

[First Reprint]

## **ASSEMBLY, No. 2360**

# **STATE OF NEW JERSEY**

## **214th LEGISLATURE**

INTRODUCED FEBRUARY 25, 2010

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen, Essex and Passaic)**

**Assemblywoman DENISE M. COYLE**

**District 16 (Morris and Somerset)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**SYNOPSIS**

Regulates captive insurers.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Financial Institutions and Insurance Committee on May 6, 2010, with amendments.



**(Sponsorship Updated As Of: 6/11/2010)**

1 AN ACT regulating wholly-owned insurance subsidiaries and  
2 supplementing Title 17 of the Revised Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. As used in this act:

8 "Affiliated company" means a company in the same corporate  
9 system as a parent, an industrial insured or a member organization  
10 by virtue of common ownership, control, operation or management.

11 "Alien captive insurance company" means an insurance company  
12 formed to write insurance business for its parents and affiliates and  
13 licensed pursuant to the laws of a jurisdiction other than this State  
14 which imposes statutory or regulatory standards in a form  
15 acceptable to the commissioner on companies transacting the  
16 business of insurance in that jurisdiction.

17 "Association" means a legal association of individuals,  
18 corporations, limited liability companies, partnerships, associations  
19 or other entities that has been in continuous existence for at least  
20 one year, the member organizations of which or which does itself,  
21 whether or not in conjunction with some or all of the member  
22 organizations:

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

26 (2) have complete voting control over an association captive  
27 insurance company incorporated as a mutual insurer; or

28 (3) constitute all of the subscribers of an association captive  
29 insurance company formed as a reciprocal insurer.

30 "Association captive insurance company" means a company that  
31 insures risks of the member organizations of the association and  
32 their affiliated companies.

33 "Captive insurance company" means any pure captive insurance  
34 company, association captive insurance company, sponsored  
35 captive insurance company, 'or' industrial insured captive  
36 insurance company <sup>1</sup>**['or risk retention group']** formed or licensed  
37 under the provisions of this act.

38 "Commissioner" means the Commissioner of Banking and  
39 Insurance.

40 "Controlled unaffiliated business" means a company:

41 (1) that is not in the corporate system of a parent and any  
42 affiliated companies;

43 (2) that has an existing contractual relationship with a parent or  
44 affiliated company; and

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AFI committee amendments adopted May 6, 2010.

1 (3) whose risks are managed by a pure captive insurance  
2 company in accordance with section '[16] 15' of this act.

3 "Excess workers' compensation insurance" means, in the case of  
4 an employer that has insured or self-insured its workers'  
5 compensation risks in accordance with applicable State or federal  
6 law, insurance in excess of a specified per incident or aggregate  
7 limit established by the commissioner.

8 "Industrial insured" means an insured:

9 (1) who procures the insurance of a risk by use of the services of  
10 a full time employee acting as an insurance manager or buyer;

11 (2) who has at least 25 full time employees; and

12 (3) whose aggregate annual premiums for insurance on all risks  
13 total at least \$25,000.

14 "Industrial insured captive insurance company" means a  
15 company that insures risks of the industrial insureds that comprise  
16 the industrial insured group, and their affiliated companies.

17 "Industrial insured group" means a group of industrial insureds  
18 that collectively:

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

22 (2) have complete voting control over an industrial insured  
23 captive insurance company incorporated as a mutual insurer; or

24 (3) constitute all of the subscribers of an industrial insured  
25 captive insurance company formed as a reciprocal insurer.

26 "Member organization" means an individual, corporation, limited  
27 liability company, partnership, association or other entity that  
28 belongs to an association.

29 "Mutual corporation" means a corporation organized without  
30 stockholders and includes a nonprofit corporation with members.

31 "Parent" means a corporation, limited liability company,  
32 partnership, other entity or individual that directly or indirectly  
33 owns, controls or holds with power to vote more than 50 percent of  
34 the outstanding voting:

35 (1) securities of a pure captive insurance company organized as  
36 a stock corporation; or

37 (2) membership interests of a pure captive insurance company  
38 organized as a nonprofit corporation.

39 "Protected cell" means a separate account established and  
40 maintained by a sponsored captive insurance company for one  
41 participant.

42 "Pure captive insurance company" means a company that insures  
43 risks of its parent and affiliated companies or controlled unaffiliated  
44 businesses.

45 '["Risk retention group" means a captive insurance company  
46 organized pursuant to the "New Jersey Risk Retention Act,"  
47 P.L.1993, c.240 (C.17:47A-1 et seq.), as a stock or mutual  
48 corporation, a reciprocal or other limited liability entity.】'

1 "Sponsor" means an entity that meets the requirements of  
2 sections '17 and '18' **[and 19]'** of this act and that the  
3 commissioner has approved to provide all or part of the capital and  
4 surplus required by applicable law to operate a sponsored captive  
5 insurance company.

6 "Sponsored captive insurance company" means a captive  
7 insurance company:

8 (1) in which the minimum capital and surplus required by  
9 applicable law is provided by one or more sponsors;

10 (2) that is formed or licensed under this act;

11 (3) that insures the risks of separate participants through the  
12 contract; and

13 (4) that segregates each participant's liability through one or  
14 more protected cells.

15  
16 2. a. A captive insurance company, if permitted by its articles  
17 of association, charter or other organizational document, may apply  
18 to the commissioner for a license to do business in any of the lines  
19 of insurance in subtitle 3 of Title 17 of the Revised Statutes or Title  
20 17B of the New Jersey Statutes, including contracts or policies of  
21 life insurance, health insurance, annuities, indemnity, property and  
22 casualty, fidelity, **'[surety,]'** guaranty and title insurance; provided,  
23 however, that:

24 (1) a pure captive insurance company shall not insure risks  
25 other than those of its parent and affiliated companies or controlled  
26 unaffiliated businesses;

27 (2) an association captive insurance company shall not insure  
28 risks other than those of the member organizations of its  
29 association, and their affiliated companies;

30 (3) an industrial insured captive insurance company shall not  
31 insure risks other than those of the industrial insureds that comprise  
32 the industrial insured group and their affiliated companies;

33 (4) **'[a risk retention group shall not insure risks other than those**  
34 **of its members and owners;**

35 **(5)]'** a captive insurance company shall not provide private  
36 passenger automobile insurance or homeowner's insurance coverage  
37 or any component thereof;

38 **'[(6)] (5)'** a captive insurance company shall not accept or cede  
39 reinsurance except as provided in section 10 of this act;

40 **'[(7)] (6)'** a captive insurance company may provide excess  
41 workers' compensation insurance to its parent and affiliated  
42 companies, unless prohibited by the federal law or laws of the state  
43 having jurisdiction over the transaction. A captive insurance  
44 company, unless prohibited by federal law, may reinsure workers'  
45 compensation of a qualified self-insured plan of its parent and  
46 affiliated companies; and

1        **'[(8)] (7)'** a captive insurance company shall comply with all  
2 applicable State and federal laws.

3        b. A captive insurance company shall not write any insurance  
4 business in this State unless:

5            (1) it first obtains from the commissioner a license authorizing it  
6 to write insurance business in this State;

7            (2) its board of directors or committee of managers or, in the  
8 case of a reciprocal insurer, its subscribers' advisory committee,  
9 holds at least one meeting each year in this State;

10           (3) it maintains its principal place of business in this State <sup>1</sup>with  
11 the appropriate number of in-State professional services provider  
12 staff to carry out the business of the captive, including but not  
13 limited to, attorneys, accountants, managers, actuaries, brokers, and  
14 third party administrators<sup>1</sup> ; and

15           (4) it appoints a registered agent to accept service of process and  
16 to otherwise act on its behalf in this State; provided that whenever  
17 that registered agent cannot with reasonable diligence be found at  
18 the registered office of the captive insurance company, the  
19 Secretary of State shall be an agent of the captive insurance  
20 company upon whom any process, notice or demand may be served.

21        c. (1) Before receiving a license, a captive insurance company  
22 shall:

23           (a) file with the commissioner a certified copy of its  
24 organization documents, a statement under oath of its president and  
25 secretary showing its financial condition, and any other statements  
26 or documents required by the commissioner; and

27           (b) submit to the commissioner for approval a description of the  
28 coverage limits and rates, together with any additional information  
29 as the commissioner may reasonably require. In the event of any  
30 subsequent material change in an item in the description, the  
31 captive insurance company shall submit to the commissioner for  
32 approval an appropriate revision and shall not offer any additional  
33 lines of insurance until a revision of the description is approved by  
34 the commissioner. The captive insurance company shall inform the  
35 commissioner of any material change in rates within 30 days of the  
36 adoption of any change.

37           (2) Each captive insurance company shall also file with the  
38 commissioner evidence of the following:

39           (a) the amount and liquidity of its assets relative to the risks to  
40 be assumed;

41           (b) the adequacy of the expertise, experience and character of  
42 the person who will manage it;

43           (c) the overall soundness of its plan of operation;

44           (d) the adequacy of the loss prevention programs of its insureds;  
45 and

46           (e) those other factors deemed relevant by the commissioner in  
47 determining whether the proposed captive insurance company will  
48 be able to meet its policy obligations.

1 (3) Information submitted pursuant to this subsection shall  
2 remain confidential and shall not be made public by the  
3 commissioner without the written consent of the company except  
4 that:

5 (a) the information may be discoverable by a party in a civil  
6 action or contested case to which the captive insurance company  
7 that submitted the information is a party, upon a showing by the  
8 party seeking to discover the information that:

9 (i) the information sought is relevant to and necessary for the  
10 furtherance of that action or case;

11 (ii) the information sought is unavailable from other  
12 nonconfidential sources; and

13 (iii) a subpoena issued by a judicial or administrative officer of  
14 competent jurisdiction has been submitted to the commissioner <sup>1</sup>[';]  
15 except that the provisions of this paragraph (3) shall not apply to a  
16 risk retention group<sup>1</sup>]; and

17 (b) the commissioner may, in the commissioner's discretion,  
18 disclose the information to a public official having jurisdiction over  
19 the regulation of insurance in another state, if:

20 (i) the public official agrees in writing to maintain the  
21 confidentiality of the information; and

22 (ii) the laws of the state in which the public official serves  
23 require the information to remain confidential.

24 d. A captive insurance company shall pay to the commissioner  
25 a nonrefundable fee of \$200 for examining, investigating and  
26 processing its application for license and the commissioner is  
27 authorized to retain legal, financial and examination services from  
28 outside the department, the reasonable cost of which may be  
29 charged against the applicant. In addition, each captive insurance  
30 company shall pay a license fee for the year of registration and a  
31 renewal fee for each year thereafter of \$300.

32 e. If the commissioner is satisfied that the documents and  
33 statements filed by a captive insurance company comply with the  
34 provisions of this act, the commissioner may grant a license  
35 authorizing it to write insurance business in this State until April 1  
36 thereafter, which license may be renewed.

37 f. A captive insurance company shall not adopt a name that is  
38 the same, deceptively similar, or likely to be confused with or  
39 mistaken for any other existing business name registered in the  
40 State.

41 <sup>1</sup>g. The commissioner may issue a license on an expedited basis  
42 to a captive insurance company currently formed or licensed  
43 pursuant to the laws of a jurisdiction other than this State, provided  
44 the captive insurance company complies with all of the filing  
45 requirements of this section and presents satisfactory evidence that  
46 it meets any additional financial standards which the commissioner  
47 may set by regulation.<sup>1</sup>

- 1       3. a. A captive insurance company shall not be issued a license  
2 unless it maintains unimpaired paid-in capital and surplus of:  
3       (1) in the case of a pure captive insurance company, not less  
4 than \$250,000;  
5       (2) in the case of an association captive insurance company, not  
6 less than \$750,000;  
7       (3) in the case of an industrial insured captive insurance  
8 company, not less than \$500,000; 'and'  
9       (4) '[in the case of a risk retention group, not less than  
10 \$1,000,000; and  
11 (5)]' in the case of a sponsored captive insurance company, not  
12 less than \$500,000.  
13       b. The commissioner may prescribe additional capital and  
14 surplus requirements based upon the type, volume and nature of  
15 insurance business transacted.  
16       c. Capital and surplus may be in the form of cash or an  
17 irrevocable letter of credit issued by a bank chartered by the State 'of  
18 New Jersey' or a member bank of the Federal Reserve System  
19 'located in this State' and approved by the commissioner.  
20  
21       4. A captive insurance company shall not pay a dividend out  
22 of, or other distribution with respect to, capital or surplus without  
23 the prior approval of the commissioner. Approval of an ongoing  
24 plan for the payment of dividends or other distributions shall be  
25 conditioned upon the retention, at the time of each payment, of  
26 capital or surplus in excess of amounts specified by, or determined  
27 in accordance with formulas approved by, the commissioner.  
28 Notwithstanding any provisions of the "New Jersey Nonprofit  
29 Corporation Act," N.J.S.15A:1-1 et seq. to the contrary, a captive  
30 insurance company organized under the provisions of the "New  
31 Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq. may make  
32 distributions as are in conformity with its purposes and approved by  
33 the commissioner.  
34  
35       5. a. A pure captive insurance company may be incorporated  
36 or organized as:  
37       (1) a stock insurer with its capital divided into shares and held  
38 by the stockholders;  
39       (2) a nonprofit corporation with one or more members; or  
40       (3) a manager-managed limited liability company.  
41       b. An association captive insurance company '[, ] or' an  
42 industrial insured captive insurance company '[, or a risk retention  
43 group]' may be:  
44       (1) incorporated as a stock insurer with its capital divided into  
45 shares and held by the stockholders;  
46       (2) incorporated as a mutual corporation;

1 (3) organized as a reciprocal insurer in accordance with the  
2 provisions of P.L.1945, c.161 (C.17:50-1 et seq.); or  
3 (4) organized as a manager-managed limited liability company.  
4 c. A captive insurance company incorporated or organized in  
5 this State shall have not less than three incorporators or three  
6 organizers of whom at least one shall be a resident of this State.  
7 d. In the case of a captive insurance company:  
8 (1) formed as a corporation: (a) before the articles of  
9 incorporation are transmitted to the Secretary of State, the  
10 incorporators shall petition the commissioner to issue a certificate  
11 setting forth the commissioner's finding that the establishment and  
12 maintenance of the proposed corporation will promote the general  
13 good of the State. In arriving at a finding the commissioner shall  
14 consider:  
15 (i) the character, reputation, financial standing and purposes of  
16 the incorporators or organizers;  
17 (ii) the character, reputation, financial responsibility, insurance  
18 experience and business qualifications of the officers and directors;  
19 and  
20 (iii) any other aspects of the proposed corporation as the  
21 commissioner deems advisable.  
22 (b) the articles of incorporation, certificate and organization fee  
23 shall be transmitted to the Secretary of State, who shall record both  
24 the articles of incorporation and the certificate.  
25 (2) formed as a reciprocal insurer, the organizers shall petition  
26 the commissioner to issue a certificate setting forth the  
27 commissioner's finding that the establishment and maintenance of  
28 the proposed association will promote the general good of the State.  
29 In arriving at a finding the commissioner shall consider the items  
30 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)  
31 of paragraph (1) of this subsection as applicable to a reciprocal  
32 insurer.  
33 (3) formed as a limited liability company, before the articles of  
34 organization are transmitted to the Secretary of State, the organizers  
35 shall petition the commissioner to issue a certificate setting forth  
36 the commissioner's finding that the establishment and maintenance  
37 of the proposed company will promote the general good of the  
38 State. In arriving at a finding, the commissioner shall consider the  
39 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph  
40 (a) of paragraph (1) of this subsection as applicable to a limited  
41 liability company.  
42 e. The capital stock of a captive insurance company  
43 incorporated as a stock insurer may be authorized with no par value.  
44 f. In the case of a captive insurance company:  
45 (1) formed as a corporation, at least one of the members of the  
46 board of directors shall be a resident of this State;



1 (2) formed as a reciprocal insurer, at least one of the members  
2 of the subscribers' advisory committee shall be a resident of this  
3 State;

4 (3) formed as a limited liability company, at least one of the  
5 managers shall be a resident of this State.

6 g. Other than a captive insurance company formed as a limited  
7 liability company pursuant to the "New Jersey Limited Liability  
8 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) or as a  
9 nonprofit corporation pursuant to the "New Jersey Nonprofit  
10 Corporation Act," N.J.S.15A:1-1 et seq., a captive insurance  
11 company formed as a corporation under the provisions of this act  
12 shall have the privileges and be subject to the provisions of the  
13 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., as  
14 well as the applicable provisions contained in this act. In the event  
15 of a conflict between the provisions of the "New Jersey Business  
16 Corporation Act," N.J.S.14A:1-1 et seq., and the provisions of this  
17 act, this act shall control.

18 h. A captive insurance company formed under the provisions of  
19 this act:

20 (1) as a limited liability company shall have the privileges and  
21 be subject to the provisions of the "New Jersey Limited Liability  
22 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) as well as the  
23 applicable provisions contained in this act. In the event of a conflict  
24 between the provisions of the "New Jersey Limited Liability  
25 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) and the  
26 provisions of this act, this act shall control; or

27 (2) as a nonprofit corporation shall have the privileges and be  
28 subject to the provisions of the "New Jersey Nonprofit Corporation  
29 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions  
30 contained in this act. In the event of a conflict between the  
31 provisions of the "New Jersey Nonprofit Corporation Act,"  
32 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall  
33 control.

34 i. The procedures to be followed by a captive insurance  
35 company in carrying out a merger, consolidation, conversion,  
36 mutualization or redomestication shall be prescribed by the  
37 commissioner by regulation.

38 j. A captive insurance company formed as a reciprocal insurer  
39 under the provisions of this act shall have the privileges and be  
40 subject to the provisions of P.L.1945, c.161 (C.17:50-1 et seq.) in  
41 addition to the applicable provisions of this act. In the event of a  
42 conflict between the provisions of P.L.1945, c.161 (C.17:50-1 et  
43 seq.) and the provisions of this act, this act shall control.

44 k. The articles of incorporation or bylaws of a captive  
45 insurance company formed as a corporation may authorize a  
46 quorum of its board of directors to consist of not less than one-third  
47 of the fixed or prescribed number of directors determined under  
48 applicable provisions of the "New Jersey Business Corporation

1 Act," N.J.S.14A:1-1 et seq., or the "New Jersey Nonprofit  
2 Corporation Act," N.J.S.15A:1-1 et seq.

3 l. The subscribers' agreement or other organizing document of  
4 a captive insurance company formed as a reciprocal insurer may  
5 authorize a quorum of its subscribers' advisory committee to consist  
6 of not less than one-third of the number of its members.

7 m. With the commissioner's approval, a captive insurance  
8 company organized as a stock insurer may convert to a nonprofit  
9 corporation with one or more members by filing with the Secretary  
10 of State an irrevocable election for a conversion, provided that:

11 (1) the irrevocable election certifies that, at the time of the  
12 company's organization and at all times thereafter, the company  
13 conducted its business in a manner consistent with a nonprofit  
14 purpose; and

15 (2) at the time of the filing of its irrevocable election, the  
16 company files with both the commissioner and the Secretary of  
17 State amended and restated articles of incorporation consistent with  
18 the provisions of this act and the "New Jersey Nonprofit  
19 Corporation Act," N.J.S.15A:1-1 et seq., duly authorized by the  
20 corporation.

21  
22 6. a. Prior to March 1 of each year, a captive insurance  
23 company shall submit to the commissioner a report of its financial  
24 condition, verified by oath of two of its executive officers. A  
25 captive insurance company shall report using generally accepted  
26 accounting principles, unless the commissioner approves the use of  
27 regulatory accounting principles, with any appropriate or necessary  
28 modifications or adaptations as may be required, approved or  
29 accepted by the commissioner for the type of insurance and kinds of  
30 insurers to be reported upon, and as supplemented by additional  
31 information required by the commissioner. Except as otherwise  
32 provided, an association captive insurance company <sup>1</sup>and a risk  
33 retention group<sup>1</sup> shall file its report in the form required by  
34 R.S.17:23-1. The commissioner shall by rule prescribe the forms in  
35 which a pure captive insurance company and an industrial insured  
36 captive insurance company shall report. The confidentiality  
37 requirements of paragraph (3) of subsection c. of section 2 of this  
38 act shall apply to each report filed pursuant to this section <sup>1</sup>and,  
39 except reports filed by risk retention groups<sup>1</sup>.

40 b. A pure captive insurance company or an industrial insured  
41 captive insurance company may make written application for filing  
42 the required report on a fiscal year-end. If an alternative reporting  
43 date is granted, the annual report is due 60 days after the fiscal  
44 year-end.

45  
46 7. a. At least once in every three years, and whenever the  
47 commissioner determines it to be prudent, the commissioner shall  
48 personally, or by some competent person appointed by the

1 commissioner, visit each captive insurance company and thoroughly  
2 inspect and examine its affairs to determine its financial condition,  
3 its ability to fulfill its obligations and whether it has complied with  
4 the provisions of this act. The commissioner may increase the three-  
5 year period to five years, if the captive insurance company is  
6 subject to a comprehensive annual audit during that period of a  
7 scope satisfactory to the commissioner by independent auditors  
8 approved by the commissioner. The expenses and charges of the  
9 examination shall be paid to the State by the company examined.

10 b. All examination reports, preliminary examination reports or  
11 results, working papers, recorded information, documents and  
12 copies thereof produced by, obtained by or disclosed to the  
13 commissioner or any other person in the course of an examination  
14 made under this section are confidential and are not subject to  
15 subpoena and shall not be made public by the commissioner without  
16 the written consent of the company, except to the extent provided in  
17 this subsection. Nothing in this subsection shall prevent the  
18 commissioner from using the information in furtherance of the  
19 commissioner's regulatory authority under this act. The  
20 commissioner may, in the commissioner's discretion, grant access to  
21 the information to public officers having jurisdiction over the  
22 regulation of insurance in any other state or country, or to law  
23 enforcement officers of this State or any other state or agency of the  
24 federal government at any time, so long as the officers receiving the  
25 information agree in writing to hold it in a manner consistent with  
26 this section.

27  
28 8. a. Pursuant to subsection b. of this section, the  
29 commissioner may suspend or revoke the license of a captive  
30 insurance company for any of the following reasons:

- 31 (1) Insolvency or impairment of capital or surplus;  
32 (2) Failure to meet the capital surplus requirements of section 3  
33 of this act;  
34 (3) Refusal or failure to submit an annual report, as required by  
35 this act, or any other report or statement required by law or by  
36 lawful order of the commissioner;  
37 (4) Failure to comply with the provisions of its own charter,  
38 bylaws or other organizational document;  
39 (5) Failure to submit to or pay the cost of examination or any  
40 legal obligation relative to an examination, as required by this act;  
41 (6) Use methods that, although not otherwise specifically  
42 prohibited by law, nevertheless render its operation detrimental or  
43 its condition unsound with respect to the public or to its  
44 policyholders; or  
45 (7) Failure to otherwise comply with the laws of this State.

46 b. If the commissioner finds, upon examination, hearing or  
47 other evidence, that a captive insurance company has violated any  
48 provision of subsection a. of this section, the commissioner may

1 suspend or revoke the company's license if the commissioner deems  
2 it in the best interest of the public and the policyholders of the  
3 captive insurance company, notwithstanding any other provision of  
4 this act.

5  
6 9. a. A captive insurance company shall comply with  
7 investment requirements to be prescribed by the commissioner by  
8 regulation.

9 b. A pure captive insurance company shall not make a loan to,  
10 or an investment in, its parent company or affiliates without prior  
11 written approval of the commissioner, and a loan or investment  
12 shall be evidenced by documentation approved by the  
13 commissioner. A pure captive insurance company shall not make a  
14 loan using the minimum capital and surplus funds required by  
15 section 3 of this act.

16  
17 10. a. A captive insurance company may provide reinsurance on  
18 risks ceded by any other insurer.

19 b. A captive insurance company may take credit for the  
20 reinsurance of risks or portions of risks ceded to reinsurers  
21 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et  
22 seq.). <sup>1</sup>~~['Prior approval of the commissioner shall be required for~~  
23 ~~ceding or taking]~~ A captive insurance company shall not take<sup>1</sup>  
24 credit for the reinsurance of risks or portions of risks ceded to  
25 reinsurers not complying with P.L.1993, c.243 (C.17:51B-1 et seq.)  
26 <sup>1</sup>~~['], except for business written by an alien captive insurance~~  
27 ~~company outside the United States]~~<sup>1</sup>.

28 c. <sup>1</sup>~~['In addition to reinsurers authorized under the provisions of~~  
29 ~~P.L.1993, c.243 (C.17:51B-1 et seq.), a captive insurance company~~  
30 ~~may take credit for the reinsurance of risks or portions of risks~~  
31 ~~ceded to a pool, exchange or association acting as a reinsurer which~~  
32 ~~has been authorized by the commissioner. The commissioner may~~  
33 ~~require any other documents, financial information or other~~  
34 ~~evidence that the pool, exchange or association will be able to~~  
35 ~~provide adequate security for its financial obligations. The~~  
36 ~~commissioner may deny authorization or impose any limitations on~~  
37 ~~the activities of a reinsurance pool, exchange or association that, in~~  
38 ~~the commissioner's judgment, are necessary and proper to provide~~  
39 ~~adequate security for the ceding captive insurance company and for~~  
40 ~~the protection and consequent benefit of the public at large.~~

41 ~~d.]<sup>1</sup> For purposes of this act, insurance by a captive insurance~~  
42 ~~company of any workers' compensation qualified self-insured plan~~  
43 ~~of its parent and affiliates shall be deemed to be reinsurance.~~

44  
45 11. a. A captive insurance company shall not be required to join  
46 a rating organization.

1       b. A captive insurance company shall not be permitted to join  
2 or contribute financially to a plan, pool, association, or guaranty or  
3 insolvency fund in this State <sup>1</sup>, including the New Jersey Property-  
4 Liability Insurance Guaranty Association, P.L.1974, c.17  
5 (C.17:30A-1 et seq.), the New Jersey Surplus Lines Insurance  
6 Guaranty Fund, P.L.1984, c.101 (C.17:22-6.70 et seq.), or “the  
7 worker’s compensation security fund” created pursuant to  
8 R.S.34:15-105.<sup>1</sup> nor shall a captive insurance company, or an  
9 insured or affiliate thereof, receive a benefit from a plan, pool,  
10 association, or guaranty or insolvency fund, <sup>1</sup>including the New  
11 Jersey Property-Liability Insurance Guaranty Association,  
12 P.L.1974, c.17 (C.17:30A-1 et seq.), the New Jersey Surplus Lines  
13 Insurance Guaranty Fund, P.L.1984, c.101 (C.17:22-6.70 et seq.), or  
14 “the worker’s compensation security fund” created pursuant to  
15 R.S.34:15-105.<sup>1</sup> for claims arising out of the operations of a captive  
16 insurance company.

17  
18       12. a. Each captive insurance company shall pay to the Director  
19 of the Division of Taxation in the Department of Treasury, on or  
20 before March 1 of each year, a tax at the rate of .38 of one percent  
21 on the first \$20,000,000 and .285 of one percent on the next  
22 \$20,000,000 and .19 of one percent on the next \$20,000,000 and  
23 .072 of one percent on each dollar thereafter on the direct premiums  
24 collected or contracted for on policies or contracts of insurance  
25 written by the captive insurance company during the year ending  
26 December 31 next preceding, after deducting from the direct  
27 premiums subject to the tax the amounts paid to policyholders as  
28 return premiums, which shall include dividends on unabsorbed  
29 premiums or premium deposits returned or credited to  
30 policyholders; except that no tax shall be due or payable as to  
31 considerations received for annuity contracts.

32       b. Each captive insurance company shall pay to the Director of  
33 the Division of Taxation in the Department of Treasury, on or  
34 before March 1 of each year, a tax at the rate of .214 of one percent  
35 on the first \$20,000,000 of assumed reinsurance premium, and .143  
36 of one percent on the next \$20,000,000 and .048 of one percent on  
37 the next \$20,000,000 and .024 of one percent of each dollar  
38 thereafter. However, no tax under this subsection applies to  
39 premiums for risks or portions of risks which are subject to taxation  
40 on a direct basis pursuant to subsection a. of this section. No tax  
41 under this subsection shall apply in connection with the receipt of  
42 assets in exchange for the assumption of loss reserves and other  
43 liabilities of another insurer under common ownership and control  
44 if the transaction is part of a plan to discontinue the operations of  
45 the other insurer, and if the intent of the parties to the transaction is  
46 to renew or maintain the business with the captive insurance  
47 company.

1       c. The annual minimum aggregate tax to be paid by a captive  
2 insurance company calculated under subsections a. and b. of this  
3 section shall be \$7,500, and the annual maximum aggregate tax  
4 shall be \$200,000. The maximum aggregate tax to be paid by a  
5 sponsored captive insurance company shall apply to each protected  
6 cell only and not to the sponsored captive insurance company as a  
7 whole.

8       d. (1) A captive insurance company shall, on or before March  
9 1 of each year, file with the commissioner an annual tax return,  
10 signed and sworn to by an officer of the company, or by its United  
11 States manager, if a company of a foreign country, in the form and  
12 containing matters as may be necessary for carrying out the  
13 provisions of this section.

14       (2) A captive insurance company shall pay the balance of any  
15 tax due under this section based on the company's business during  
16 the preceding calendar year and make an installment payment in an  
17 amount equal to one-half of the tax payable under this section on  
18 the company's business done during the preceding calendar year.

19       (3) The examination of returns and the assessment of additional  
20 taxes, penalties and interest shall be as provided by the State  
21 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

22       e. Two or more captive insurance companies under common  
23 ownership and control shall be taxed as though they were a single  
24 captive insurance company.

25       f. For the purposes of this section, "common ownership and  
26 control" shall mean:

27       (1) in the case of stock corporations, the direct or indirect  
28 ownership of 80 percent or more of the outstanding voting stock of  
29 two or more corporations by the same shareholder or shareholders;  
30 and

31       (2) in the case of mutual or nonprofit corporations, the direct or  
32 indirect ownership of 80 percent or more of the surplus and the  
33 voting power of two or more corporations by the same member or  
34 members.

35       g. The tax provided for in this section shall constitute all taxes  
36 collectible under the laws of this State from any captive insurance  
37 company, and a captive insurance company shall not pay taxes  
38 pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

39       h. Annually, ten percent of the premium tax revenues collected  
40 by the director pursuant to this section shall be transferred to the  
41 commissioner for the regulation of captive insurance companies  
42 under this act.

43       i. The tax provided for by this section shall be calculated on an  
44 annual basis, notwithstanding policies or contracts of insurance or  
45 contracts of reinsurance issued on a multiyear basis. In the case of  
46 multiyear policies or contracts, the premium shall be prorated for  
47 purposes of determining the tax under this section.

1       <sup>1</sup>["13. Risk retention groups shall have the privileges and be  
2 subject to the provisions of the "New Jersey Risk Retention Act,"  
3 P.L.1993, c.240 (C.17:47A-1 et seq.) in addition to the applicable  
4 provisions of this act.]"<sup>1</sup>

5  
6       <sup>1</sup>["14.] 13.<sup>1</sup> a. (1) There is created a fund to be known as the  
7 "Captive Insurance Regulation and Supervision Fund," for the  
8 purpose of providing the financial means for the commissioner to  
9 administer this act <sup>1</sup>["and the "New Jersey Risk Retention Act,"  
10 P.L.1993, c.240 (C.17:47A-1 et seq.),]"<sup>1</sup> and for reasonable  
11 expenses incurred in promoting the captive insurance industry in  
12 this State. The transfer of 10 percent of the premium tax under  
13 subsection h. of section 12 of this act, and all fees and assessments  
14 received by the department pursuant to the administration of this act  
15 <sup>1</sup>["and the "New Jersey Risk Retention Act," P.L.1993, c.240  
16 (C.17:47A-1 et seq.)]"<sup>1</sup> shall be credited to this fund. Of this  
17 amount, not more than two percent of the premium tax under  
18 section 12 of this act may be transferred to the New Jersey  
19 Economic Development Authority for expenses for promotional  
20 activities conducted by the commission in relation to captive  
21 insurance companies. All fees received by the department from  
22 reinsurers who assume risk solely from captive insurance  
23 companies and are subject to the provisions of P.L.1993, c.243  
24 (C.17:51B-1 et seq.), shall be deposited into the Captive Insurance  
25 Regulation and Supervision Fund, except that all fines and  
26 administrative penalties shall be deposited directly into the General  
27 Fund.

28       (2) All payments from the Captive Insurance Regulation and  
29 Supervision Fund for the maintenance of staff and associated  
30 expenses, including contractual services as necessary, shall be  
31 disbursed from the State Treasury to the commissioner after receipt  
32 of proper documentation regarding services rendered and expenses  
33 incurred.

34       b. At the end of each fiscal year, the balance in the Captive  
35 Insurance Regulation and Supervision Fund shall be transferred to  
36 the General Fund.

37  
38       <sup>1</sup>["15.] 14.<sup>1</sup> Except as otherwise provided in this act, the terms  
39 and conditions set forth in P.L.1975, c.113 (C.17:30C-1 et seq.),  
40 pertaining to insurance reorganizations, receiverships and  
41 injunctions, shall apply to captive insurance companies formed or  
42 licensed under this act.

43  
44       <sup>1</sup>["16.] 15.<sup>1</sup> The commissioner may adopt rules establishing  
45 standards to ensure that a parent or affiliated company is able to  
46 exercise control of the risk management function of any controlled  
47 unaffiliated business to be insured by a pure captive insurance

1 company, except that until such time as rules under this section are  
2 adopted, the commissioner may approve the coverage of the risk by  
3 a pure captive insurance company.

4  
5 '17.] 16.' a. An association captive insurance company '1,  
6 risk retention group,']' or industrial insured captive insurance  
7 company formed as a stock or mutual corporation may be converted  
8 to or merged with and into a reciprocal insurer in accordance with a  
9 plan of conversion or merger and the provisions of this section.

10 b. A plan for conversion or merger shall provide a fair and  
11 equitable plan for purchasing, retiring or otherwise extinguishing  
12 the interests of the stockholders and policyholders of a stock  
13 insurer, and the members and policyholders of a mutual insurer,  
14 including a fair and equitable provision for the rights and remedies  
15 of dissenting stockholders, members or policyholders.

16 c. In the case of a conversion authorized under subsection a. of  
17 this section:

18 (1) the conversion shall be accomplished under a reasonable  
19 plan and procedure as approved by the commissioner, except that  
20 the commissioner shall not approve a plan of conversion unless the  
21 plan:

22 (a) satisfies the provisions of subsection b. of this section;

23 (b) provides for a hearing, of which notice is given to the  
24 captive insurance company, its directors, officers and policyholders,  
25 and, in the case of a stock insurer, its stockholders, and in the case  
26 of a mutual insurer, its members, all of which persons shall be  
27 entitled to attend and appear at the hearing if notice of a hearing is  
28 given and no director, officer, policyholder, member or stockholder  
29 requests a hearing, the commissioner may cancel the hearing;

30 (c) provides a fair and equitable plan for the conversion of  
31 stockholder, member or policyholder interests into subscriber  
32 interests in the resulting reciprocal insurer, substantially  
33 proportionate to the corresponding interests in the stock or mutual  
34 insurer. This requirement shall not preclude the resulting reciprocal  
35 insurer from applying underwriting criteria that could affect  
36 ongoing ownership interests; and

37 (d) is approved:

38 (i) in the case of a stock insurer, by a majority of the  
39 shareholders entitled to vote represented in person or by proxy at a  
40 duly called regular or special meeting at which a quorum is present;  
41 and

42 (ii) in the case of a mutual insurer, by a majority of the voting  
43 interests of policyholders represented in person or by proxy at a  
44 duly called regular or special meeting thereof at which a quorum is  
45 present;

46 (2) the commissioner shall approve the plan of conversion if the  
47 commissioner finds that the conversion will promote the general



1 good of the State in conformity with those standards set forth in  
2 paragraph (2) of subsection d. of section 5 of this act;

3 (3) if the commissioner approves the plan, the commissioner  
4 shall amend the converting insurer's certificate of authority to  
5 reflect conversion to a reciprocal insurer and issue the amended  
6 certificate of authority to the company's attorney-in-fact;

7 (4) the conversion shall be effective upon the issuance of an  
8 amended certificate of authority of a reciprocal insurer by the  
9 commissioner; and

10 (5) the corporate existence of the converting insurer shall cease  
11 and the resulting reciprocal insurer shall notify the Secretary of  
12 State of the conversion upon the conversion becoming effective.

13 d. A merger authorized under subsection a. of this section shall  
14 be accomplished substantially in accordance with the procedures to  
15 be prescribed by the commissioner, except that, solely for purposes  
16 of the merger:

17 (1) the plan of merger shall satisfy the provisions of subsection  
18 b. of this section;

19 (2) the subscribers' advisory committee of a reciprocal insurer  
20 shall be equivalent to the board of directors of a stock or mutual  
21 insurance company;

22 (3) the subscribers of a reciprocal insurer shall be the equivalent  
23 of the policyholders of a mutual insurance company;

24 (4) if a subscribers' advisory committee does not have a  
25 president or secretary, the officers of the committee having  
26 substantially equivalent duties shall be deemed the president or  
27 secretary of the committee;

28 (5) the commissioner shall approve the articles of merger if the  
29 commissioner finds that the merger will promote the general good  
30 of the State in conformity with those standards set forth in  
31 paragraph (2) of subsection d. of section 5 of this act. If the  
32 commissioner approves the articles of merger, the commissioner  
33 shall indorse the commissioner's approval thereon and the surviving  
34 insurer shall present the same to the Secretary of State;

35 (6) notwithstanding section 3 of this act, the commissioner may  
36 permit the formation, without surplus, of a captive insurance  
37 company organized as a reciprocal insurer, into which an existing  
38 captive insurance company may be merged for the purpose of  
39 facilitating a transaction under this section, except that there shall  
40 be no more than one authorized insurance company surviving the  
41 merger; and

42 (7) an alien captive insurance company may be a party to a  
43 merger authorized under subsection a. of this section in accordance  
44 with procedures to be prescribed by the commissioner by  
45 regulation.

46

47 '18.] 17.' a. One or more sponsors may form a sponsored  
48 captive insurance company as prescribed in this act.

1       b. A sponsored captive insurance company may establish and  
2 maintain one or more protected cells to insure the risks of one or  
3 more participants, subject to the following conditions:

4       (1) A sponsored captive insurance company shall not have any  
5 stockholders other than its participants and sponsors.

6       (2) A sponsored captive insurance company shall separately  
7 account for each protected cell in its books and records to reflect  
8 the financial condition and results of operations of each protected  
9 cell, net income or loss of each protected cell, dividends or other  
10 distributions to participants of each protected cell and any other  
11 factors prescribed in the participant contract or required by the  
12 commissioner.

13       (3) The assets of a sponsored captive insurance company are not  
14 chargeable with liabilities arising out of any other insurance  
15 business the sponsored captive insurance company may conduct.

16       (4) A sponsored captive insurance company shall not sell,  
17 exchange or transfer assets, issue a dividend or make a distribution  
18 between or among any of its protected cells without the written  
19 consent of all its protected cells.

20       (5) A sponsored captive insurance company shall not sell,  
21 exchange or transfer assets, issue a dividend or make a distribution  
22 to a sponsor or participant unless the commissioner approves the  
23 transaction and determines that the transaction will not cause  
24 insolvency or impairment of any protected cell.

25       (6) At the time of filing its annual report pursuant to section 6 of  
26 this act, a sponsored captive insurance company shall also file with  
27 the department:

28       (a) an accounting statement detailing the financial experience of  
29 each protected cell, in a form to be prescribed by the commissioner;  
30 and

31       (b) any other financial report prescribed by the commissioner.

32       (7) A sponsored captive insurance company shall notify the  
33 commissioner in writing within 10 days after learning of any  
34 protected cell that is insolvent or otherwise unable to meet its claim  
35 or expense obligations.

36       (8) A sponsored captive insurance company shall obtain the  
37 commissioner's written approval of any participant contract before  
38 the contract becomes effective.

39       (9) The addition of a new participant or the withdrawal of a  
40 participant from an existing sponsored captive insurance company  
41 shall be considered a change in the captive insurer's business plan  
42 and shall require the commissioner's approval.

43       (10) With respect to each protected cell, the insurance business  
44 written by a sponsored captive insurance company may be:

45       (a) assumed from an insurance company licensed under the laws  
46 of any state;

47       (b) reinsured by a reinsurer authorized or accredited by the  
48 State; or

1 (c) secured by a trust fund or an irrevocable letter of credit.

2

3 '[19.] 18.' a. A risk retention group shall not be either a  
4 sponsor or participant in a sponsored captive insurance company.

5 b. An association, corporation, limited liability company,  
6 partnership, trust or any another business entity may be a  
7 participant in any sponsored captive insurance company formed or  
8 licensed under this act.

9 c. A sponsor may be a participant in a sponsored captive  
10 insurance company.

11 d. A participant need not be a shareholder of a sponsored  
12 captive insurance company or any affiliate of a sponsored captive  
13 insurance company.

14 e. A participant shall insure only its own risks through a  
15 sponsored captive insurance company.

16

17 '[20.] 19.' a. No cause of action shall arise nor shall any  
18 liability be imposed against the commissioner, the commissioner's  
19 authorized agent or any examiner appointed by the commissioner  
20 for any statements made or conduct performed in good faith while  
21 carrying out the provisions of this act. This section does not  
22 abrogate or modify in any way any common law or other statutory  
23 privilege or immunity available to any person identified in this  
24 subsection. A person identified in this subsection shall be entitled to  
25 an award of attorney's fees and costs if he is the prevailing party in  
26 a civil cause of action for libel, slander or any other relevant tort  
27 arising out of activities in carrying out the provisions of this act and  
28 the party bringing the action was not substantially justified in doing  
29 so. For purposes of this subsection, a proceeding is "substantially  
30 justified" if it had a reasonable basis in law or fact at the time that it  
31 was initiated.

32 b. No cause of action shall arise, nor shall any liability be  
33 imposed against any person for the act of communicating or  
34 delivering information or data to the commissioner or the  
35 commissioner's authorized representative or examiner pursuant to  
36 an examination made under this act, if the communication or  
37 delivery was performed in good faith and without fraudulent intent  
38 or the intent to deceive.

39

40 '[21.] 20.' This act shall take effect on the 90th day following  
41 enactment.