose financial captive insurance company.

1350 (2) Upon an order of supervision, rehabilitation, or liquidation of a special purpose
1351 financial captive insurance company, the receiver shall manage the assets and liabilities of the
1352 special purpose financial captive insurance company pursuant to this chapter.

1353 (3) An amount recoverable by the receiver of a special purpose financial captive
1354 insurance company under a reinsurance contract may not be reduced or diminished as a result
1355 of the entry of an order of conservation, rehabilitation, or liquidation with respect to a ceding
1356 insurer, notwithstanding a contract or other documentation governing the special purpose
1357 financial captive insurance company insurance securitization.

1358 (4) The following applies notwithstanding Title 31A, Chapter 27a, Insurer

1359 Receivership Act, or another law of this state:

1360 (a) An application or petition or a temporary restraining order or injunction issued
1361 pursuant to Title 31A, Chapter 27a, Insurer Receivership Act, with respect to a ceding insurer
1362 does not prohibit the transaction of business by a special purpose financial captive insurance
1363 company, including:

1364 (i) a payment by a special purpose financial captive insurance company made with
1365 respect to a special purpose financial captive insurance company security; or

1366 (ii) an action or proceeding against a special purpose financial captive insurance
1367 company or its assets.

1368 (b) (i) Subject to Subsection (4)(b)(ii), the commencement of a summary proceeding
1369 with respect to a special purpose financial captive insurance company and an order issued by
1370 the court in the summary proceeding may not prohibit:

1371 (A) a payment by a special purpose financial captive insurance company; or

1372 (B) the special purpose financial captive insurance company from taking an action
1373 required to make a payment described in this Subsection (4)(b)(i).

1374 (ii) Subsection (4)(b)(i) applies only if the payment is made:

1375 (A) pursuant to a special purpose financial captive insurance company security or
1376 reinsurance contract; and

1377 (B) consistent with the special purpose financial captive insurance company's plan of
1378 operation and any order issued to the special purpose financial captive insurance company
1379 pursuant to Section 31A-37a-201.

1380 (c) A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding
1381 insurer to a special purpose financial captive insurance company of money or other property
1382 made pursuant to a reinsurance contract.

1383 (d) A receiver of a special purpose financial captive insurance company may not void a
1384 nonfraudulent transfer by the special purpose financial captive insurance company of money or
1385 other property:

1386 (i) (A) made to a ceding insurer pursuant to a reinsurance contract; or

1387 (B) made to or for the benefit of a holder of a special purpose financial captive
1388 insurance company security with respect to the special purpose financial captive insurance
1389 company security; and

1390 (ii) made consistent with the special purpose financial captive insurance company's
1391 plan of operation and an order issued to the special purpose financial captive insurance
1392 company pursuant to Section 31A-37a-201.

1393 (5) (a) Except to fulfill an obligation under a reinsurance contract and notwithstanding
1394 another provision of this chapter, Chapter 37, Captive Insurance Companies Act, or other laws
1395 of this state, the assets of a special purpose financial captive insurance company may not be
1396 consolidated with or included in the estate of a ceding insurer in a delinquency proceeding
1397 against the ceding insurer pursuant to this chapter for any purpose including a distribution to a
1398 creditor of the ceding insurer.

1399 (b) This Subsection (5) applies to assets that include an asset held in trust:

1400 (i) on a funds-withheld basis; or

1401 (ii) under another arrangement to secure the special purpose financial captive insurance
1402 company's obligations under a reinsurance contract.

1403 Section 30. **Effective date.**

1404 This bill takes effect on May 5, 2008, except that the amendments to Section
1405 31A-3-304 in this bill takes effect on July 1, 2010.