

# ASSEMBLY, No. 1580

## STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**SYNOPSIS**

Regulates captive insurers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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  
18 organization documents, a statement under oath of its president and  
19 secretary showing its financial condition, and any other statements  
20 or 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  
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;

46 (4) in the case of a risk retention group, not less than  
47 \$1,000,000; 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  
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 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  
44 investment requirements to be prescribed by the commissioner by  
45 regulation.

46 b. A pure captive insurance company shall not make a loan to,  
47 or an investment in, its parent company or affiliates without prior

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

6

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

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

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

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

33

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

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

42

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

1 .072 of one percent on each dollar thereafter on the direct premiums  
2 collected or contracted for on policies or contracts of insurance  
3 written by the captive insurance company during the year ending  
4 December 31 next preceding, after deducting from the direct  
5 premiums subject to the tax the amounts paid to policyholders as  
6 return premiums, which shall include dividends on unabsorbed  
7 premiums or premium deposits returned or credited to  
8 policyholders; except that no tax shall be due or payable as to  
9 considerations received for annuity contracts.

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

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

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

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

44 (3) The examination of returns and the assessment of additional  
45 taxes, penalties and interest shall be as provided by the State  
46 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  
3 captive insurance company, its directors, officers and policyholders,  
4 and, in the case of a stock insurer, its stockholders, and in the case  
5 of a mutual insurer, its members, all of which persons shall be  
6 entitled to attend and appear at the hearing if notice of a hearing is  
7 given 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.