

# 17:47B-1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2011                    **CHAPTER:** 25

**NJSA:** 17:147B-1 (Regulates captive insurers)

**BILL NO:** A2360 (Substituted for S387)

**SPONSOR(S)** Schaer and others

**DATE INTRODUCED:** February 25, 2010

**COMMITTEE:**            **ASSEMBLY:** Financial Institutions and Insurance

**SENATE:** Commerce  
Budget and Appropriations

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** January 6, 2011

**SENATE:** January 6, 2011

**DATE OF APPROVAL:** February 21, 2011

### FOLLOWING ARE ATTACHED IF AVAILABLE:

#### FINAL TEXT OF BILL (Third reprint enacted)

#### A2360

<b>SPONSOR'S STATEMENT:</b> (Begins on page 19 of original bill)	Yes	
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b>	Yes
	<b>SENATE:</b>	Yes    Budget Commerce

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** Yes

**LEGISLATIVE FISCAL ESTIMATE:** Yes    11-1-10  
1-5-11

#### S168

**SPONSOR'S STATEMENT:** (Begins on page 19 of original bill) Yes

<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b>	No
	<b>SENATE:</b>	Yes    Commerce Budget

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes

(continued)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Gov. Christie signs new job legislation aimed at insurance industry," NewJerseyNewsroom.com, 2-23-11

LAW/KR

Title 17.  
Subtitle 3.  
Part 8B. (New)  
Captive Insurers.  
Chapter 47B.  
(New)  
Captive Insurers  
Generally.  
§§1-19 -  
C.17:47B-1 to  
17:47B-19  
§20 - Note

P.L.2011, CHAPTER 25, *approved February 21, 2011*  
Assembly, No. 2360 (*Third Reprint*)

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

**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.

<sup>2</sup>Assembly floor amendments adopted June 28, 2010.

<sup>3</sup>Senate SCM committee amendments adopted December 6, 2010.

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

3 "Association captive insurance company" means a company that  
4 insures risks of the member organizations of the association and  
5 their affiliated companies.

6 <sup>2</sup>"Branch business" means any insurance business transacted by  
7 a branch captive insurance company in this State.

8 "Branch captive insurance company" means an alien captive  
9 insurance company licensed by the commissioner to transact the  
10 business of insurance in this State through a business unit with a  
11 principal place of business in this State.

12 "Branch operations" means any business operations of a branch  
13 captive insurance company in this State.<sup>2</sup>

14 "Captive insurance company" means any pure captive insurance  
15 company, association captive insurance company, sponsored  
16 captive insurance company, <sup>1</sup>or<sup>1</sup> industrial insured captive  
17 insurance company <sup>1</sup>[or risk retention group]<sup>1</sup> formed or licensed  
18 under the provisions of this act. <sup>2</sup>For purposes of this act, a branch  
19 captive insurance company shall be a pure captive insurance  
20 company with respect to operations in the State, unless otherwise  
21 permitted by the commissioner.<sup>2</sup>

22 "Commissioner" means the Commissioner of Banking and  
23 Insurance.

24 "Controlled unaffiliated business" means a company:

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

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

29 (3) whose risks are managed by a pure captive insurance  
30 company in accordance with section <sup>1</sup>[16] 15<sup>1</sup> of this act.

31 "Excess workers' compensation insurance" means, in the case of  
32 an employer that has insured or self-insured its workers'  
33 compensation risks in accordance with applicable State or federal  
34 law, insurance in excess of a specified per incident or aggregate  
35 limit established by the commissioner.

36 "Industrial insured" means an insured:

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

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

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

42 "Industrial insured captive insurance company" means a  
43 company that insures risks of the industrial insureds that comprise  
44 the industrial insured group, and their affiliated companies.

45 "Industrial insured group" means a group of industrial insureds  
46 that collectively:

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

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

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

8 "Member organization" means an individual, corporation, limited  
9 liability company, partnership, association or other entity that  
10 belongs to an association.

11 "Mutual corporation" means a corporation organized without  
12 stockholders and includes a nonprofit corporation with members.

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

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

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

21 "Protected cell" means a separate account established and  
22 maintained by a sponsored captive insurance company for one  
23 participant.

24 "Pure captive insurance company" means a company that insures  
25 risks of its parent and affiliated companies or controlled unaffiliated  
26 businesses.

27 <sup>1</sup>["Risk retention group" means a captive insurance company  
28 organized pursuant to the "New Jersey Risk Retention Act,"  
29 P.L.1993, c.240 (C.17:47A-1 et seq.), as a stock or mutual  
30 corporation, a reciprocal or other limited liability entity.]<sup>1</sup>

31 "Sponsor" means an entity that meets the requirements of  
32 sections <sup>1</sup>17 and<sup>1</sup> 18 <sup>1</sup>[and 19]<sup>1</sup> of this act and that the  
33 commissioner has approved to provide all or part of the capital and  
34 surplus required by applicable law to operate a sponsored captive  
35 insurance company.

36 "Sponsored captive insurance company" means a captive  
37 insurance company:

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

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

41 (3) that insures the risks of separate participants through the  
42 contract; and

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

45  
46 2. a. A captive insurance company, if permitted by its articles of  
47 association, charter or other organizational document, may apply to  
48 the commissioner for a license to do business in any of the lines of

- 1 insurance in subtitle 3 of Title 17 of the Revised Statutes or Title  
2 17B of the New Jersey Statutes, including contracts or policies of  
3 life insurance, health insurance, annuities, indemnity, property and  
4 casualty, fidelity, **'[surety,]'** guaranty and title insurance; provided,  
5 however, that:
- 6 (1) a pure captive insurance company shall not insure risks  
7 other than those of its parent and affiliated companies or controlled  
8 unaffiliated businesses;
- 9 (2) an association captive insurance company shall not insure  
10 risks other than those of the member organizations of its  
11 association, and their affiliated companies;
- 12 (3) an industrial insured captive insurance company shall not  
13 insure risks other than those of the industrial insureds that comprise  
14 the industrial insured group and their affiliated companies;
- 15 (4) **'[a risk retention group shall not insure risks other than those**  
16 **of its members and owners;**
- 17 **(5)]'** a captive insurance company shall not provide private  
18 passenger automobile insurance or homeowner's insurance coverage  
19 or any component thereof;
- 20 **'[(6)] (5)'** a captive insurance company shall not accept or cede  
21 reinsurance except as provided in section 10 of this act;
- 22 **'[(7)] (6)'** a captive insurance company may provide excess  
23 workers' compensation insurance to its parent and affiliated  
24 companies, unless prohibited by the federal law or laws of the state  
25 having jurisdiction over the transaction. A captive insurance  
26 company, unless prohibited by federal law, may reinsure workers'  
27 compensation of a qualified self-insured plan of its parent and  
28 affiliated companies; and
- 29 **'[(8)] (7)'** a captive insurance company shall comply with all  
30 applicable State and federal laws.
- 31 b. A captive insurance company shall not write any insurance  
32 business in this State unless:
- 33 (1) it first obtains from the commissioner a license authorizing it  
34 to write insurance business in this State;
- 35 (2) its board of directors or committee of managers or, in the  
36 case of a reciprocal insurer, its subscribers' advisory committee,  
37 holds at least one meeting each year in this State;
- 38 (3) it maintains its principal place of business in this State 'with  
39 the appropriate number of in-State professional services provider  
40 staff to carry out the business of the captive, including but not  
41 limited to, attorneys, accountants, managers, actuaries, brokers, and  
42 third party administrators'; and
- 43 (4) it appoints a registered agent to accept service of process and  
44 to otherwise act on its behalf in this State; provided that whenever  
45 that registered agent cannot with reasonable diligence be found at  
46 the registered office of the captive insurance company, the

1 Secretary of State shall be an agent of the captive insurance  
2 company upon whom any process, notice or demand may be served.

3 c. (1) Before receiving a license, a captive insurance company  
4 shall:

5 (a) file with the commissioner a certified copy of its  
6 organization documents, a statement under oath of its president and  
7 secretary showing its financial condition, and any other statements  
8 or documents required by the commissioner; and

9 (b) submit to the commissioner for approval a description of the  
10 coverage limits and rates, together with any additional information  
11 as the commissioner may reasonably require. In the event of any  
12 subsequent material change in an item in the description, the  
13 captive insurance company shall submit to the commissioner for  
14 approval an appropriate revision and shall not offer any additional  
15 lines of insurance until a revision of the description is approved by  
16 the commissioner. The captive insurance company shall inform the  
17 commissioner of any material change in rates within 30 days of the  
18 adoption of any change.

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

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

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

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

26 (d) the adequacy of the loss prevention programs of its insureds;  
27 and

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

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

35 (a) the information may be discoverable by a party in a civil  
36 action or contested case to which the captive insurance company  
37 that submitted the information is a party, upon a showing by the  
38 party seeking to discover the information that:

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

41 (ii) the information sought is unavailable from other  
42 nonconfidential sources; and

43 (iii) a subpoena issued by a judicial or administrative officer of  
44 competent jurisdiction has been submitted to the commissioner '【;  
45 except that the provisions of this paragraph (3) shall not apply to a  
46 risk retention group】'; and

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

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

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

8 d. A captive insurance company shall pay to the commissioner  
9 a nonrefundable fee <sup>2</sup>[of \$200]<sup>2</sup> for examining, investigating and  
10 processing its application for license and the commissioner is  
11 authorized to retain legal, financial and examination services from  
12 outside the department, the reasonable cost of which may be  
13 charged against the applicant. In addition, each captive insurance  
14 company shall pay a license fee for the year of registration and a  
15 renewal fee for each year thereafter <sup>2</sup>[of \$300]. The commissioner  
16 shall establish by regulation fees necessary for the administration of  
17 this act.<sup>2</sup>

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

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

27 <sup>1</sup>g. The commissioner may <sup>2</sup>[issue a license on an expedited  
28 basis to a captive insurance company currently formed or licensed  
29 pursuant to the laws of a jurisdiction other than this State, provided  
30 the captive insurance company complies with all of the filing  
31 requirements of this section and presents satisfactory evidence that  
32 it meets any additional financial standards which the commissioner  
33 may set by regulation.<sup>1</sup>] establish by regulation an expedited  
34 licensing process for a captive insurance company currently formed  
35 or licensed pursuant to the laws of a jurisdiction other than this  
36 State that applies for license to do business in this State.<sup>2</sup>

37  
38 3. a. A captive insurance company shall not be issued a license  
39 unless it maintains unimpaired paid-in capital and surplus of:

40 (1) in the case of a pure captive insurance company, not less  
41 than \$250,000;

42 (2) in the case of an association captive insurance company, not  
43 less than \$750,000;

44 (3) in the case of an industrial insured captive insurance  
45 company, not less than \$500,000; <sup>1</sup>and<sup>1</sup>

46 (4) <sup>1</sup>[in the case of a risk retention group, not less than  
47 \$1,000,000; and



1 (5)]<sup>1</sup> in the case of a sponsored captive insurance company, not  
2 less than \$500,000.

3 b. The commissioner may prescribe additional capital and  
4 surplus requirements based upon the type, volume and nature of  
5 insurance business transacted.

6 c. Capital and surplus may be in the form of cash or an  
7 irrevocable letter of credit issued by a bank chartered by the State <sup>1</sup>of  
8 New Jersey<sup>1</sup> or a member bank of the Federal Reserve System  
9 <sup>1</sup>located in this State<sup>1</sup> and approved by the commissioner.

10

11 4. A captive insurance company shall not pay a dividend out  
12 of, or other distribution with respect to, capital or surplus without  
13 the prior approval of the commissioner. Approval of an ongoing  
14 plan for the payment of dividends or other distributions shall be  
15 conditioned upon the retention, at the time of each payment, of  
16 capital or surplus in excess of amounts specified by, or determined  
17 in accordance with formulas approved by, the commissioner.  
18 Notwithstanding any provisions of the "New Jersey Nonprofit  
19 Corporation Act," N.J.S.15A:1-1 et seq. to the contrary, a captive  
20 insurance company organized under the provisions of the "New  
21 Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq. may make  
22 distributions as are in conformity with its purposes and approved by  
23 the commissioner.

24

25 5. a. A pure captive insurance company may be incorporated  
26 or organized as:

27 (1) a stock insurer with its capital divided into shares and held  
28 by the stockholders;

29 (2) a nonprofit corporation with one or more members; or

30 (3) a manager-managed limited liability company.

31 b. An association captive insurance company <sup>1</sup>[,] or<sup>1</sup> an  
32 industrial insured captive insurance company <sup>1</sup>[, or a risk retention  
33 group]<sup>1</sup> may be:

34 (1) incorporated as a stock insurer with its capital divided into  
35 shares and held by the stockholders;

36 (2) incorporated as a mutual corporation;

37 (3) organized as a reciprocal insurer in accordance with the  
38 provisions of P.L.1945, c.161 (C.17:50-1 et seq.); or

39 (4) organized as a manager-managed limited liability company.

40 c. A captive insurance company incorporated or organized in  
41 this State shall have not less than three incorporators or three  
42 organizers of whom at least one shall be a resident of this State.

43 d. In the case of a captive insurance company:

44 (1) formed as a corporation: (a) before the articles of  
45 incorporation are transmitted to the Secretary of State, the  
46 incorporators shall petition the commissioner to issue a certificate  
47 setting forth the commissioner's finding that the establishment and

1 maintenance of the proposed corporation will promote the general  
2 good of the State. In arriving at a finding the commissioner shall  
3 consider:

4 (i) the character, reputation, financial standing and purposes of  
5 the incorporators or organizers;

6 (ii) the character, reputation, financial responsibility, insurance  
7 experience and business qualifications of the officers and directors;  
8 and

9 (iii) any other aspects of the proposed corporation as the  
10 commissioner deems advisable.

11 (b) the articles of incorporation, certificate and organization fee  
12 shall be transmitted to the Secretary of State, who shall record both  
13 the articles of incorporation and the certificate.

14 (2) formed as a reciprocal insurer, the organizers shall petition  
15 the commissioner to issue a certificate setting forth the  
16 commissioner's finding that the establishment and maintenance of  
17 the proposed association will promote the general good of the State.  
18 In arriving at a finding the commissioner shall consider the items  
19 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)  
20 of paragraph (1) of this subsection as applicable to a reciprocal  
21 insurer.

22 (3) formed as a limited liability company, before the articles of  
23 organization are transmitted to the Secretary of State, the organizers  
24 shall petition the commissioner to issue a certificate setting forth  
25 the commissioner's finding that the establishment and maintenance  
26 of the proposed company will promote the general good of the  
27 State. In arriving at a finding, the commissioner shall consider the  
28 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph  
29 (a) of paragraph (1) of this subsection as applicable to a limited  
30 liability company.

31 e. The capital stock of a captive insurance company  
32 incorporated as a stock insurer may be authorized with no par value.

33 f. In the case of a captive insurance company:

34 (1) formed as a corporation, at least one of the members of the  
35 board of directors shall be a resident of this State;

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

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

41 g. Other than a captive insurance company formed as a limited  
42 liability company pursuant to the "New Jersey Limited Liability  
43 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) or as a  
44 nonprofit corporation pursuant to the "New Jersey Nonprofit  
45 Corporation Act," N.J.S.15A:1-1 et seq., a captive insurance  
46 company formed as a corporation under the provisions of this act  
47 shall have the privileges and be subject to the provisions of the  
48 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., as

1 well as the applicable provisions contained in this act. In the event  
2 of a conflict between the provisions of the "New Jersey Business  
3 Corporation Act," N.J.S.14A:1-1 et seq., and the provisions of this  
4 act, this act shall control.

5 h. A captive insurance company formed under the provisions of  
6 this act:

7 (1) as a limited liability company shall have the privileges and  
8 be subject to the provisions of the "New Jersey Limited Liability  
9 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) as well as the  
10 applicable provisions contained in this act. In the event of a conflict  
11 between the provisions of the "New Jersey Limited Liability  
12 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) and the  
13 provisions of this act, this act shall control; or

14 (2) as a nonprofit corporation shall have the privileges and be  
15 subject to the provisions of the "New Jersey Nonprofit Corporation  
16 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions  
17 contained in this act. In the event of a conflict between the  
18 provisions of the "New Jersey Nonprofit Corporation Act,"  
19 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall  
20 control.

21 i. The procedures to be followed by a captive insurance  
22 company in carrying out a merger, consolidation, conversion,  
23 mutualization or redomestication shall be prescribed by the  
24 commissioner by regulation.

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

31 k. The articles of incorporation or bylaws of a captive  
32 insurance company formed as a corporation may authorize a  
33 quorum of its board of directors to consist of not less than one-third  
34 of the fixed or prescribed number of directors determined under  
35 applicable provisions of the "New Jersey Business Corporation  
36 Act," N.J.S.14A:1-1 et seq., or the "New Jersey Nonprofit  
37 Corporation Act," N.J.S.15A:1-1 et seq.

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

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

46 (1) the irrevocable election certifies that, at the time of the  
47 company's organization and at all times thereafter, the company

1 conducted its business in a manner consistent with a nonprofit  
2 purpose; and

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

9  
10 6. a. Prior to March 1 of each year, a captive insurance  
11 company shall submit to the commissioner a report of its financial  
12 condition, verified by oath of two of its executive officers. A  
13 captive insurance company shall report using generally accepted  
14 accounting principles, unless the commissioner approves the use of  
15 regulatory accounting principles, with any appropriate or necessary  
16 modifications or adaptations as may be required, approved or  
17 accepted by the commissioner for the type of insurance and kinds of  
18 insurers to be reported upon, and as supplemented by additional  
19 information required by the commissioner. Except as otherwise  
20 provided, an association captive insurance company <sup>1</sup>and a risk  
21 retention group<sup>1</sup> shall file its report in the form required by  
22 R.S.17:23-1. The commissioner shall by rule prescribe the forms in  
23 which a pure captive insurance company and an industrial insured  
24 captive insurance company shall report. The confidentiality  
25 requirements of paragraph (3) of subsection c. of section 2 of this  
26 act shall apply to each report filed pursuant to this section <sup>1</sup>[,  
27 except reports filed by risk retention groups<sup>1</sup>].

28 b. A pure captive insurance company or an industrial insured  
29 captive insurance company may make written application for filing  
30 the required report on a fiscal year-end. If an alternative reporting  
31 date is granted, the annual report is due 60 days after the fiscal  
32 year-end.

33  
34 7. a. At least once in every three years, and whenever the  
35 commissioner determines it to be prudent, the commissioner shall  
36 personally, or by some competent person appointed by the  
37 commissioner, visit each captive insurance company and thoroughly  
38 inspect and examine its affairs to determine its financial condition,  
39 its ability to fulfill its obligations and whether it has complied with  
40 the provisions of this act. The commissioner may increase the three-  
41 year period to five years, if the captive insurance company is  
42 subject to a comprehensive annual audit during that period of a  
43 scope satisfactory to the commissioner by independent auditors  
44 approved by the commissioner. The expenses and charges of the  
45 examination shall be paid to the State by the company examined.

46 b. All examination reports, preliminary examination reports or  
47 results, working papers, recorded information, documents and  
48 copies thereof produced by, obtained by or disclosed to the

1 commissioner or any other person in the course of an examination  
2 made under this section are confidential and are not subject to  
3 subpoena and shall not be made public by the commissioner without  
4 the written consent of the company, except to the extent provided in  
5 this subsection. Nothing in this subsection shall prevent the  
6 commissioner from using the information in furtherance of the  
7 commissioner's regulatory authority under this act. The  
8 commissioner may, in the commissioner's discretion, grant access to  
9 the information to public officers having jurisdiction over the  
10 regulation of insurance in any other state or country, or to law  
11 enforcement officers of this State or any other state or agency of the  
12 federal government at any time, so long as the officers receiving the  
13 information agree in writing to hold it in a manner consistent with  
14 this section.

15 <sup>2</sup>c. As to a branch captive insurance company, the commissioner  
16 shall only examine the branch operations and branch business of the  
17 branch captive insurance company, in a manner to be prescribed by  
18 the commissioner by regulation.<sup>2</sup>

19

20 8. a. Pursuant to subsection b. of this section, the  
21 commissioner may suspend or revoke the license of a captive  
22 insurance company for any of the following reasons:

23 (1) Insolvency or impairment of capital or surplus;

24 (2) Failure to meet the capital surplus requirements of section 3  
25 of this act;

26 (3) Refusal or failure to submit an annual report, as required by  
27 this act, or any other report or statement required by law or by  
28 lawful order of the commissioner;

29 (4) Failure to comply with the provisions of its own charter,  
30 bylaws or other organizational document;

31 (5) Failure to submit to or pay the cost of examination or any  
32 legal obligation relative to an examination, as required by this act;

33 (6) Use methods that, although not otherwise specifically  
34 prohibited by law, nevertheless render its operation detrimental or  
35 its condition unsound with respect to the public or to its  
36 policyholders; or

37 (7) Failure to otherwise comply with the laws of this State.

38 b. If the commissioner finds, upon examination, hearing or  
39 other evidence, that a captive insurance company has violated any  
40 provision of subsection a. of this section, the commissioner may  
41 suspend or revoke the company's license if the commissioner deems  
42 it in the best interest of the public and the policyholders of the  
43 captive insurance company, notwithstanding any other provision of  
44 this act.

45

46 9. a. A captive insurance company shall comply with  
47 investment requirements to be prescribed by the commissioner by  
48 regulation.

1       b. A pure captive insurance company shall not make a loan to,  
2 or an investment in, its parent company or affiliates without prior  
3 written approval of the commissioner, and a loan or investment  
4 shall be evidenced by documentation approved by the  
5 commissioner. A pure captive insurance company shall not make a  
6 loan using the minimum capital and surplus funds required by  
7 section 3 of this act.

8  
9       10. a. A captive insurance company may provide reinsurance on  
10 risks ceded by any other insurer.

11       b. A captive insurance company may take credit for the  
12 reinsurance of risks or portions of risks ceded to reinsurers  
13 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et  
14 seq.). <sup>1</sup>~~【Prior approval of the commissioner shall be required for~~  
15 ~~ceding or taking】~~ A captive insurance company shall not take<sup>1</sup>  
16 credit for the reinsurance of risks or portions of risks ceded to  
17 reinsurers not complying with P.L.1993, c.243 (C.17:51B-1 et seq.)  
18 <sup>1</sup>【, except for business written by an alien captive insurance  
19 company outside the United States】<sup>1</sup>.

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

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

36  
37       11. a. A captive insurance company shall not be required to join  
38 a rating organization.

39       b. A captive insurance company shall not be permitted to join  
40 or contribute financially to a plan, pool, association, or guaranty or  
41 insolvency fund in this State <sup>1</sup>, including <sup>2</sup>the New Jersey Life and  
42 Health Insurance Guaranty Association, P.L.1991, c.208  
43 (C.17B:32A-1 et seq.),<sup>2</sup> the New Jersey Property-Liability  
44 Insurance Guaranty Association, P.L.1974, c.17 (C.17:30A-1 et  
45 seq.), the New Jersey Surplus Lines Insurance Guaranty Fund,  
46 P.L.1984, c.101 (C.17:22-6.70 et seq.), or “the workers’  
47 compensation security fund” created pursuant to R.S.34:15-105,<sup>1</sup>

1 nor shall a captive insurance company, or an insured or affiliate  
2 thereof, <sup>3</sup>or a claimant thereof,<sup>3</sup> receive a benefit from a plan, pool,  
3 association, or guaranty or insolvency fund, <sup>1</sup>including <sup>2</sup>the New  
4 Jersey Life and Health Insurance Guaranty Association, P.L.1991,  
5 c.208 (C.17B:32A-1 et seq.),<sup>2</sup> the New Jersey Property-Liability  
6 Insurance Guaranty Association, P.L.1974, c.17 (C.17:30A-1 et  
7 seq.), the New Jersey Surplus Lines Insurance Guaranty Fund,  
8 P.L.1984, c.101 (C.17:22-6.70 et seq.), or “the workers’  
9 compensation security fund” created pursuant to R.S.34:15-105,<sup>1</sup>  
10 for claims arising out of the operations of a captive insurance  
11 company.

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

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

43 c. The annual minimum aggregate tax to be paid by a captive  
44 insurance company calculated under subsections a. and b. of this  
45 section shall be \$7,500, and the annual maximum aggregate tax  
46 shall be \$200,000. The maximum aggregate tax to be paid by a  
47 sponsored captive insurance company shall apply to each protected

1 cell only and not to the sponsored captive insurance company as a  
2 whole.

3 d. (1) A captive insurance company shall, on or before March  
4 1 of each year, file with the commissioner an annual tax return,  
5 signed and sworn to by an officer of the company, or by its United  
6 States manager, if a company of a foreign country, in the form and  
7 containing matters as may be necessary for carrying out the  
8 provisions of this section.

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

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

17 e. Two or more captive insurance companies under common  
18 ownership and control shall be taxed as though they were a single  
19 captive insurance company.

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

22 (1) in the case of stock corporations, the direct or indirect  
23 ownership of 80 percent or more of the outstanding voting stock of  
24 two or more corporations by the same shareholder or shareholders;  
25 and

26 (2) in the case of mutual or nonprofit corporations, the direct or  
27 indirect ownership of 80 percent or more of the surplus and the  
28 voting power of two or more corporations by the same member or  
29 members.

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

34 h. <sup>3</sup>Annually, ten percent of the premium tax revenues  
35 collected by the director pursuant to this section shall be transferred  
36 to the commissioner for the regulation of captive insurance  
37 companies under this act.

38 i. <sup>3</sup>The tax provided for by this section shall be calculated on  
39 an annual basis, notwithstanding policies or contracts of insurance  
40 or contracts of reinsurance issued on a multiyear basis. In the case  
41 of multiyear policies or contracts, the premium shall be prorated for  
42 purposes of determining the tax under this section.

43 <sup>2</sup> <sup>3</sup>[j.] i. <sup>3</sup> The tax provided for by this section shall only apply  
44 to the branch business of a branch captive insurance company.<sup>2</sup>

45  
46 <sup>1</sup>[13. Risk retention groups shall have the privileges and be  
47 subject to the provisions of the "New Jersey Risk Retention Act,"



1 P.L.1993, c.240 (C.17:47A-1 et seq.) in addition to the applicable  
2 provisions of this act.]<sup>1</sup>

3  
4 <sup>1</sup>[14.] 13.<sup>1</sup> <sup>2</sup>[ a. (1)]<sup>2</sup> There is created <sup>2</sup>within the Department  
5 of Banking and Insurance<sup>2</sup> a fund to be known as the "Captive  
6 Insurance Regulation and Supervision Fund," for the purpose of  
7 providing the financial means for the commissioner to administer  
8 this act <sup>1</sup>[and the "New Jersey Risk Retention Act," P.L.1993,  
9 c.240 (C.17:47A-1 et seq.),]<sup>1</sup> and for reasonable expenses incurred  
10 in promoting the captive insurance industry in this State. <sup>2</sup>[The  
11 transfer of 10 percent of the premium tax under subsection h. of  
12 section 12 of this act, and all] The commissioner may establish by  
13 regulation, fees necessary for the administration of this act. All<sup>2</sup>  
14 fees and assessments received by the department pursuant to the  
15 administration of this act <sup>1</sup>[and the "New Jersey Risk Retention  
16 Act," P.L.1993, c.240 (C.17:47A-1 et seq.)]<sup>1</sup> shall be credited to  
17 this fund. <sup>2</sup>[Of this amount, not more than two percent of the  
18 premium tax under section 12 of this act may be transferred to the  
19 New Jersey Economic Development Authority for expenses for  
20 promotional activities conducted by the commission in relation to  
21 captive insurance companies.]<sup>2</sup> All fees received by the department  
22 from 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 <sup>2</sup>[, 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]<sup>2</sup>.

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

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

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

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

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

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

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

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

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

38 (d) is approved:

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

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

47 (2) the commissioner shall approve the plan of conversion if the  
48 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 <sup>1</sup>[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.

42

43

44

45

46

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Regulates captive insurers.

# 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)**

**SYNOPSIS**

Regulates captive insurers.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/9/2010)

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, industrial insured captive insurance  
36 company or risk retention group formed or licensed under the  
37 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

45 (3) whose risks are managed by a pure captive insurance  
46 company in accordance with section 16 of this act.

47 "Excess workers' compensation insurance" means, in the case of  
48 an employer that has insured or self-insured its workers'

1 compensation risks in accordance with applicable State or federal  
2 law, insurance in excess of a specified per incident or aggregate  
3 limit established by the commissioner.

4 "Industrial insured" means an insured:

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

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

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

10 "Industrial insured captive insurance company" means a  
11 company that insures risks of the industrial insureds that comprise  
12 the industrial insured group, and their affiliated companies.

13 "Industrial insured group" means a group of industrial insureds  
14 that collectively:

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

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

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

22 "Member organization" means an individual, corporation, limited  
23 liability company, partnership, association or other entity that  
24 belongs to an association.

25 "Mutual corporation" means a corporation organized without  
26 stockholders and includes a nonprofit corporation with members.

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

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

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

35 "Protected cell" means a separate account established and  
36 maintained by a sponsored captive insurance company for one  
37 participant.

38 "Pure captive insurance company" means a company that insures  
39 risks of its parent and affiliated companies or controlled unaffiliated  
40 businesses.

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

45 "Sponsor" means an entity that meets the requirements of  
46 sections 18 and 19 of this act and that the commissioner has  
47 approved to provide all or part of the capital and surplus required by  
48 applicable law to operate a sponsored captive insurance company.



1 "Sponsored captive insurance company" means a captive  
2 insurance company:

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

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

6 (3) that insures the risks of separate participants through the  
7 contract; and

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

10

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

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

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

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

28 (4) a risk retention group shall not insure risks other than those  
29 of its members and owners;

30 (5) a captive insurance company shall not provide private  
31 passenger automobile insurance or homeowner's insurance coverage  
32 or any component thereof;

33 (6) a captive insurance company shall not accept or cede  
34 reinsurance except as provided in section 10 of this act;

35 (7) a captive insurance company may provide excess workers'  
36 compensation insurance to its parent and affiliated companies,  
37 unless prohibited by the federal law or laws of the state having  
38 jurisdiction over the transaction. A captive insurance company,  
39 unless prohibited by federal law, may reinsure workers'  
40 compensation of a qualified self-insured plan of its parent and  
41 affiliated companies; and

42 (8) a captive insurance company shall comply with all  
43 applicable State and federal laws.

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

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

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

4 (3) it maintains its principal place of business in this State; and

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

11 c. (1) Before receiving a license, a captive insurance company  
12 shall:

13 (a) file with the commissioner a certified copy of its organization  
14 documents, a statement under oath of its president and secretary  
15 showing its financial condition, and any other statements or  
16 documents required by the commissioner; and

17 (b) submit to the commissioner for approval a description of the  
18 coverage limits and rates, together with any additional information  
19 as the commissioner may reasonably require. In the event of any  
20 subsequent material change in an item in the description, the  
21 captive insurance company shall submit to the commissioner for  
22 approval an appropriate revision and shall not offer any additional  
23 lines of insurance until a revision of the description is approved by  
24 the commissioner. The captive insurance company shall inform the  
25 commissioner of any material change in rates within 30 days of the  
26 adoption of any change.

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

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

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

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

34 (d) the adequacy of the loss prevention programs of its insureds;  
35 and

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

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

43 (a) the information may be discoverable by a party in a civil  
44 action or contested case to which the captive insurance company  
45 that submitted the information is a party, upon a showing by the  
46 party seeking to discover the information that:

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

- 1 (ii) the information sought is unavailable from other  
2 nonconfidential sources; and
- 3 (iii) a subpoena issued by a judicial or administrative officer of  
4 competent jurisdiction has been submitted to the commissioner;  
5 except that the provisions of this paragraph (3) shall not apply to a  
6 risk retention group; and
- 7 (b) the commissioner may, in the commissioner's discretion,  
8 disclose the information to a public official having jurisdiction over  
9 the regulation of insurance in another state, if:
- 10 (i) the public official agrees in writing to maintain the  
11 confidentiality of the information; and
- 12 (ii) the laws of the state in which the public official serves  
13 require the information to remain confidential.
- 14 d. A captive insurance company shall pay to the commissioner a  
15 nonrefundable fee of \$200 for examining, investigating and  
16 processing its application for license and the commissioner is  
17 authorized to retain legal, financial and examination services from  
18 outside the department, the reasonable cost of which may be  
19 charged against the applicant. In addition, each captive insurance  
20 company shall pay a license fee for the year of registration and a  
21 renewal fee for each year thereafter of \$300.
- 22 e. If the commissioner is satisfied that the documents and  
23 statements filed by a captive insurance company comply with the  
24 provisions of this act, the commissioner may grant a license  
25 authorizing it to write insurance business in this State until April 1  
26 thereafter, which license may be renewed.
- 27 f. A captive insurance company shall not adopt a name that is  
28 the same, deceptively similar, or likely to be confused with or  
29 mistaken for any other existing business name registered in the  
30 State.
- 31
- 32 3. a. A captive insurance company shall not be issued a license  
33 unless it maintains unimpaired paid-in capital and surplus of:
- 34 (1) in the case of a pure captive insurance company, not less than  
35 \$250,000;
- 36 (2) in the case of an association captive insurance company, not  
37 less than \$750,000;
- 38 (3) in the case of an industrial insured captive insurance  
39 company, not less than \$500,000;
- 40 (4) in the case of a risk retention group, not less than \$1,000,000;  
41 and
- 42 (5) in the case of a sponsored captive insurance company, not  
43 less than \$500,000.
- 44 b. The commissioner may prescribe additional capital and  
45 surplus requirements based upon the type, volume and nature of  
46 insurance business transacted.
- 47 c. Capital and surplus may be in the form of cash or an  
48 irrevocable letter of credit issued by a bank chartered by the State or a

1 member bank of the Federal Reserve System and approved by the  
2 commissioner.

3  
4 4. A captive insurance company shall not pay a dividend out  
5 of, or other distribution with respect to, capital or surplus without  
6 the prior approval of the commissioner. Approval of an ongoing  
7 plan for the payment of dividends or other distributions shall be  
8 conditioned upon the retention, at the time of each payment, of  
9 capital or surplus in excess of amounts specified by, or determined  
10 in accordance with formulas approved by, the commissioner.  
11 Notwithstanding any provisions of the "New Jersey Nonprofit  
12 Corporation Act," N.J.S.15A:1-1 et seq. to the contrary, a captive  
13 insurance company organized under the provisions of the "New  
14 Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq. may make  
15 distributions as are in conformity with its purposes and approved by  
16 the commissioner.

17  
18 5. a. A pure captive insurance company may be incorporated  
19 or organized as:

20 (1) a stock insurer with its capital divided into shares and held  
21 by the stockholders;

22 (2) a nonprofit corporation with one or more members; or

23 (3) a manager-managed limited liability company.

24 b. An association captive insurance company, an industrial  
25 insured captive insurance company, or a risk retention group may  
26 be:

27 (1) incorporated as a stock insurer with its capital divided into  
28 shares and held by the stockholders;

29 (2) incorporated as a mutual corporation;

30 (3) organized as a reciprocal insurer in accordance with the  
31 provisions of P.L.1945, c.161 (C.17:50-1 et seq.); or

32 (4) organized as a manager-managed limited liability company.

33 c. A captive insurance company incorporated or organized in  
34 this State shall have not less than three incorporators or three  
35 organizers of whom at least one shall be a resident of this State.

36 d. In the case of a captive insurance company:

37 (1) formed as a corporation: (a) before the articles of  
38 incorporation are transmitted to the Secretary of State, the  
39 incorporators shall petition the commissioner to issue a certificate  
40 setting forth the commissioner's finding that the establishment and  
41 maintenance of the proposed corporation will promote the general  
42 good of the State. In arriving at a finding the commissioner shall  
43 consider:

44 (i) the character, reputation, financial standing and purposes of  
45 the incorporators or organizers;

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

48 and

1 (iii) any other aspects of the proposed corporation as the  
2 commissioner deems advisable.

3 (b) the articles of incorporation, certificate and organization fee  
4 shall be transmitted to the Secretary of State, who shall record both  
5 the articles of incorporation and the certificate.

6 (2) formed as a reciprocal insurer, the organizers shall petition  
7 the commissioner to issue a certificate setting forth the  
8 commissioner's finding that the establishment and maintenance of  
9 the proposed association will promote the general good of the State.  
10 In arriving at a finding the commissioner shall consider the items  
11 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)  
12 of paragraph (1) of this subsection as applicable to a reciprocal  
13 insurer.

14 (3) formed as a limited liability company, before the articles of  
15 organization are transmitted to the Secretary of State, the organizers  
16 shall petition the commissioner to issue a certificate setting forth  
17 the commissioner's finding that the establishment and maintenance  
18 of the proposed company will promote the general good of the  
19 State. In arriving at a finding, the commissioner shall consider the  
20 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph  
21 (a) of paragraph (1) of this subsection as applicable to a limited  
22 liability company.

23 e. The capital stock of a captive insurance company incorporated  
24 as a stock insurer may be authorized with no par value.

25 f. In the case of a captive insurance company:

26 (1) formed as a corporation, at least one of the members of the  
27 board of directors shall be a resident of this State;

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

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

32 g. Other than a captive insurance company formed as a limited  
33 liability company pursuant to the "New Jersey Limited Liability  
34 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) or as a  
35 nonprofit corporation pursuant to the "New Jersey Nonprofit  
36 Corporation Act," N.J.S.15A:1-1 et seq., a captive insurance  
37 company formed as a corporation under the provisions of this act  
38 shall have the privileges and be subject to the provisions of the  
39 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., as  
40 well as the applicable provisions contained in this act. In the event  
41 of a conflict between the provisions of the "New Jersey Business  
42 Corporation Act," N.J.S.14A:1-1 et seq., and the provisions of this  
43 act, this act shall control.

44 h. A captive insurance company formed under the provisions of  
45 this act:

46 (1) as a limited liability company shall have the privileges and  
47 be subject to the provisions of the "New Jersey Limited Liability  
48 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) as well as the

1 applicable provisions contained in this act. In the event of a conflict  
2 between the provisions of the "New Jersey Limited Liability  
3 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) and the  
4 provisions of this act, this act shall control; or

5 (2) as a nonprofit corporation shall have the privileges and be  
6 subject to the provisions of the "New Jersey Nonprofit Corporation  
7 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions  
8 contained in this act. In the event of a conflict between the  
9 provisions of the "New Jersey Nonprofit Corporation Act,"  
10 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall  
11 control.

12 i. The procedures to be followed by a captive insurance  
13 company in carrying out a merger, consolidation, conversion,  
14 mutualization or redomestication shall be prescribed by the  
15 commissioner by regulation.

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

22 k. The articles of incorporation or bylaws of a captive insurance  
23 company formed as a corporation may authorize a quorum of its  
24 board of directors to consist of not less than one-third of the fixed  
25 or prescribed number of directors determined under applicable  
26 provisions of the "New Jersey Business Corporation Act,"  
27 N.J.S.14A:1-1 et seq., or the "New Jersey Nonprofit Corporation  
28 Act," N.J.S.15A:1-1 et seq.

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

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

37 (1) the irrevocable election certifies that, at the time of the  
38 company's organization and at all times thereafter, the company  
39 conducted its business in a manner consistent with a nonprofit  
40 purpose; and

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

1       6. a. Prior to March 1 of each year, a captive insurance  
2 company shall submit to the commissioner a report of its financial  
3 condition, verified by oath of two of its executive officers. A  
4 captive insurance company shall report using generally accepted  
5 accounting principles, unless the commissioner approves the use of  
6 regulatory accounting principles, with any appropriate or necessary  
7 modifications or adaptations as may be required, approved or  
8 accepted by the commissioner for the type of insurance and kinds of  
9 insurers to be reported upon, and as supplemented by additional  
10 information required by the commissioner. Except as otherwise  
11 provided, an association captive insurance company and a risk  
12 retention group shall file its report in the form required by  
13 R.S.17:23-1. The commissioner shall by rule prescribe the forms in  
14 which a pure captive insurance company and an industrial insured  
15 captive insurance company shall report. The confidentiality  
16 requirements of paragraph (3) of subsection c. of section 2 of this  
17 act shall apply to each report filed pursuant to this section, except  
18 reports filed by risk retention groups.

19       b. A pure captive insurance company or an industrial insured  
20 captive insurance company may make written application for filing  
21 the required report on a fiscal year-end. If an alternative reporting  
22 date is granted, the annual report is due 60 days after the fiscal  
23 year-end.

24  
25       7. a. At least once in every three years, and whenever the  
26 commissioner determines it to be prudent, the commissioner shall  
27 personally, or by some competent person appointed by the  
28 commissioner, visit each captive insurance company and thoroughly  
29 inspect and examine its affairs to determine its financial condition,  
30 its ability to fulfill its obligations and whether it has complied with  
31 the provisions of this act. The commissioner may increase the three-  
32 year period to five years, if the captive insurance company is  
33 subject to a comprehensive annual audit during that period of a  
34 scope satisfactory to the commissioner by independent auditors  
35 approved by the commissioner. The expenses and charges of the  
36 examination shall be paid to the State by the company examined.

37       b. All examination reports, preliminary examination reports or  
38 results, working papers, recorded information, documents and  
39 copies thereof produced by, obtained by or disclosed to the  
40 commissioner or any other person in the course of an examination  
41 made under this section are confidential and are not subject to  
42 subpoena and shall not be made public by the commissioner without  
43 the written consent of the company, except to the extent provided in  
44 this subsection. Nothing in this subsection shall prevent the  
45 commissioner from using the information in furtherance of the  
46 commissioner's regulatory authority under this act. The  
47 commissioner may, in the commissioner's discretion, grant access to  
48 the information to public officers having jurisdiction over the

1 regulation of insurance in any other state or country, or to law  
2 enforcement officers of this State or any other state or agency of the  
3 federal government at any time, so long as the officers receiving the  
4 information agree in writing to hold it in a manner consistent with  
5 this section.

6

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

10 (1) Insolvency or impairment of capital or surplus;

11 (2) Failure to meet the capital surplus requirements of section 3  
12 of this act;

13 (3) Refusal or failure to submit an annual report, as required by  
14 this act, or any other report or statement required by law or by  
15 lawful order of the commissioner;

16 (4) Failure to comply with the provisions of its own charter,  
17 bylaws or other organizational document;

18 (5) Failure to submit to or pay the cost of examination or any  
19 legal obligation relative to an examination, as required by this act;

20 (6) Use methods that, although not otherwise specifically  
21 prohibited by law, nevertheless render its operation detrimental or  
22 its condition unsound with respect to the public or to its  
23 policyholders; or

24 (7) Failure to otherwise comply with the laws of this State.

25 b. If the commissioner finds, upon examination, hearing or other  
26 evidence, that a captive insurance company has violated any  
27 provision of subsection a. of this section, the commissioner may  
28 suspend or revoke the company's license if the commissioner deems  
29 it in the best interest of the public and the policyholders of the  
30 captive insurance company, notwithstanding any other provision of  
31 this act.

32

33 9. a. A captive insurance company shall comply with  
34 investment requirements to be prescribed by the commissioner by  
35 regulation.

36 b. A pure captive insurance company shall not make a loan to,  
37 or an investment in, its parent company or affiliates without prior  
38 written approval of the commissioner, and a loan or investment  
39 shall be evidenced by documentation approved by the  
40 commissioner. A pure captive insurance company shall not make a  
41 loan using the minimum capital and surplus funds required by  
42 section 3 of this act.

43

44 10. a. A captive insurance company may provide reinsurance on  
45 risks ceded by any other insurer.

46 b. A captive insurance company may take credit for the  
47 reinsurance of risks or portions of risks ceded to reinsurers  
48 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et



1 seq.). Prior approval of the commissioner shall be required for  
2 ceding or taking credit for the reinsurance of risks or portions of  
3 risks ceded to reinsurers not complying with P.L.1993, c.243  
4 (C.17:51B-1 et seq.), except for business written by an alien captive  
5 insurance company outside the United States.

6 c. In addition to reinsurers authorized under the provisions of  
7 P.L.1993, c.243 (C.17:51B-1 et seq.), a captive insurance company  
8 may take credit for the reinsurance of risks or portions of risks  
9 ceded to a pool, exchange or association acting as a reinsurer which  
10 has been authorized by the commissioner. The commissioner may  
11 require any other documents, financial information or other  
12 evidence that the pool, exchange or association will be able to  
13 provide adequate security for its financial obligations. The  
14 commissioner may deny authorization or impose any limitations on  
15 the activities of a reinsurance pool, exchange or association that, in  
16 the commissioner's judgment, are necessary and proper to provide  
17 adequate security for the ceding captive insurance company and for  
18 the protection and consequent benefit of the public at large.

19 d. For purposes of this act, insurance by a captive insurance  
20 company of any workers' compensation qualified self-insured plan  
21 of its parent and affiliates shall be deemed to be reinsurance.

22  
23 11. a. A captive insurance company shall not be required to join  
24 a rating organization.

25 b. A captive insurance company shall not be permitted to join  
26 or contribute financially to a plan, pool, association, or guaranty or  
27 insolvency fund in this State, nor shall a captive insurance  
28 company, or an insured or affiliate thereof, receive a benefit from a  
29 plan, pool, association, or guaranty or insolvency fund for claims  
30 arising out of the operations of a captive insurance company.

31  
32 12. a. Each captive insurance company shall pay to the Director  
33 of the Division of Taxation in the Department of Treasury, on or  
34 before March 1 of each year, a tax at the rate of .38 of one percent  
35 on the first \$20,000,000 and .285 of one percent on the next  
36 \$20,000,000 and .19 of one percent on the next \$20,000,000 and  
37 .072 of one percent on each dollar thereafter on the direct premiums  
38 collected or contracted for on policies or contracts of insurance  
39 written by the captive insurance company during the year ending  
40 December 31 next preceding, after deducting from the direct  
41 premiums subject to the tax the amounts paid to policyholders as  
42 return premiums, which shall include dividends on unabsorbed  
43 premiums or premium deposits returned or credited to  
44 policyholders; except that no tax shall be due or payable as to  
45 considerations received for annuity contracts.

46 b. Each captive insurance company shall pay to the Director of  
47 the Division of Taxation in the Department of Treasury, on or  
48 before March 1 of each year, a tax at the rate of .214 of one percent

1 on the first \$20,000,000 of assumed reinsurance premium, and .143  
2 of one percent on the next \$20,000,000 and .048 of one percent on  
3 the next \$20,000,000 and .024 of one percent of each dollar  
4 thereafter. However, no tax under this subsection applies to  
5 premiums for risks or portions of risks which are subject to taxation  
6 on a direct basis pursuant to subsection a. of this section. No tax  
7 under this subsection shall apply in connection with the receipt of  
8 assets in exchange for the assumption of loss reserves and other  
9 liabilities of another insurer under common ownership and control  
10 if the transaction is part of a plan to discontinue the operations of  
11 the other insurer, and if the intent of the parties to the transaction is  
12 to renew or maintain the business with the captive insurance  
13 company.

14 c. The annual minimum aggregate tax to be paid by a captive  
15 insurance company calculated under subsections a. and b. of this  
16 section shall be \$7,500, and the annual maximum aggregate tax  
17 shall be \$200,000. The maximum aggregate tax to be paid by a  
18 sponsored captive insurance company shall apply to each protected  
19 cell only and not to the sponsored captive insurance company as a  
20 whole.

21 d. (1) A captive insurance company shall, on or before March  
22 1 of each year, file with the commissioner an annual tax return,  
23 signed and sworn to by an officer of the company, or by its United  
24 States manager, if a company of a foreign country, in the form and  
25 containing matters as may be necessary for carrying out the  
26 provisions of this section.

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

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

35 e. Two or more captive insurance companies under common  
36 ownership and control shall be taxed as though they were a single  
37 captive insurance company.

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

40 (1) in the case of stock corporations, the direct or indirect  
41 ownership of 80 percent or more of the outstanding voting stock of  
42 two or more corporations by the same shareholder or shareholders;  
43 and

44 (2) in the case of mutual or nonprofit corporations, the direct or  
45 indirect ownership of 80 percent or more of the surplus and the  
46 voting power of two or more corporations by the same member or  
47 members.

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

5 h. Annually, ten percent of the premium tax revenues collected  
6 by the director pursuant to this section shall be transferred to the  
7 commissioner for the regulation of captive insurance companies  
8 under this act.

9 i. The tax provided for by this section shall be calculated on an  
10 annual basis, notwithstanding policies or contracts of insurance or  
11 contracts of reinsurance issued on a multiyear basis. In the case of  
12 multiyear policies or contracts, the premium shall be prorated for  
13 purposes of determining the tax under this section.  
14

15 13. Risk retention groups shall have the privileges and be  
16 subject to the provisions of the "New Jersey Risk Retention Act,"  
17 P.L.1993, c.240 (C.17:47A-1 et seq.) in addition to the applicable  
18 provisions of this act.  
19

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

41 (2) All payments from the Captive Insurance Regulation and  
42 Supervision Fund for the maintenance of staff and associated  
43 expenses, including contractual services as necessary, shall be  
44 disbursed from the State Treasury to the commissioner after receipt  
45 of proper documentation regarding services rendered and expenses  
46 incurred.

1       b. At the end of each fiscal year, the balance in the Captive  
2 Insurance Regulation and Supervision Fund shall be transferred to  
3 the General Fund.

4  
5       15. Except as otherwise provided in this act, the terms and  
6 conditions set forth in P.L.1975, c.113 (C.17:30C-1 et seq.),  
7 pertaining to insurance reorganizations, receiverships and  
8 injunctions, shall apply to captive insurance companies formed or  
9 licensed under this act.

10  
11       16. The commissioner may adopt rules establishing standards to  
12 ensure that a parent or affiliated company is able to exercise control  
13 of the risk management function of any controlled unaffiliated  
14 business to be insured by a pure captive insurance company, except  
15 that until such time as rules under this section are adopted, the  
16 commissioner may approve the coverage of the risk by a pure  
17 captive insurance company.

18  
19       17. a. An association captive insurance company, risk retention  
20 group, or industrial insured captive insurance company formed as a  
21 stock or mutual corporation may be converted to or merged with  
22 and into a reciprocal insurer in accordance with a plan of  
23 conversion or merger and the provisions of this section.

24       b. A plan for conversion or merger shall provide a fair and  
25 equitable plan for purchasing, retiring or otherwise extinguishing  
26 the interests of the stockholders and policyholders of a stock  
27 insurer, and the members and policyholders of a mutual insurer,  
28 including a fair and equitable provision for the rights and remedies  
29 of dissenting stockholders, members or policyholders.

30       c. In the case of a conversion authorized under subsection a. of  
31 this section:

32       (1) the conversion shall be accomplished under a reasonable  
33 plan and procedure as approved by the commissioner, except that  
34 the commissioner shall not approve a plan of conversion unless the  
35 plan:

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

37       (b) provides for a hearing, of which notice is given to the  
38 captive insurance company, its directors, officers and policyholders,  
39 and, in the case of a stock insurer, its stockholders, and in the case  
40 of a mutual insurer, its members, all of which persons shall be  
41 entitled to attend and appear at the hearing if notice of a hearing is  
42 given and no director, officer, policyholder, member or stockholder  
43 requests a hearing, the commissioner may cancel the hearing;

44       (c) provides a fair and equitable plan for the conversion of  
45 stockholder, member or policyholder interests into subscriber  
46 interests in the resulting reciprocal insurer, substantially  
47 proportionate to the corresponding interests in the stock or mutual  
48 insurer. This requirement shall not preclude the resulting reciprocal

1 insurer from applying underwriting criteria that could affect  
2 ongoing ownership interests; and  
3 (d) is approved:  
4 (i) in the case of a stock insurer, by a majority of the  
5 shareholders entitled to vote represented in person or by proxy at a  
6 duly called regular or special meeting at which a quorum is present;  
7 and  
8 (ii) in the case of a mutual insurer, by a majority of the voting  
9 interests of policyholders represented in person or by proxy at a  
10 duly called regular or special meeting thereof at which a quorum is  
11 present;  
12 (2) the commissioner shall approve the plan of conversion if the  
13 commissioner finds that the conversion will promote the general  
14 good of the State in conformity with those standards set forth in  
15 paragraph (2) of subsection d. of section 5 of this act;  
16 (3) if the commissioner approves the plan, the commissioner  
17 shall amend the converting insurer's certificate of authority to  
18 reflect conversion to a reciprocal insurer and issue the amended  
19 certificate of authority to the company's attorney-in-fact;  
20 (4) the conversion shall be effective upon the issuance of an  
21 amended certificate of authority of a reciprocal insurer by the  
22 commissioner; and  
23 (5) the corporate existence of the converting insurer shall cease  
24 and the resulting reciprocal insurer shall notify the Secretary of  
25 State of the conversion upon the conversion becoming effective.  
26 d. A merger authorized under subsection a. of this section shall  
27 be accomplished substantially in accordance with the procedures to  
28 be prescribed by the commissioner, except that, solely for purposes  
29 of the merger:  
30 (1) the plan of merger shall satisfy the provisions of subsection  
31 b. of this section;  
32 (2) the subscribers' advisory committee of a reciprocal insurer  
33 shall be equivalent to the board of directors of a stock or mutual  
34 insurance company;  
35 (3) the subscribers of a reciprocal insurer shall be the equivalent  
36 of the policyholders of a mutual insurance company;  
37 (4) if a subscribers' advisory committee does not have a  
38 president or secretary, the officers of the committee having  
39 substantially equivalent duties shall be deemed the president or  
40 secretary of the committee;  
41 (5) the commissioner shall approve the articles of merger if the  
42 commissioner finds that the merger will promote the general good  
43 of the State in conformity with those standards set forth in  
44 paragraph (2) of subsection d. of section 5 of this act. If the  
45 commissioner approves the articles of merger, the commissioner  
46 shall indorse the commissioner's approval thereon and the surviving  
47 insurer shall present the same to the Secretary of State;

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

8 (7) an alien captive insurance company may be a party to a  
9 merger authorized under subsection a. of this section in accordance  
10 with procedures to be prescribed by the commissioner by  
11 regulation.

12

13 18. a. One or more sponsors may form a sponsored captive  
14 insurance company as prescribed in this act.

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

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

20 (2) A sponsored captive insurance company shall separately  
21 account for each protected cell in its books and records to reflect  
22 the financial condition and results of operations of each protected  
23 cell, net income or loss of each protected cell, dividends or other  
24 distributions to participants of each protected cell and any other  
25 factors prescribed in the participant contract or required by the  
26 commissioner.

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

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

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

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

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

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

46 (7) A sponsored captive insurance company shall notify the  
47 commissioner in writing within 10 days after learning of any

1 protected cell that is insolvent or otherwise unable to meet its claim  
2 or expense obligations.

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

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

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

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

14 (b) reinsured by a reinsurer authorized or accredited by the  
15 State; or

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

17

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

20 b. An association, corporation, limited liability company,  
21 partnership, trust or any another business entity may be a  
22 participant in any sponsored captive insurance company formed or  
23 licensed under this act.

24 c. A sponsor may be a participant in a sponsored captive  
25 insurance company.

26 d. A participant need not be a shareholder of a sponsored captive  
27 insurance company or any affiliate of a sponsored captive insurance  
28 company.

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

31

32 20. a. No cause of action shall arise nor shall any liability be  
33 imposed against the commissioner, the commissioner's authorized  
34 agent or any examiner appointed by the commissioner for any  
35 statements made or conduct performed in good faith while carrying  
36 out the provisions of this act. This section does not abrogate or  
37 modify in any way any common law or other statutory privilege or  
38 immunity available to any person identified in this subsection. A  
39 person identified in this subsection shall be entitled to an award of  
40 attorney's fees and costs if he is the prevailing party in a civil cause  
41 of action for libel, slander or any other relevant tort arising out of  
42 activities in carrying out the provisions of this act and the party  
43 bringing the action was not substantially justified in doing so. For  
44 purposes of this subsection, a proceeding is "substantially justified"  
45 if it had a reasonable basis in law or fact at the time that it was  
46 initiated.

47 b. No cause of action shall arise, nor shall any liability be  
48 imposed against any person for the act of communicating or

1 delivering information or data to the commissioner or the  
2 commissioner's authorized representative or examiner pursuant to  
3 an examination made under this act, if the communication or  
4 delivery was performed in good faith and without fraudulent intent  
5 or the intent to deceive.

6

7 21. This act shall take effect on the 90th day following  
8 enactment.

9

10

11

STATEMENT

12

13 This bill permits a captive insurance company to be licensed by  
14 the Department of Banking and Insurance to do business in the  
15 State in any of the lines of insurance in subtitle 3 of Title 17 of the  
16 Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New  
17 Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including  
18 contracts or policies of life insurance, health insurance, annuities,  
19 indemnity, property and casualty, fidelity, surety, guaranty and title  
20 insurance, and reinsurance, provided the captive meets certain  
21 requirements.

22 The bill regulates captive insurance companies, which include  
23 pure captive insurance companies, association captive insurance  
24 companies, sponsored captive insurance companies, industrial  
25 insured captive insurance companies and risk retention groups. Risk  
26 retention groups are already authorized to be licensed in the State.

27 The bill provides that a captive insurance company must meet  
28 certain requirements, including those relating to formation, capital  
29 and surplus, annual reporting, examination, local office presence,  
30 ability to meet policy obligations, payment of certain fees and taxes,  
31 and annual reporting.

32 In addition, the bill creates a "Captive Insurance Regulation and  
33 Supervision Fund" to provide the financial means for the  
34 commissioner to administer the bill's requirements and the  
35 requirements of the "New Jersey Risk Retention Act," P.L.1993,  
36 c.240 (C.17:47A-1 et seq.).

37 Further, the bill provides procedures for various types of captive  
38 insurance companies to merge with other entities and procedures  
39 that a sponsored captive insurance company must follow with  
40 respect to protected cell companies.

41 Under the bill, a captive insurance company cannot be required  
42 to join a rating organization. The bill prohibits a captive insurance  
43 company from joining or contributing to a state insolvency guaranty  
44 fund and from receiving benefits from the fund if the captive  
45 insurance company becomes impaired or insolvent.

46 Finally, the bill authorizes the Commissioner of Banking and  
47 Insurance to suspend or revoke a captive's license for a violation of  
48 the bill's provisions or unsound operations.



ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2360**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 6, 2010

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 2360.

This bill, as amended, permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements.

The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting.

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements.

Further, the bill provides procedures for various types of captive insurance companies to merge with other entities and procedures that a sponsored captive insurance company must follow with respect to protected cell companies.

Under the bill, a captive insurance company cannot be required to join a rating organization. The bill prohibits a captive insurance company from joining or contributing to a state insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.

Finally, the bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) remove risk retention groups from being included as a form of captive insurance company that is subject to the bill's provisions;

(2) require a captive insurance company to maintain an appropriate number of professional service providers to carry out the business of the captive;

(3) remove language that would have allowed a captive insurance company to engage in the business of surety bond insurance; and

(4) make certain changes regarding the circumstances under which a captive insurance company may take credit for the reinsurance of risk ceded to insurers, to ensure that reinsurance transactions of domestic insurers and captive insurance companies are regulated on an equal basis.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 2360**

with Assembly Floor Amendments  
(Proposed by Assemblyman SCHAER, Assemblywoman COYLE,  
and Assemblyman MCKEON)

ADOPTED: JUNE 28, 2010

These amendments add to the bill's regulatory scheme for licensing captive insurers in the State, new definitions of "branch captive insurance company," "branch business," and "branch operations." Under the new definitions, a branch captive insurance company, which is formed to write insurance business for its parents and affiliates and which is licensed pursuant to the laws of another jurisdiction (an alien captive insurance company), shall be a pure captive insurance company with respect to its operations in the State, unless otherwise permitted by the commissioner.

By adding these definitions, the amendments clarify that the bill's regulatory and licensing scheme generally applies to those captive insurance companies that become licensed and domiciled in this State pursuant to the bill's provisions. The bill's provisions will not apply to a captive insurance company already domiciled and licensed in another state or country, unless that company forms a branch captive insurance company in this State, in which case certain of the bill's provisions, relating to taxation and regulatory examination, will apply to the branch operations and branch business of the branch captive insurance company.

These amendments also clarify that the Commissioner of Banking and Insurance may establish by regulation an expedited licensing process for a captive insurance company currently formed or licensed pursuant to the laws of another jurisdiction that applies for a license to do business in the State. Further, the amendments add the New Jersey Life and Health Insurance Guaranty Association, P.L.1991, c.208 (C.17B:32A-1 et seq.), as another specific association that captive insurance companies will not be permitted to join or receive a benefit from.

Finally, the amendments provide that the commissioner may establish by regulation, fees necessary for the administration of the bill's provisions, and that all fees received shall be credited to the Captive Insurance Regulation and Supervision Fund established by the bill.

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**ASSEMBLY, No. 2360**

## **STATE OF NEW JERSEY 214th LEGISLATURE**

DATED: NOVEMBER 1, 2010

### SUMMARY

- Synopsis:** Regulates captive insurers.
- Type of Impact:** Uncertain impact on State tax revenue; increased administrative expenses and regulatory fee revenue of the Department of Banking and Insurance.
- Agencies Affected:** Department of Banking and Insurance

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate Increase- See comments below		
<b>State Revenue</b>	Indeterminate Impact-See comments below		

- The Office of Legislative Services (OLS) notes that this bill's impact on State tax revenues is uncertain. Insufficient information exists on which to base an estimate of the bill's direct impact on State insurance premiums tax revenues, which depends on the amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation of premiums.
- The bill increases expenditures of the Department of Banking and Insurance, by an indeterminate amount, by requiring that agency to license, regulate and promote captive insurance companies, and increases the department's licensing and fee revenue from such companies. The department is authorized to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees and taxes dedicated to department operating costs might not fully defray such costs. Additionally, the bill dedicates 10 percent of the premiums tax revenues collected from captive insurance companies to the department for the regulation of those companies.

- The bill creates the "Captive Insurance Regulation and Supervision Fund" and provides the financial means for the commissioner to administer the bill's regulatory and promotional responsibilities by authorizing the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund.

## **BILL DESCRIPTION**

Assembly Bill No. 2360 (2R) of 2010, permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements. The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies. It also charges the department with promoting the captive insurance industry in the State.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting. The bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

The bill provides for the calculation of a premiums tax, which shall be the only tax collectible from any captive insurance company and exempts captive insurance companies from the premiums tax collectible pursuant to P.L. 1945, c. 132 (C. 54:18A-1 et seq.). Ten percent of the premiums tax collected annually under the bill shall be transferred to the commissioner for the regulation of captive insurance companies.

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements and for reasonable expenses incurred in promoting the captive insurance industry in the State. The commissioner may establish, by regulation, fees necessary to cover the department's expenses in the administration of the bill, and all fees received shall be credited to the fund.

The bill prohibits a captive insurance company from joining or contributing to a State insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

While no fiscal note worksheet was received, the Executive Branch provided information informally on the impact of this bill.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill has two principal fiscal impacts: an indeterminate effect on State tax revenues, and increased regulatory costs and regulatory fee revenue attributable to the Department of Banking and Insurance.

Insufficient information exists on which to base an estimate of the bill's impact on State tax revenues. The bill's direct impact on State insurance premiums tax revenues, depends on the amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation. To the extent that captive insurance companies pay taxes on premiums that otherwise would not be taxable by New Jersey, all such taxes comprise additional State tax revenue. Nominal and effective rates of taxation of captive insurance company premiums under the bill are significantly lower than nominal and effective rates of taxation on premiums of other insurance companies subject to New Jersey taxation currently. The degree of difference depends on several factors, particularly the amount of taxable premiums received by each captive insurance company, since the nominal tax rate on such premiums decreases as total premiums increase. In a simple example, \$20 million of premiums received by a noncaptive insurance company taxable in New Jersey, subject to a nominal tax rate of 2.1 percent, or taxes of \$420,000, under this bill would, if received by a New Jersey captive insurance company, be subject to a nominal tax rate of .38 percent, or taxes of \$76,000.

Articles written on the subject of captive insurance by insurance, legal and tax professionals strongly suggest that the risks a firm chooses to insure through formation of a captive insurance company are those for which it is already self-insuring, or those which it implicitly retains because insurance is unavailable on the market. Thus, premiums paid under those circumstances to New Jersey captive insurance companies formed after enactment of this bill would comprise growth in both taxable premiums and State tax revenue. Any shift in business from captive insurance companies domiciled elsewhere to a New Jersey captive insurance company formed after enactment of this bill would also comprise growth in both taxable premiums and State tax revenue. The OLS found no information on other states' experience in domiciling captive insurance companies that a negative impact resulted on insurance premiums tax revenues from noncaptive insurers when states began to license captive insurance companies. However, because there is no information available from which to estimate the nature and volume of captive insurance business activity in New Jersey upon enactment of this bill, the OLS cannot conclude that insurance premiums tax revenue will either increase or decrease as a result. The OLS notes that, to the extent this bill results in the creation of an entirely new New Jersey captive insurance industry, an increase in business activity and employment is likely, with a positive effect on other state tax revenues.

With respect to the expenses associated with administering the bill's provisions, the OLS notes that the bill creates the "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's regulatory and promotional responsibilities and authorizes the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund. Additionally, 10 percent of the premiums tax revenues collected under the bill are to be transferred to the commissioner for the regulation of captive insurers. Thus it should be possible for the commissioner to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees and taxes dedicated to department operating costs might not fully defray such costs.

*Section: Commerce, Labor and Industry*

*Analyst: Thomas K. Musick  
Section Chief*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

[Second Reprint]

## **ASSEMBLY, No. 2360**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 6, 2010

The Senate Commerce Committee reports favorably, and with committee amendments, Assembly Bill No. 2360 (2R).

This bill, as amended, permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements.

The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies and risk retention groups.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, annual reporting, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting.

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements.

Further, the bill provides procedures for various types of captive insurance companies to merge with other entities and procedures that a sponsored captive insurance company must follow with respect to protected cell companies.

Under the bill, a captive insurance company cannot be required to join a rating organization. The bill prohibits a captive insurance company from joining or contributing to a State insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.



Finally, the bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

The committee amendments to the bill:

- clarify that, in addition to an insured or affiliate of a captive insurance company, a claimant thereof shall not receive a benefit from a plan, pool, association or guaranty or insolvency fund; and
- eliminate the transfer of ten percent of the premium tax revenues collected under the bill to the commissioner for the regulation of captive insurance companies.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Third Reprint]

**ASSEMBLY, No. 2360**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 8, 2010

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2360 (3R).

This bill permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements.

The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies and risk retention groups.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, annual reporting, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting.

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements.

Further, the bill provides procedures for various types of captive insurance companies to merge with other entities and procedures that a sponsored captive insurance company must follow with respect to protected cell companies.

Under the bill, a captive insurance company cannot be required to join a rating organization. The bill prohibits a captive insurance company from joining or contributing to a State insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.

Finally, the bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

This bill is identical to Senate Bill No. 168 (1R), as also reported by the committee.

FISCAL IMPACT:

The bill has two principal fiscal impacts: an indeterminate effect on State tax revenues, and increased regulatory costs and regulatory fee revenue attributable to the Department of Banking and Insurance.

With respect to the impact on State tax revenues, the OLS notes insufficient information exists on which to base an estimate of the bill's direct impact on State insurance premiums tax revenues, which depends on the amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation of premiums.

The bill increases expenditures of the Department of Banking and Insurance, by an indeterminate amount, by requiring that agency to license, regulate and promote captive insurance companies, and increases the department's licensing and fee revenue from such companies. The department is authorized to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees and taxes dedicated to department operating costs might not fully defray such costs. Additionally, the bill dedicates 10 percent of the premiums tax revenues collected from captive insurance companies to the department for the regulation of those companies.

Lastly, the bill creates the "Captive Insurance Regulation and Supervision Fund" and provides the financial means for the commissioner to administer the bill's regulatory and promotional responsibilities by authorizing the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund.

# LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

**ASSEMBLY, No. 2360**

## **STATE OF NEW JERSEY 214th LEGISLATURE**

DATED: JANUARY 5, 2011

### SUMMARY

- Synopsis:** Regulates captive insurers.
- Type of Impact:** Uncertain impact on State tax revenue; increased administrative expenses and regulatory fee revenue of the Department of Banking and Insurance.
- Agencies Affected:** Department of Banking and Insurance

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate Increase – See comments below		
<b>State Revenue</b>	Indeterminate Impact – See comments below		

- The Office of Legislative Services (OLS) notes that this bill's impact on State tax revenues is uncertain. Insufficient information exists on which to base an estimate of the bill's direct impact on State insurance premiums tax revenues, which depends on the amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation of premiums.
- The bill increases expenditures of the Department of Banking and Insurance, by an indeterminate amount, by requiring that agency to license, regulate and promote captive insurance companies, and increases the department's licensing and fee revenue from such companies. The department is authorized to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees dedicated to department operating costs might not fully defray such costs.
- The bill creates the "Captive Insurance Regulation and Supervision Fund" and provides the financial means for the commissioner to administer the bill's regulatory and promotional

responsibilities by authorizing the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund.

## **BILL DESCRIPTION**

Assembly Bill No. 2360 (3R) of 2010 permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements. The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies. It also charges the department with promoting the captive insurance industry in the State.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting. The bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

The bill provides for the calculation of a premiums tax, which shall be the only tax collectible from any captive insurance company and exempts captive insurance companies from the premiums tax collectible pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements and for reasonable expenses incurred in promoting the captive insurance industry in the State. The commissioner may establish, by regulation, fees necessary to cover the department's expenses in the administration of the bill, and all fees received shall be credited to the fund.

The bill prohibits a captive insurance company from joining or contributing to a State insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

While no fiscal note worksheet was received, the Executive Branch provided information informally on the impact of this bill.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill has two principal fiscal impacts: an indeterminate effect on State tax revenues, and increased regulatory costs and regulatory fee revenue attributable to the Department of Banking and Insurance.

Insufficient information exists on which to base an estimate of the bill's impact on State tax revenues. The bill's direct impact on State insurance premiums tax revenues depends on the amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation. To the extent that captive insurance companies pay taxes on premiums that otherwise would not be taxable by New Jersey, all such taxes comprise additional State tax revenue. Nominal and effective rates of taxation of captive insurance company premiums under the bill are significantly lower than nominal and effective rates of taxation on premiums of other insurance companies subject to New Jersey taxation currently. The degree of difference depends on several factors, particularly the amount of taxable premiums received by each captive insurance company, since the nominal tax rate on such premiums decreases as total premiums increase. In a simple example, \$20 million of premiums received by a noncaptive insurance company taxable in New Jersey, subject to a nominal tax rate of 2.1 percent, or taxes of \$420,000, under this bill would, if received by a New Jersey captive insurance company, be subject to a nominal tax rate of .38 percent, or taxes of \$76,000.

Articles written on the subject of captive insurance by insurance, legal and tax professionals strongly suggest that the risks a firm chooses to insure through formation of a captive insurance company are those for which it is already self-insuring, or those which it implicitly retains because insurance is unavailable on the market. Thus, premiums paid under those circumstances to New Jersey captive insurance companies formed after enactment of this bill would comprise growth in both taxable premiums and State tax revenue. Any shift in business from captive insurance companies domiciled elsewhere to a New Jersey captive insurance company formed after enactment of this bill would also comprise growth in both taxable premiums and State tax revenue. The OLS found no information on other states' experience in domiciling captive insurance companies that a negative impact resulted on insurance premiums tax revenues from noncaptive insurers when states began to license captive insurance companies. However, because there is no information available from which to estimate the nature and volume of captive insurance business activity in New Jersey upon enactment of this bill, the OLS cannot conclude that insurance premiums tax revenue will either increase or decrease as a result. The OLS notes that, to the extent this bill results in the creation of an entirely new New Jersey captive insurance industry, an increase in business activity and employment is likely, with a positive effect on other state tax revenues.

With respect to the expenses associated with administering the bill's provisions, the OLS notes that the bill creates the "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's regulatory and promotional responsibilities and authorizes the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund. Thus it should be possible for the commissioner to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees dedicated to department operating costs might not fully defray such costs.

*Section:* Commerce, Labor and Industry

*Analyst:* Thomas K. Musick  
Section Chief

*Approved:* David J. Rosen  
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# SENATE, No. 168

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Essex, Morris, Somerset and Union)**

**SYNOPSIS**

Regulates captive insurers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 5/11/2010)**

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, industrial insured captive insurance  
36 company or risk retention group formed or licensed under the  
37 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

45 (3) whose risks are managed by a pure captive insurance  
46 company in accordance with section 16 of this act.



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

6 "Industrial insured" means an insured:

- 7 (1) who procures the insurance of a risk by use of the services of  
8 a full time employee acting as an insurance manager or buyer;  
9 (2) who has at least 25 full time employees; and  
10 (3) whose aggregate annual premiums for insurance on all risks  
11 total at least \$25,000.

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

15 "Industrial insured group" means a group of industrial insureds  
16 that collectively:

- 17 (1) own, control, or hold with power to vote all of the  
18 outstanding voting securities of an industrial insured captive  
19 insurance company incorporated as a stock insurer;  
20 (2) have complete voting control over an industrial insured  
21 captive insurance company incorporated as a mutual insurer; or  
22 (3) constitute all of the subscribers of an industrial insured  
23 captive insurance company formed as a reciprocal insurer.

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

27 "Mutual corporation" means a corporation organized without  
28 stockholders and includes a nonprofit corporation with members.

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

- 33 (1) securities of a pure captive insurance company organized as  
34 a stock corporation; or  
35 (2) membership interests of a pure captive insurance company  
36 organized as a nonprofit corporation.

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

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

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

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

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

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

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

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

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

14

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

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

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

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

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

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

37 (6) a captive insurance company shall not accept or cede  
38 reinsurance except as provided in section 10 of this act;

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

46 (8) a captive insurance company shall comply with all  
47 applicable State and federal laws.

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

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

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

8       (3) it maintains its principal place of business in this State; and

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

15       c. (1) Before receiving a license, a captive insurance company  
16 shall:

17       (a) file with the commissioner a certified copy of its organization  
18 documents, a statement under oath of its president and secretary  
19 showing its financial condition, and any other statements or  
20 documents required by the commissioner; and

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

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

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

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

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

38       (d) the adequacy of the loss prevention programs of its insureds;  
39 and

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

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

1 (a) the information may be discoverable by a party in a civil  
2 action or contested case to which the captive insurance company  
3 that submitted the information is a party, upon a showing by the  
4 party seeking to discover the information that:

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

7 (ii) the information sought is unavailable from other  
8 nonconfidential sources; and

9 (iii) a subpoena issued by a judicial or administrative officer of  
10 competent jurisdiction has been submitted to the commissioner;  
11 except that the provisions of this paragraph (3) shall not apply to a  
12 risk retention group; and

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

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

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

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

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

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

37

38 3. a. A captive insurance company shall not be issued a license  
39 unless it maintains unimpaired paid-in capital and surplus of:

40 (1) in the case of a pure captive insurance company, not less than  
41 \$250,000;

42 (2) in the case of an association captive insurance company, not  
43 less than \$750,000;

44 (3) in the case of an industrial insured captive insurance  
45 company, not less than \$500,000;

46 (4) in the case of a risk retention group, not less than \$1,000,000;  
47 and

1 (5) in the case of a sponsored captive insurance company, not  
2 less than \$500,000.

3 b. The commissioner may prescribe additional capital and  
4 surplus requirements based upon the type, volume and nature of  
5 insurance business transacted.

6 c. Capital and surplus may be in the form of cash or an  
7 irrevocable letter of credit issued by a bank chartered by the State or a  
8 member bank of the Federal Reserve System and approved by the  
9 commissioner.

10

11 4. A captive insurance company shall not pay a dividend out of,  
12 or other distribution with respect to, capital or surplus without the  
13 prior approval of the commissioner. Approval of an ongoing plan  
14 for the payment of dividends or other distributions shall be  
15 conditioned upon the retention, at the time of each payment, of  
16 capital or surplus in excess of amounts specified by, or determined  
17 in accordance with formulas approved by, the commissioner.  
18 Notwithstanding any provisions of the "New Jersey Nonprofit  
19 Corporation Act," N.J.S.15A:1-1 et seq. to the contrary, a captive  
20 insurance company organized under the provisions of the "New  
21 Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq. may make  
22 distributions as are in conformity with its purposes and approved by  
23 the commissioner.

24

25 5. a. A pure captive insurance company may be incorporated or  
26 organized as:

27 (1) a stock insurer with its capital divided into shares and held  
28 by the stockholders;

29 (2) a nonprofit corporation with one or more members; or

30 (3) a manager-managed limited liability company.

31 b. An association captive insurance company, an industrial  
32 insured captive insurance company, or a risk retention group may  
33 be:

34 (1) incorporated as a stock insurer with its capital divided into  
35 shares and held by the stockholders;

36 (2) incorporated as a mutual corporation;

37 (3) organized as a reciprocal insurer in accordance with the  
38 provisions of P.L.1945, c.161 (C.17:50-1 et seq.); or

39 (4) organized as a manager-managed limited liability company.

40 c. A captive insurance company incorporated or organized in  
41 this State shall have not less than three incorporators or three  
42 organizers of whom at least one shall be a resident of this State.

43 d. In the case of a captive insurance company:

44 (1) formed as a corporation: (a) before the articles of  
45 incorporation are transmitted to the Secretary of State, the  
46 incorporators shall petition the commissioner to issue a certificate  
47 setting forth the commissioner's finding that the establishment and

1 maintenance of the proposed corporation will promote the general  
2 good of the State. In arriving at a finding the commissioner shall  
3 consider:

4 (i) the character, reputation, financial standing and purposes of  
5 the incorporators or organizers;

6 (ii) the character, reputation, financial responsibility, insurance  
7 experience and business qualifications of the officers and directors;  
8 and

9 (iii) any other aspects of the proposed corporation as the  
10 commissioner deems advisable.

11 (b) the articles of incorporation, certificate and organization fee  
12 shall be transmitted to the Secretary of State, who shall record both  
13 the articles of incorporation and the certificate.

14 (2) formed as a reciprocal insurer, the organizers shall petition  
15 the commissioner to issue a certificate setting forth the  
16 commissioner's finding that the establishment and maintenance of  
17 the proposed association will promote the general good of the State.  
18 In arriving at a finding the commissioner shall consider the items  
19 set forth in sub-subparagraphs (i), (ii) and (iii) of subparagraph (a)  
20 of paragraph (1) of this subsection as applicable to a reciprocal  
21 insurer.

22 (3) formed as a limited liability company, before the articles of  
23 organization are transmitted to the Secretary of State, the organizers  
24 shall petition the commissioner to issue a certificate setting forth  
25 the commissioner's finding that the establishment and maintenance  
26 of the proposed company will promote the general good of the  
27 State. In arriving at a finding, the commissioner shall consider the  
28 items set forth in subsubparagraphs (i), (ii) and (iii) of subparagraph  
29 (a) of paragraph (1) of this subsection as applicable to a limited  
30 liability company.

31 e. The capital stock of a captive insurance company incorporated  
32 as a stock insurer may be authorized with no par value.

33 f. In the case of a captive insurance company:

34 (1) formed as a corporation, at least one of the members of the  
35 board of directors shall be a resident of this State;

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

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

40 g. Other than a captive insurance company formed as a limited  
41 liability company pursuant to the "New Jersey Limited Liability  
42 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) or as a  
43 nonprofit corporation pursuant to the "New Jersey Nonprofit  
44 Corporation Act," N.J.S.15A:1-1 et seq., a captive insurance  
45 company formed as a corporation under the provisions of this act  
46 shall have the privileges and be subject to the provisions of the  
47 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., as

1 well as the applicable provisions contained in this act. In the event  
2 of a conflict between the provisions of the "New Jersey Business  
3 Corporation Act," N.J.S.14A:1-1 et seq., and the provisions of this  
4 act, this act shall control.

5 h. A captive insurance company formed under the provisions of  
6 this act:

7 (1) as a limited liability company shall have the privileges and  
8 be subject to the provisions of the "New Jersey Limited Liability  
9 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) as well as the  
10 applicable provisions contained in this act. In the event of a conflict  
11 between the provisions of the "New Jersey Limited Liability  
12 Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.) and the  
13 provisions of this act, this act shall control; or

14 (2) as a nonprofit corporation shall have the privileges and be  
15 subject to the provisions of the "New Jersey Nonprofit Corporation  
16 Act," N.J.S.15A:1-1 et seq., as well as the applicable provisions  
17 contained in this act. In the event of a conflict between the  
18 provisions of the "New Jersey Nonprofit Corporation Act,"  
19 N.J.S.15A:1-1 et seq., and the provisions of this act, this act shall  
20 control.

21 i. The procedures to be followed by a captive insurance  
22 company in carrying out a merger, consolidation, conversion,  
23 mutualization or redomestication shall be prescribed by the  
24 commissioner by regulation.

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

31 k. The articles of incorporation or bylaws of a captive insurance  
32 company formed as a corporation may authorize a quorum of its  
33 board of directors to consist of not less than one-third of the fixed  
34 or prescribed number of directors determined under applicable  
35 provisions of the "New Jersey Business Corporation Act,"  
36 N.J.S.14A:1-1 et seq., or the "New Jersey Nonprofit Corporation  
37 Act," N.J.S.15A:1-1 et seq.

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

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

46 (1) the irrevocable election certifies that, at the time of the  
47 company's organization and at all times thereafter, the company

1 conducted its business in a manner consistent with a nonprofit  
2 purpose; and

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

9  
10 6. a. Prior to March 1 of each year, a captive insurance  
11 company shall submit to the commissioner a report of its financial  
12 condition, verified by oath of two of its executive officers. A  
13 captive insurance company shall report using generally accepted  
14 accounting principles, unless the commissioner approves the use of  
15 regulatory accounting principles, with any appropriate or necessary  
16 modifications or adaptations as may be required, approved or  
17 accepted by the commissioner for the type of insurance and kinds of  
18 insurers to be reported upon, and as supplemented by additional  
19 information required by the commissioner. Except as otherwise  
20 provided, an association captive insurance company and a risk  
21 retention group shall file its report in the form required by  
22 R.S.17:23-1. The commissioner shall by rule prescribe the forms in  
23 which a pure captive insurance company and an industrial insured  
24 captive insurance company shall report. The confidentiality  
25 requirements of paragraph (3) of subsection c. of section 2 of this  
26 act shall apply to each report filed pursuant to this section, except  
27 reports filed by risk retention groups.

28 b. A pure captive insurance company or an industrial insured  
29 captive insurance company may make written application for filing  
30 the required report on a fiscal year-end. If an alternative reporting  
31 date is granted, the annual report is due 60 days after the fiscal  
32 year-end.

33  
34 7. a. At least once in every three years, and whenever the  
35 commissioner determines it to be prudent, the commissioner shall  
36 personally, or by some competent person appointed by the  
37 commissioner, visit each captive insurance company and thoroughly  
38 inspect and examine its affairs to determine its financial condition,  
39 its ability to fulfill its obligations and whether it has complied with  
40 the provisions of this act. The commissioner may increase the three-  
41 year period to five years, if the captive insurance company is  
42 subject to a comprehensive annual audit during that period of a  
43 scope satisfactory to the commissioner by independent auditors  
44 approved by the commissioner. The expenses and charges of the  
45 examination shall be paid to the State by the company examined.

46 b. All examination reports, preliminary examination reports or  
47 results, working papers, recorded information, documents and



1 copies thereof produced by, obtained by or disclosed to the  
2 commissioner or any other person in the course of an examination  
3 made under this section are confidential and are not subject to  
4 subpoena and shall not be made public by the commissioner without  
5 the written consent of the company, except to the extent provided in  
6 this subsection. Nothing in this subsection shall prevent the  
7 commissioner from using the information in furtherance of the  
8 commissioner's regulatory authority under this act. The  
9 commissioner may, in the commissioner's discretion, grant access to  
10 the information to public officers having jurisdiction over the  
11 regulation of insurance in any other state or country, or to law  
12 enforcement officers of this State or any other state or agency of the  
13 federal government at any time, so long as the officers receiving the  
14 information agree in writing to hold it in a manner consistent with  
15 this section.

16

17 8. a. Pursuant to subsection b. of this section, the commissioner  
18 may suspend or revoke the license of a captive insurance company  
19 for any of the following reasons:

20 (1) Insolvency or impairment of capital or surplus;

21 (2) Failure to meet the capital surplus requirements of section 3  
22 of this act;

23 (3) Refusal or failure to submit an annual report, as required by  
24 this act, or any other report or statement required by law or by  
25 lawful order of the commissioner;

26 (4) Failure to comply with the provisions of its own charter,  
27 bylaws or other organizational document;

28 (5) Failure to submit to or pay the cost of examination or any  
29 legal obligation relative to an examination, as required by this act;

30 (6) Use methods that, although not otherwise specifically  
31 prohibited by law, nevertheless render its operation detrimental or  
32 its condition unsound with respect to the public or to its  
33 policyholders; or

34 (7) Failure to otherwise comply with the laws of this State.

35 b. If the commissioner finds, upon examination, hearing or other  
36 evidence, that a captive insurance company has violated any  
37 provision of subsection a. of this section, the commissioner may  
38 suspend or revoke the company's license if the commissioner deems  
39 it in the best interest of the public and the policyholders of the  
40 captive insurance company, notwithstanding any other provision of  
41 this act.

42

43 9. a. A captive insurance company shall comply with investment  
44 requirements to be prescribed by the commissioner by regulation.

45 b. A pure captive insurance company shall not make a loan to,  
46 or an investment in, its parent company or affiliates without prior  
47 written approval of the commissioner, and a loan or investment

1 shall be evidenced by documentation approved by the  
2 commissioner. A pure captive insurance company shall not make a  
3 loan using the minimum capital and surplus funds required by  
4 section 3 of this act.

5

6 10. a. A captive insurance company may provide reinsurance on  
7 risks ceded by any other insurer.

8 b. A captive insurance company may take credit for the  
9 reinsurance of risks or portions of risks ceded to reinsurers  
10 complying with the provisions of P.L.1993, c.243 (C.17:51B-1 et  
11 seq.). Prior approval of the commissioner shall be required for  
12 ceding or taking credit for the reinsurance of risks or portions of  
13 risks ceded to reinsurers not complying with P.L.1993, c.243  
14 (C.17:51B-1 et seq.), except for business written by an alien captive  
15 insurance company outside the United States.

16 c. In addition to reinsurers authorized under the provisions of  
17 P.L.1993, c.243 (C.17:51B-1 et seq.), a captive insurance company  
18 may take credit for the reinsurance of risks or portions of risks  
19 ceded to a pool, exchange or association acting as a reinsurer which  
20 has been authorized by the commissioner. The commissioner may  
21 require any other documents, financial information or other  
22 evidence that the pool, exchange or association will be able to  
23 provide adequate security for its financial obligations. The  
24 commissioner may deny authorization or impose any limitations on  
25 the activities of a reinsurance pool, exchange or association that, in  
26 the commissioner's judgment, are necessary and proper to provide  
27 adequate security for the ceding captive insurance company and for  
28 the protection and consequent benefit of the public at large.

29 d. For purposes of this act, insurance by a captive insurance  
30 company of any workers' compensation qualified self-insured plan  
31 of its parent and affiliates shall be deemed to be reinsurance.

32

33 11. a. A captive insurance company shall not be required to join  
34 a rating organization.

35 b. A captive insurance company shall not be permitted to join or  
36 contribute financially to a plan, pool, association, or guaranty or  
37 insolvency fund in this State, nor shall a captive insurance  
38 company, or an insured or affiliate thereof, receive a benefit from a  
39 plan, pool, association, or guaranty or insolvency fund for claims  
40 arising out of the operations of a captive insurance company.

41

42 12. a. Each captive insurance company shall pay to the Director  
43 of the Division of Taxation in the Department of Treasury, on or  
44 before March 1 of each year, a tax at the rate of .38 of one percent  
45 on the first \$20,000,000 and .285 of one percent on the next  
46 \$20,000,000 and .19 of one percent on the next \$20,000,000 and  
47 .072 of one percent on each dollar thereafter on the direct premiums

1 collected or contracted for on policies or contracts of insurance  
2 written by the captive insurance company during the year ending  
3 December 31 next preceding, after deducting from the direct  
4 premiums subject to the tax the amounts paid to policyholders as  
5 return premiums, which shall include dividends on unabsorbed  
6 premiums or premium deposits returned or credited to  
7 policyholders; except that no tax shall be due or payable as to  
8 considerations received for annuity contracts.

9 b. Each captive insurance company shall pay to the Director of  
10 the Division of Taxation in the Department of Treasury, on or  
11 before March 1 of each year, a tax at the rate of .214 of one percent  
12 on the first \$20,000,000 of assumed reinsurance premium, and .143  
13 of one percent on the next \$20,000,000 and .048 of one percent on  
14 the next \$20,000,000 and .024 of one percent of each dollar  
15 thereafter. However, no tax under this subsection applies to  
16 premiums for risks or portions of risks which are subject to taxation  
17 on a direct basis pursuant to subsection a. of this section. No tax  
18 under this subsection shall apply in connection with the receipt of  
19 assets in exchange for the assumption of loss reserves and other  
20 liabilities of another insurer under common ownership and control  
21 if the transaction is part of a plan to discontinue the operations of  
22 the other insurer, and if the intent of the parties to the transaction is  
23 to renew or maintain the business with the captive insurance  
24 company.

25 c. The annual minimum aggregate tax to be paid by a captive  
26 insurance company calculated under subsections a. and b. of this  
27 section shall be \$7,500, and the annual maximum aggregate tax  
28 shall be \$200,000. The maximum aggregate tax to be paid by a  
29 sponsored captive insurance company shall apply to each protected  
30 cell only and not to the sponsored captive insurance company as a  
31 whole.

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

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

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

1 e. Two or more captive insurance companies under common  
2 ownership and control shall be taxed as though they were a single  
3 captive insurance company.

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

6 (1) in the case of stock corporations, the direct or indirect  
7 ownership of 80 percent or more of the outstanding voting stock of  
8 two or more corporations by the same shareholder or shareholders;  
9 and

10 (2) in the case of mutual or nonprofit corporations, the direct or  
11 indirect ownership of 80 percent or more of the surplus and the  
12 voting power of two or more corporations by the same member or  
13 members.

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

18 h. Annually, ten percent of the premium tax revenues collected  
19 by the director pursuant to this section shall be transferred to the  
20 commissioner for the regulation of captive insurance companies  
21 under this act.

22 i. The tax provided for by this section shall be calculated on an  
23 annual basis, notwithstanding policies or contracts of insurance or  
24 contracts of reinsurance issued on a multiyear basis. In the case of  
25 multiyear policies or contracts, the premium shall be prorated for  
26 purposes of determining the tax under this section.

27

28 13. Risk retention groups shall have the privileges and be  
29 subject to the provisions of the "New Jersey Risk Retention Act,"  
30 P.L.1993, c.240 (C.17:47A-1 et seq.) in addition to the applicable  
31 provisions of this act.

32

33 14. a. (1) There is created a fund to be known as the "Captive  
34 Insurance Regulation and Supervision Fund," for the purpose of  
35 providing the financial means for the commissioner to administer  
36 this act and the "New Jersey Risk Retention Act," P.L.1993, c.240  
37 (C.17:47A-1 et seq.), and for reasonable expenses incurred in  
38 promoting the captive insurance industry in this State. The transfer  
39 of 10 percent of the premium tax under subsection h. of section 12  
40 of this act, and all fees and assessments received by the department  
41 pursuant to the administration of this act and the "New Jersey Risk  
42 Retention Act," P.L.1993, c.240 (C.17:47A-1 et seq.) shall be  
43 credited to this fund. Of this amount, not more than two percent of  
44 the premium tax under section 12 of this act may be transferred to  
45 the New Jersey Commerce, Economic Growth & Tourism  
46 Commission, for expenses for promotional activities conducted by  
47 the commission in relation to captive insurance companies. All fees

1 received by the department from reinsurers who assume risk solely  
2 from captive insurance companies and are subject to the provisions  
3 of P.L.1993, c.243 (C.17:51B-1 et seq.), shall be deposited into the  
4 Captive Insurance Regulation and Supervision Fund, except that all  
5 fines and administrative penalties shall be deposited directly into  
6 the General Fund.

7 (2) All payments from the Captive Insurance Regulation and  
8 Supervision Fund for the maintenance of staff and associated  
9 expenses, including contractual services as necessary, shall be  
10 disbursed from the State Treasury to the commissioner after receipt  
11 of proper documentation regarding services rendered and expenses  
12 incurred.

13 b. At the end of each fiscal year, the balance in the Captive  
14 Insurance Regulation and Supervision Fund shall be transferred to  
15 the General Fund.

16

17 15. Except as otherwise provided in this act, the terms and  
18 conditions set forth in P.L.1975, c.113 (C.17:30C-1 et seq.),  
19 pertaining to insurance reorganizations, receiverships and  
20 injunctions, shall apply to captive insurance companies formed or  
21 licensed under this act.

22

23 16. The commissioner may adopt rules establishing standards to  
24 ensure that a parent or affiliated company is able to exercise control  
25 of the risk management function of any controlled unaffiliated  
26 business to be insured by a pure captive insurance company, except  
27 that until such time as rules under this section are adopted, the  
28 commissioner may approve the coverage of the risk by a pure  
29 captive insurance company.

30

31 17. a. An association captive insurance company, risk retention  
32 group, or industrial insured captive insurance company formed as a  
33 stock or mutual corporation may be converted to or merged with  
34 and into a reciprocal insurer in accordance with a plan of  
35 conversion or merger and the provisions of this section.

36 b. A plan for conversion or merger shall provide a fair and  
37 equitable plan for purchasing, retiring or otherwise extinguishing  
38 the interests of the stockholders and policyholders of a stock  
39 insurer, and the members and policyholders of a mutual insurer,  
40 including a fair and equitable provision for the rights and remedies  
41 of dissenting stockholders, members or policyholders.

42 c. In the case of a conversion authorized under subsection a. of  
43 this section:

44 (1) the conversion shall be accomplished under a reasonable  
45 plan and procedure as approved by the commissioner, except that  
46 the commissioner shall not approve a plan of conversion unless the  
47 plan:

- 1 (a) satisfies the provisions of subsection b. of this section;
- 2 (b) provides for a hearing, of which notice is given to the captive  
3 insurance company, its directors, officers and policyholders, and, in  
4 the case of a stock insurer, its stockholders, and in the case of a  
5 mutual insurer, its members, all of which persons shall be entitled  
6 to attend and appear at the hearing if notice of a hearing is given  
7 and no director, officer, policyholder, member or stockholder  
8 requests a hearing, the commissioner may cancel the hearing;
- 9 (c) provides a fair and equitable plan for the conversion of  
10 stockholder, member or policyholder interests into subscriber  
11 interests in the resulting reciprocal insurer, substantially  
12 proportionate to the corresponding interests in the stock or mutual  
13 insurer. This requirement shall not preclude the resulting reciprocal  
14 insurer from applying underwriting criteria that could affect  
15 ongoing ownership interests; and
- 16 (d) is approved:
- 17 (i) in the case of a stock insurer, by a majority of the  
18 shareholders entitled to vote represented in person or by proxy at a  
19 duly called regular or special meeting at which a quorum is present;  
20 and
- 21 (ii) in the case of a mutual insurer, by a majority of the voting  
22 interests of policyholders represented in person or by proxy at a  
23 duly called regular or special meeting thereof at which a quorum is  
24 present;
- 25 (2) the commissioner shall approve the plan of conversion if the  
26 commissioner finds that the conversion will promote the general  
27 good of the State in conformity with those standards set forth in  
28 paragraph (2) of subsection d. of section 5 of this act;
- 29 (3) if the commissioner approves the plan, the commissioner  
30 shall amend the converting insurer's certificate of authority to  
31 reflect conversion to a reciprocal insurer and issue the amended  
32 certificate of authority to the company's attorney-in-fact;
- 33 (4) the conversion shall be effective upon the issuance of an  
34 amended certificate of authority of a reciprocal insurer by the  
35 commissioner; and
- 36 (5) the corporate existence of the converting insurer shall cease  
37 and the resulting reciprocal insurer shall notify the Secretary of  
38 State of the conversion upon the conversion becoming effective.
- 39 d. A merger authorized under subsection a. of this section shall  
40 be accomplished substantially in accordance with the procedures to  
41 be prescribed by the commissioner, except that, solely for purposes  
42 of the merger:
- 43 (1) the plan of merger shall satisfy the provisions of subsection  
44 b. of this section;
- 45 (2) the subscribers' advisory committee of a reciprocal insurer  
46 shall be equivalent to the board of directors of a stock or mutual  
47 insurance company;

- 1 (3) the subscribers of a reciprocal insurer shall be the equivalent  
2 of the policyholders of a mutual insurance company;
- 3 (4) if a subscribers' advisory committee does not have a  
4 president or secretary, the officers of the committee having  
5 substantially equivalent duties shall be deemed the president or  
6 secretary of the committee;
- 7 (5) the commissioner shall approve the articles of merger if the  
8 commissioner finds that the merger will promote the general good  
9 of the State in conformity with those standards set forth in  
10 paragraph (2) of subsection d. of section 5 of this act. If the  
11 commissioner approves the articles of merger, the commissioner  
12 shall indorse the commissioner's approval thereon and the surviving  
13 insurer shall present the same to the Secretary of State;
- 14 (6) notwithstanding section 3 of this act, the commissioner may  
15 permit the formation, without surplus, of a captive insurance  
16 company organized as a reciprocal insurer, into which an existing  
17 captive insurance company may be merged for the purpose of  
18 facilitating a transaction under this section, except that there shall  
19 be no more than one authorized insurance company surviving the  
20 merger; and
- 21 (7) an alien captive insurance company may be a party to a  
22 merger authorized under subsection a. of this section in accordance  
23 with procedures to be prescribed by the commissioner by  
24 regulation.
- 25
- 26 18. a. One or more sponsors may form a sponsored captive  
27 insurance company as prescribed in this act.
- 28 b. A sponsored captive insurance company may establish and  
29 maintain one or more protected cells to insure the risks of one or  
30 more participants, subject to the following conditions:
- 31 (1) A sponsored captive insurance company shall not have any  
32 stockholders other than its participants and sponsors.
- 33 (2) A sponsored captive insurance company shall separately  
34 account for each protected cell in its books and records to reflect  
35 the financial condition and results of operations of each protected  
36 cell, net income or loss of each protected cell, dividends or other  
37 distributions to participants of each protected cell and any other  
38 factors prescribed in the participant contract or required by the  
39 commissioner.
- 40 (3) The assets of a sponsored captive insurance company are not  
41 chargeable with liabilities arising out of any other insurance  
42 business the sponsored captive insurance company may conduct.
- 43 (4) A sponsored captive insurance company shall not sell,  
44 exchange or transfer assets, issue a dividend or make a distribution  
45 between or among any of its protected cells without the written  
46 consent of all its protected cells.

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

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

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

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

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

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

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

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

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

28 (b) reinsured by a reinsurer authorized or accredited by the  
29 State; or

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

31  
32 19. a. A risk retention group shall not be either a sponsor or  
33 participant in a sponsored captive insurance company.

34 b. An association, corporation, limited liability company,  
35 partnership, trust or any another business entity may be a  
36 participant in any sponsored captive insurance company formed or  
37 licensed under this act.

38 c. A sponsor may be a participant in a sponsored captive  
39 insurance company.

40 d. A participant need not be a shareholder of a sponsored captive  
41 insurance company or any affiliate of a sponsored captive insurance  
42 company.

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

45  
46 20. a. No cause of action shall arise nor shall any liability be  
47 imposed against the commissioner, the commissioner's authorized



1 agent or any examiner appointed by the commissioner for any  
2 statements made or conduct performed in good faith while carrying  
3 out the provisions of this act. This section does not abrogate or  
4 modify in any way any common law or other statutory privilege or  
5 immunity available to any person identified in this subsection. A  
6 person identified in this subsection shall be entitled to an award of  
7 attorney's fees and costs if he is the prevailing party in a civil cause  
8 of action for libel, slander or any other relevant tort arising out of  
9 activities in carrying out the provisions of this act and the party  
10 bringing the action was not substantially justified in doing so. For  
11 purposes of this subsection, a proceeding is "substantially justified"  
12 if it had a reasonable basis in law or fact at the time that it was  
13 initiated.

14 b. No cause of action shall arise, nor shall any liability be  
15 imposed against any person for the act of communicating or  
16 delivering information or data to the commissioner or the  
17 commissioner's authorized representative or examiner pursuant to  
18 an examination made under this act, if the communication or  
19 delivery was performed in good faith and without fraudulent intent  
20 or the intent to deceive.

21

22 21. This act shall take effect on the 90th day following  
23 enactment.

24

25

26

#### STATEMENT

27

28 This bill permits a captive insurance company to be licensed by  
29 the Department of Banking and Insurance to do business in the  
30 State in any of the lines of insurance in subtitle 3 of Title 17 of the  
31 Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New  
32 Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including  
33 contracts or policies of life insurance, health insurance, annuities,  
34 indemnity, property and casualty, fidelity, surety, guaranty and title  
35 insurance, and reinsurance, provided the captive meets certain  
36 requirements.

37 The bill regulates captive insurance companies, which include  
38 pure captive insurance companies, association captive insurance  
39 companies, sponsored captive insurance companies, industrial  
40 insured captive insurance companies and risk retention groups. Risk  
41 retention groups are already authorized to be licensed in the State.

42 The bill provides that a captive insurance company must meet  
43 certain requirements, including those relating to formation, capital  
44 and surplus, annual reporting, examination, local office presence,  
45 ability to meet policy obligations, payment of certain fees and taxes,  
46 and annual reporting.

1       In addition, the bill creates a "Captive Insurance Regulation and  
2       Supervision Fund" to provide the financial means for the  
3       commissioner to administer the bill's requirements and the  
4       requirements of the "New Jersey Risk Retention Act," P.L.1993,  
5       c.240 (C.17:47A-1 et seq.).

6       Further, the bill provides procedures for various types of captive  
7       insurance companies to merge with other entities and procedures  
8       that a sponsored captive insurance company must follow with  
9       respect to protected cell companies.

10       Under the bill, a captive insurance company cannot be required  
11       to join a rating organization. The bill prohibits a captive insurance  
12       company from joining or contributing to a state insolvency guaranty  
13       fund and from receiving benefits from the fund if the captive  
14       insurance company becomes impaired or insolvent.

15       Finally, the bill authorizes the Commissioner of Banking and  
16       Insurance to suspend or revoke a captive's license for a violation of  
17       the bill's provisions or unsound operations.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### **SENATE, No. 168**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 6, 2010

The Senate Commerce Committee reports favorably, and with committee amendments, Senate Bill No. 168.

This bill, as amended, permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, surety, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements.

The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, annual reporting, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting.

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements.

Further, the bill provides procedures for various types of captive insurance companies to merge with other entities and procedures that a sponsored captive insurance company must follow with respect to protected cell companies.

Under the bill, a captive insurance company cannot be required to join a rating organization. The bill prohibits a captive insurance company from joining or contributing to a state insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.

Finally, the bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

The committee amendments to the bill:

(1) remove risk retention groups from being included as a form of captive insurance company that is subject to the bill's provisions;

(2) require a captive insurance company to maintain an appropriate number of professional service providers to carry out the business of the captive;

(3) remove language that would have allowed a captive insurance company to engage in the business of surety bond insurance;

(4) make certain changes regarding the circumstances under which a captive insurance company may take credit for the reinsurance of risk ceded to insurers, to ensure that reinsurance transactions of domestic insurers and captive insurance companies are regulated on an equal basis;

(5) clarify that the bill's regulatory and licensing scheme generally applies to those captive insurance companies that become licensed and domiciled in this State pursuant to the bill's provisions by adding new definitions of "branch captive insurance company," "branch business," and "branch operations." Under the new definitions, a branch captive insurance company, which is formed to write insurance business for its parents and affiliates and which is licensed pursuant to the laws of another jurisdiction (an alien captive insurance company), shall be a pure captive insurance company with respect to its operations in the State, unless otherwise permitted by the commissioner. The bill's provisions will not apply to a captive insurance company already domiciled and licensed in another state or country, unless that company forms a branch captive insurance company in this State, in which case certain of the bill's provisions, relating to taxation and regulatory examination, will apply to the branch operations and branch business of the branch captive insurance company;

(6) clarify that the Commissioner of Banking and Insurance may establish by regulation an expedited licensing process for a captive insurance company currently formed or licensed pursuant to the laws of another jurisdiction that applies for a license to do business in the State;

(7) add the New Jersey Life and Health Insurance Guaranty Association, the New Jersey Property-Liability Insurance Guaranty Association, the New Jersey Surplus Lines Insurance Guaranty Fund, and the State's "workers' compensation security fund", as specific associations that captive insurance companies will not be permitted to join or receive a benefit from;

(8) eliminate the transfer of ten percent of the premium tax revenues collected under the bill to the commissioner for the regulation of captive insurance companies;

(9) provide that the commissioner may establish by regulation, fees necessary for the administration of the bill's provisions, and that all fees received shall be credited to the Captive Insurance Regulation and Supervision Fund established by the bill; and

(10) clarify that, in addition to an insured or affiliate of a captive insurance company, a claimant shall not receive a benefit from a plan, pool, association or guaranty or insolvency fund.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## SENATE, No. 168

# STATE OF NEW JERSEY

DATED: DECEMBER 8, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 168 (1R).

This bill permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, surety, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements.

The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, annual reporting, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting.

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements.

Further, the bill provides procedures for various types of captive insurance companies to merge with other entities and procedures that a sponsored captive insurance company must follow with respect to protected cell companies.

Under the bill, a captive insurance company cannot be required to join a rating organization. The bill prohibits a captive insurance company from joining or contributing to a state insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.

Finally, the bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

This bill is identical to Assembly Bill No. 2360 (3R), as also reported by the committee.

FISCAL IMPACT:

The bill has two principal fiscal impacts: an indeterminate effect on State tax revenues, and increased regulatory costs and regulatory fee revenue attributable to the Department of Banking and Insurance.

With respect to the impact on State tax revenues, the OLS notes insufficient information exists on which to base an estimate of the bill's direct impact on State insurance premiums tax revenues, which depends on the amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation of premiums.

The bill increases expenditures of the Department of Banking and Insurance, by an indeterminate amount, by requiring that agency to license, regulate and promote captive insurance companies, and increases the department's licensing and fee revenue from such companies. The department is authorized to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees and taxes dedicated to department operating costs might not fully defray such costs. Additionally, the bill dedicates 10 percent of the premiums tax revenues collected from captive insurance companies to the department for the regulation of those companies.

Lastly, the bill creates the "Captive Insurance Regulation and Supervision Fund" and provides the financial means for the commissioner to administer the bill's regulatory and promotional responsibilities by authorizing the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

**SENATE, No. 168**

## **STATE OF NEW JERSEY 214th LEGISLATURE**

DATED: JANUARY 5, 2011

### SUMMARY

- Synopsis:** Regulates captive insurers.
- Type of Impact:** Uncertain impact on State tax revenue; increased administrative expenses and regulatory fee revenue of the Department of Banking and Insurance.
- Agencies Affected:** Department of Banking and Insurance

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate Increase- See comments below		
<b>State Revenue</b>	Indeterminate Impact-See comments below		

- The Office of Legislative Services (OLS) notes that this bill's impact on State tax revenues is uncertain. Insufficient information exists on which to base an estimate of the bill's direct impact on State insurance premiums tax revenues, which depends on the amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation of premiums.
- The bill increases expenditures of the Department of Banking and Insurance, by an indeterminate amount, by requiring that agency to license, regulate and promote captive insurance companies, and increases the department's licensing and fee revenue from such companies. The department is authorized to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees dedicated to department operating costs might not fully defray such costs.
- The bill creates the "Captive Insurance Regulation and Supervision Fund" and provides the financial means for the commissioner to administer the bill's regulatory and promotional



responsibilities by authorizing the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund.

## **BILL DESCRIPTION**

Senate Bill No. 168 (1R) of 2010 permits a captive insurance company to be licensed by the Department of Banking and Insurance to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements. The bill regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies. It also charges the department with promoting the captive insurance industry in the State.

The bill provides that a captive insurance company must meet certain requirements, including those relating to formation, capital and surplus, examination, local office presence, ability to meet policy obligations, payment of certain fees and taxes, and annual reporting. The bill authorizes the Commissioner of Banking and Insurance to suspend or revoke a captive's license for a violation of the bill's provisions or unsound operations.

The bill provides for the calculation of a premiums tax, which shall be the only tax collectible from any captive insurance company and exempts captive insurance companies from the premiums tax collectible pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

In addition, the bill creates a "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's requirements and for reasonable expenses incurred in promoting the captive insurance industry in the State. The commissioner may establish, by regulation, fees necessary to cover the department's expenses in the administration of the bill, and all fees received shall be credited to the fund.

The bill prohibits a captive insurance company from joining or contributing to a State insolvency guaranty fund and from receiving benefits from the fund if the captive insurance company becomes impaired or insolvent.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

While no fiscal note worksheet was received, the Executive Branch provided information informally on the impact of this bill.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill has two principal fiscal impacts: an indeterminate effect on State tax revenues, and increased regulatory costs and regulatory fee revenue attributable to the Department of Banking and Insurance.

Insufficient information exists on which to base an estimate of the bill's impact on State tax revenues. The bill's direct impact on State insurance premiums tax revenues depends on the

amount of taxable premiums received by captive insurance companies established in New Jersey, and the extent, if any, to which these premiums were previously paid, or otherwise would be paid, to a noncaptive insurer subject to New Jersey taxation. To the extent that captive insurance companies pay taxes on premiums that otherwise would not be taxable by New Jersey, all such taxes comprise additional State tax revenue. Nominal and effective rates of taxation of captive insurance company premiums under the bill are significantly lower than nominal and effective rates of taxation on premiums of other insurance companies subject to New Jersey taxation currently. The degree of difference depends on several factors, particularly the amount of taxable premiums received by each captive insurance company, since the nominal tax rate on such premiums decreases as total premiums increase. In a simple example, \$20 million of premiums received by a noncaptive insurance company taxable in New Jersey, subject to a nominal tax rate of 2.1 percent, or taxes of \$420,000, under this bill would, if received by a New Jersey captive insurance company, be subject to a nominal tax rate of .38 percent, or taxes of \$76,000.

Articles written on the subject of captive insurance by insurance, legal and tax professionals strongly suggest that the risks a firm chooses to insure through formation of a captive insurance company are those for which it is already self-insuring, or those which it implicitly retains because insurance is unavailable on the market. Thus, premiums paid under those circumstances to New Jersey captive insurance companies formed after enactment of this bill would comprise growth in both taxable premiums and State tax revenue. Any shift in business from captive insurance companies domiciled elsewhere to a New Jersey captive insurance company formed after enactment of this bill would also comprise growth in both taxable premiums and State tax revenue. The OLS found no information on other states' experience in domiciling captive insurance companies that a negative impact resulted on insurance premiums tax revenues from noncaptive insurers when states began to license captive insurance companies. However, because there is no information available from which to estimate the nature and volume of captive insurance business activity in New Jersey upon enactment of this bill, the OLS cannot conclude that insurance premiums tax revenue will either increase or decrease as a result. The OLS notes that, to the extent this bill results in the creation of an entirely new New Jersey captive insurance industry, an increase in business activity and employment is likely, with a positive effect on other state tax revenues.

With respect to the expenses associated with administering the bill's provisions, the OLS notes that the bill creates the "Captive Insurance Regulation and Supervision Fund" to provide the financial means for the commissioner to administer the bill's regulatory and promotional responsibilities and authorizes the commissioner to establish fees necessary to offset those expenses, which fees shall be credited to the fund. Thus it should be possible for the commissioner to set the fee structure to adequately fund all departmental expenses, although at the outset, due to uncertainty concerning the number of potential licensees and the costs of promoting the State to the industry, revenue from fees dedicated to department operating costs might not fully defray such costs.

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).