



# Senate

General Assembly

**File No. 208**

January Session, 2005

Substitute Senate Bill No. 27

*Senate, April 7, 2005*

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING CAPTIVE INSURERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) As used in sections 1 to  
2 18, inclusive, of this act:

3 (1) "Affiliated company" means any company in the same corporate  
4 system as a parent, an industrial insured, or a member organization by  
5 virtue of common ownership, control, operation or management.

6 (2) "Association" means any legal association of individuals,  
7 corporations, limited liability companies, partnerships, associations or  
8 other entities that has been in continuous existence for at least one  
9 year, where the association itself or some or all of the member  
10 organizations:

11 (A) Own, control or hold with power to vote all of the outstanding  
12 voting securities of an association captive insurance company  
13 incorporated as a stock insurer;

14 (B) Have complete voting control over an association captive  
15 insurance company incorporated as a mutual insurer; or

16 (C) Constitute all of the subscribers of an association captive  
17 insurance company formed as a reciprocal insurer.

18 (3) "Association captive insurance company" means any company  
19 that insures risks of the member organizations of the association and  
20 their affiliated companies.

21 (4) "Captive insurance company" means any pure captive insurance  
22 company, association captive insurance company, industrial insured  
23 captive insurance company or risk retention group formed or licensed  
24 under the provisions of sections 1 to 18, inclusive, of this act.

25 (5) "Commissioner" means the Insurance Commissioner.

26 (6) "Controlled unaffiliated business" means any company:

27 (A) That is not in the corporate system of a parent and affiliated  
28 companies;

29 (B) That has an existing contractual relationship with a parent or  
30 affiliated company; and

31 (C) Whose risks are insured by a pure captive insurance company in  
32 accordance with section 18 of this act.

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

38 (8) "Industrial insured" means an insured:

39 (A) Who procures the insurance of any risk or risks by use of the  
40 services of a full-time employee acting as an insurance manager or  
41 buyer;

42 (B) Whose aggregate annual premiums for insurance on all risks  
43 total at least twenty-five thousand dollars; and

44 (C) Who has at least twenty-five full-time employees.

45 (9) "Industrial insured captive insurance company" means any  
46 company that insures risks of the industrial insureds that comprise the  
47 industrial insured group and their affiliated companies.

48 (10) "Industrial insured group" means any group of industrial  
49 insureds that collectively:

50 (A) Own, control or hold with power to vote all of the outstanding  
51 voting securities of an industrial insured captive insurance company  
52 incorporated as a stock insurer;

53 (B) Have complete voting control over an industrial insured captive  
54 insurance company incorporated as a mutual insurer; or

55 (C) Constitute all of the subscribers of an industrial insured captive  
56 insurance company formed as a reciprocal insurer.

57 (11) "Member organization" means any individual, corporation,  
58 limited liability company, partnership, association or other entity that  
59 belongs to an association.

60 (12) "Mutual corporation" means a corporation organized without  
61 stockholders and includes a nonprofit corporation with members.

62 (13) "Parent" means a corporation, limited liability company,  
63 partnership, other entity or individual, that directly or indirectly owns,  
64 controls or holds with power to vote more than fifty per cent of the  
65 outstanding voting:

66 (A) Securities of a pure captive insurance company organized as a  
67 stock corporation; or

68 (B) Membership interests of a pure captive insurance company  
69 organized as a nonprofit corporation.

70 (14) "Pure captive insurance company" means any company that  
71 insures risks of its parent and affiliated companies or controlled  
72 unaffiliated business.

73 (15) "Risk retention group" means a captive insurance company  
74 organized under the laws of this state pursuant to the federal Liability  
75 Risk Retention Act of 1986, 15 USC 3901 et seq., as amended from time  
76 to time, as a stock or mutual corporation, a reciprocal or other limited  
77 liability entity.

78 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) Any captive insurance  
79 company, when permitted by its articles of association, charter or other  
80 organizational document, may apply to the Insurance Commissioner  
81 for a license to do the business of life insurance, annuities, health  
82 insurance, as defined in section 38a-469 of the general statutes, and  
83 commercial risk insurance, as defined in section 38a-663 of the general  
84 statutes, provided:

85 (1) No pure captive insurance company may insure any risks other  
86 than those of its parent and affiliated companies or controlled  
87 unaffiliated business;

88 (2) No association captive insurance company may insure any risks  
89 other than those of the member organizations of its association, and  
90 their affiliated companies;

91 (3) No industrial insured captive insurance company may insure  
92 any risks other than those of the industrial insureds that comprise the  
93 industrial insured group, and their affiliated companies;

94 (4) No risk retention group may insure any risks other than those of  
95 its members and owners;

96 (5) No captive insurance company may provide private passenger  
97 motor vehicle or homeowner's insurance coverage or any component  
98 thereof;

99 (6) No captive insurance company may accept or cede reinsurance

100 except as provided in section 11 of this act;

101 (7) No captive insurer may provide workers' compensation  
102 insurance, except that any captive insurance company may provide  
103 excess workers' compensation insurance to its parent and affiliated  
104 companies, unless prohibited by federal law or the laws of the state  
105 having jurisdiction over the transaction. Any captive insurance  
106 company, unless prohibited by federal law, may reinsure workers'  
107 compensation of a qualified self-insured plan of its parent and  
108 affiliated companies; and

109 (8) Any captive insurance company which provides life insurance,  
110 annuities or health insurance shall comply with all applicable state and  
111 federal laws.

112 (b) No captive insurance company shall do any insurance business  
113 in this state unless:

114 (1) It first obtains from the Insurance Commissioner a license  
115 authorizing it to do insurance business in this state;

116 (2) Its board of directors or committee of managers or, in the case of  
117 a reciprocal insurer, its subscribers' advisory committee holds at least  
118 one meeting each year in this state;

119 (3) It maintains its principal place of business in this state; and

120 (4) It appoints a registered agent to accept service of process and to  
121 otherwise act on its behalf in this state. Whenever such registered  
122 agent cannot with reasonable diligence be found at the registered  
123 office of the captive insurance company, the Insurance Commissioner  
124 shall be an agent of such captive insurance company upon whom any  
125 process, notice or demand may be served.

126 (c) (1) To be considered for a license, a captive insurance company  
127 shall:

128 (A) File with the commissioner a certified copy of its organizational

129 documents, a statement under oath of its president and secretary  
130 showing its financial condition, and any other statements or  
131 documents required by the commissioner; and

132 (B) Submit to the commissioner for approval a description of the  
133 coverages, deductibles, coverage limits and rates and such additional  
134 information as the commissioner may require. In the event of any  
135 subsequent material change in any item in such description, the  
136 captive insurance company shall submit to the commissioner for  
137 approval an appropriate revision and shall not offer any additional  
138 kinds of insurance until a revision of such description is approved by  
139 the commissioner. The captive insurance company shall inform the  
140 commissioner of any material change in rates not later than thirty days  
141 after the adoption of such change.

142 (2) Each applicant captive insurance company shall also file with the  
143 commissioner evidence of the following:

144 (A) The amount and liquidity of the company's assets relative to the  
145 risks to be assumed;

146 (B) The adequacy of the expertise, experience and character of the  
147 persons who will manage the company;

148 (C) The overall soundness of the company's plan of operation;

149 (D) The adequacy of the loss prevention programs of the company's  
150 insureds; and

151 (E) Such other factors deemed relevant by the commissioner in  
152 ascertaining whether the proposed captive insurance company will be  
153 able to meet its policy obligations.

154 (3) Information submitted pursuant to this subsection shall be and  
155 remain confidential and may not be made public by the commissioner  
156 or an employee or agent of the commissioner without the written  
157 consent of the company, except that:

158 (A) Such information may be discoverable by a party in a civil  
159 action or contested case to which the captive insurance company that  
160 submitted such information is a party upon a showing by the party  
161 seeking to discover such information that:

162 (i) The information sought is relevant to and necessary for the  
163 furtherance of such action or case;

164 (ii) The information sought is unavailable from other  
165 nonconfidential sources; and

166 (iii) A subpoena issued by a judicial or administrative officer of  
167 competent jurisdiction has been submitted to the commissioner,  
168 provided such submission requirement shall not apply to a risk  
169 retention group; and

170 (B) The commissioner may, in the commissioner's discretion,  
171 disclose such information to a public official having jurisdiction over  
172 the regulation of insurance in another state, provided:

173 (i) Such public official agrees, in writing, to maintain the  
174 confidentiality of such information; and

175 (ii) The laws of the state in which such public official serves require  
176 such information to be and to remain confidential.

177 (d) (1) Each captive insurance company shall pay to the  
178 commissioner a nonrefundable fee of two hundred dollars for  
179 examining, investigating and processing its application for license, and  
180 the commissioner may retain legal, financial and examination services  
181 from outside the department, the reasonable cost of which may be  
182 charged against the applicant. The provisions of subdivisions (2) to (5),  
183 inclusive, of subsection (k) of section 38a-14 of the general statutes  
184 shall apply to examinations, investigations and processing conducted  
185 under this section.

186 (2) Each captive insurance company shall pay a license fee for the  
187 first year of licensure and a renewal fee for each year thereafter as set

188 forth in section 38a-11 of the general statutes, as amended by this act.

189 (e) If the commissioner finds that the documents and statements  
190 that a captive insurance company has filed comply with the provisions  
191 of sections 1 to 18, inclusive, of this act, the commissioner may grant a  
192 license authorizing the company to do insurance business in this state  
193 until April first thereafter. The captive insurance company may apply  
194 to renew such license on such forms as the commissioner prescribes.

195 Sec. 3. (NEW) (*Effective October 1, 2005*) No captive insurance  
196 company shall adopt a name that is the same, deceptively similar or  
197 likely to be confused with or mistaken for any other existing business  
198 name registered in this state.

199 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) The Insurance  
200 Commissioner may not issue a license to a captive insurance company  
201 or allow the company to retain a license unless the company has and  
202 maintains unimpaired paid-in capital and surplus of:

203 (1) In the case of a pure captive insurance company, not less than  
204 two hundred fifty thousand dollars;

205 (2) In the case of an association captive insurance company, not less  
206 than seven hundred fifty thousand dollars;

207 (3) In the case of an industrial insured captive insurance company,  
208 not less than five hundred thousand dollars; and

209 (4) In the case of a risk retention group, not less than one million  
210 dollars.

211 (b) The commissioner may adopt regulations, in accordance with  
212 chapter 54 of the general statutes, to establish additional capital and  
213 surplus requirements based upon the type, volume and nature of  
214 insurance business transacted.

215 (c) Capital and surplus may be in the form of cash or an irrevocable  
216 letter of credit issued by a bank chartered by this state or a member

217 bank of the Federal Reserve System and approved by the  
218 commissioner.

219 Sec. 5. (NEW) (*Effective October 1, 2005*) No captive insurance  
220 company may pay a dividend out of, or other distribution with respect  
221 to, capital or surplus without the prior approval of the Insurance  
222 Commissioner. Approval of an ongoing plan for the payment of  
223 dividends or other distributions shall be conditioned on the retention,  
224 at the time of each payment, of capital or surplus in excess of amounts  
225 specified by, or determined in accordance with formulas approved by,  
226 the commissioner.

227 Sec. 6. (NEW) (*Effective October 1, 2005*) (a) A pure captive insurance  
228 company may be incorporated as a stock insurer with its capital  
229 divided into shares and held by the stockholders, as a nonprofit  
230 corporation with one or more members, or as a manager-managed  
231 limited liability company.

232 (b) An association captive insurance company, an industrial insured  
233 captive insurance company, or a risk retention group may be:

234 (1) Incorporated as a stock insurer with its capital divided into  
235 shares and held by the stockholders;

236 (2) Incorporated as a mutual insurer without capital stock, the  
237 governing body of which is elected by its insureds;

238 (3) Organized as a reciprocal insurer; or

239 (4) Organized as a manager-managed limited liability company.

240 (c) A captive insurance company incorporated or organized in this  
241 state shall have not less than three incorporators or three organizers of  
242 whom at least one shall be a resident of this state.

243 (d) In the case of a captive insurance company:

244 (1) (A) Formed as a corporation, before the articles of incorporation  
245 are transmitted to the Secretary of the State, the incorporators shall

246 petition the Insurance Commissioner to issue a certificate setting forth  
247 the commissioner's finding that the establishment and maintenance of  
248 the proposed corporation will promote the general good of the state. In  
249 arriving at such a finding the commissioner shall consider:

250 (i) The character, reputation, financial standing and purposes of the  
251 incorporators;

252 (ii) The character, reputation, financial responsibility, insurance  
253 experience and business qualifications of the officers and directors;  
254 and

255 (iii) Such other aspects as the commissioner deems advisable.

256 (B) The articles of incorporation, such certificate and the  
257 organization fee shall be transmitted to the Secretary of the State who  
258 shall record both the articles of incorporation and the certificate.

259 (2) Formed as a reciprocal insurer, the organizers shall petition the  
260 commissioner to issue a certificate setting forth the commissioner's  
261 finding that the establishment and maintenance of the proposed  
262 association will promote the general good of the state. In arriving at  
263 such a finding the commissioner shall consider the items set forth in  
264 subparagraph (A) of subdivision (1) of this subsection.

265 (3) Formed as a limited liability company, before the articles of  
266 organization are transmitted to the Secretary of the State, the  
267 organizers shall petition the commissioner to issue a certificate setting  
268 forth the commissioner's finding that the establishment and  
269 maintenance of the proposed company will promote the general good  
270 of the state. In arriving at such a finding, the commissioner shall  
271 consider the items set forth in subparagraph (A) of subdivision (1) of  
272 this subsection.

273 (e) The capital stock of a captive insurance company incorporated as  
274 a stock insurer may be authorized with no par value.

275 (f) In the case of a captive insurance company:

276 (1) Formed as a corporation, at least one of the members of the  
277 board of directors shall be a resident of this state;

278 (2) Formed as a reciprocal insurer, at least one of the members of the  
279 subscribers' advisory committee shall be a resident of this state;

280 (3) Formed as a limited liability company, at least one of the  
281 managers shall be a resident of this state.

282 (g) Other than captive insurance companies formed as limited  
283 liability companies or as nonprofit corporations, captive insurance  
284 companies formed as corporations under the provisions of sections 1  
285 to 18, inclusive, of this act shall have the privileges and be subject to  
286 the provisions of title 33 of the general statutes as well as the  
287 applicable provisions in sections 1 to 18, inclusive, of this act. In the  
288 event of conflict between the provisions of title 33 of the general  
289 statutes and sections 1 to 18, inclusive, of this act, the provisions of  
290 sections 1 to 18, inclusive, of this act shall control.

291 (h) Captive insurance companies formed under the provisions of  
292 this chapter:

293 (1) As limited liability companies shall have the privileges and be  
294 subject to the provisions of chapter 613 of the general statutes and  
295 applicable provisions in sections 1 to 18, inclusive, of this act. In the  
296 event of a conflict between the provisions of chapter 613 of the general  
297 statutes and sections 1 to 18, inclusive, of this act, the provisions of  
298 sections 1 to 18, inclusive, of this act shall control; or

299 (2) As nonprofit corporations shall have the privileges and be  
300 subject to the applicable provisions of title 33 of the general statutes  
301 and applicable provisions in sections 1 to 18, inclusive, of this act. In  
302 the event of conflict between the provisions of title 33 of the general  
303 statutes and sections 1 to 18, inclusive, of this act, the provisions of  
304 sections 1 to 18, inclusive, of this act shall control.

305 (i) The provisions of chapter 698 of the general statutes pertaining to  
306 mergers, consolidations and conversions shall apply in determining

307 the procedures to be followed by captive insurance companies in  
308 carrying out any of the transactions described in said chapter 698.

309 (j) Captive insurance companies formed as reciprocal insurers under  
310 the provisions of sections 1 to 18, inclusive, of this act shall have the  
311 privileges and be subject to the provisions of title 38a of the general  
312 statutes in addition to the applicable provisions of sections 1 to 18,  
313 inclusive, of this act. In the event of a conflict between the provisions  
314 of sections 1 to 18, inclusive, of this act and title 38a of the general  
315 statutes, the provisions of sections 1 to 18, inclusive, of this act shall  
316 control.

317 (k) The articles of incorporation or bylaws of a captive insurance  
318 company formed as a corporation may authorize a quorum of its board  
319 of directors to consist of no fewer than one-third of the fixed or  
320 prescribed number of directors.

321 (l) The subscribers' agreement or other organizing document of a  
322 captive insurance company formed as a reciprocal insurer may  
323 authorize a quorum of its subscribers' advisory committee to consist of  
324 no fewer than one-third of the number of its members.

325 Sec. 7. (NEW) (*Effective October 1, 2005*) (a) Captive insurance  
326 companies shall not be required to make any annual report except as  
327 provided in sections 1 to 18, inclusive, of this act.

328 (b) Prior to March first of each year, each captive insurance  
329 company shall submit to the Insurance Commissioner a report of its  
330 financial condition verified by oath of two of its executive officers.  
331 Each captive insurance company shall report using generally accepted  
332 accounting principles, unless the commissioner approves the use of  
333 statutory accounting principles, with any appropriate or necessary  
334 modifications or adaptations required or approved or accepted by the  
335 commissioner for the type of insurance and kinds of insurers to be  
336 reported upon, and as supplemented by additional information  
337 required by the commissioner. Except as otherwise provided, each  
338 association captive insurance company and each risk retention group

339 shall file its report in the form required by sections 38a-53 and 38a-53a  
340 of the general statutes. The commissioner may adopt regulations, in  
341 accordance with chapter 54 of the general statutes, to establish the  
342 manner in which pure captive insurance companies and industrial  
343 insured captive insurance companies shall report. The provisions of  
344 subsection (b) of section 38a-69a of the general statutes shall apply to  
345 each report filed pursuant to this section.

346 (c) Any pure captive insurance company or industrial insured  
347 captive insurance company may make written application to the  
348 commissioner for approval to file the required report at the end of the  
349 fiscal year. If the commissioner grants approval for such alternative  
350 reporting date:

351 (1) The annual report shall be due sixty days after the end of the  
352 fiscal year; and

353 (2) In order to provide sufficient detail to support the premium tax  
354 return, the pure captive insurance company or industrial insured  
355 captive insurance company shall file prior to March first of each year  
356 for each calendar year-end such information as the commissioner may  
357 prescribe verified by oath of two of its executive officers.

358 Sec. 8. (NEW) (*Effective October 1, 2005*) (a) At least once every three  
359 years, and additionally whenever the Insurance Commissioner  
360 determines it to be prudent, the commissioner or the commissioner's  
361 designee shall visit each captive insurance company and thoroughly  
362 inspect and examine its affairs to ascertain its financial condition, its  
363 ability to fulfill its obligations and whether it has complied with the  
364 provisions of sections 1 to 18, inclusive, of this act and any applicable  
365 provisions of title 38a of the general statutes. The commissioner may  
366 extend said three-year period to five years, provided the captive  
367 insurance company is subject to a comprehensive annual audit during  
368 such period of a scope satisfactory to the commissioner by  
369 independent auditors approved by the commissioner. The expenses  
370 and charges of the examination shall be paid to the commissioner for  
371 deposit in the Insurance Fund by the company examined.

372 (b) The provisions of subsection (k) of section 38a-14 of the general  
373 statutes shall apply to examinations conducted under this section.

374 (c) All examination reports, preliminary examination reports or  
375 results, working papers, recorded information, documents and copies  
376 thereof produced by, obtained by or disclosed to the commissioner or  
377 any other person in the course of an examination made under this  
378 section are confidential and are not subject to subpoena and may not  
379 be made public by the commissioner or an employee or agent of the  
380 commissioner without the written consent of the company, except to  
381 the extent provided in this subsection. Nothing in this subsection shall  
382 prevent the commissioner from using such information in furtherance  
383 of the commissioner's regulatory authority under sections 1 to 18,  
384 inclusive, of this act or title 38a of the general statutes. The  
385 commissioner may, in the commissioner's discretion, grant access to  
386 such information to public officials having jurisdiction over the  
387 regulation of insurance in any other state or country, or to law  
388 enforcement officers of this state or any other state or agency of the  
389 federal government at any time, provided such officials or officers  
390 receiving the information agree, in writing, to hold the information in a  
391 manner consistent with this section.

392 Sec. 9. (NEW) (*Effective October 1, 2005*) (a) The license of a captive  
393 insurance company may be suspended or revoked by the Insurance  
394 Commissioner for any of the following reasons:

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

396 (2) Failure to meet the requirements of section 4 of this act;

397 (3) Refusal or failure to submit an annual report, as required by  
398 section 7 of this act or any other report or statement required by law or  
399 by lawful order of the commissioner;

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

402 (5) Failure to submit to or pay the cost of examination or any legal

403 obligation related to such examination as required by any provision of  
404 section 8 of this act or title 38a of the general statutes;

405 (6) Use of methods that, although not otherwise specifically  
406 prohibited by law, nevertheless render its operation detrimental or its  
407 condition unsound with respect to the public or to its policyholders; or

408 (7) Failure otherwise to comply with the laws of this state.

409 (b) If the commissioner finds, after examination, hearing or other  
410 evidence, that any captive insurance company has violated any  
411 provision of subsection (a) of this section, the commissioner may  
412 suspend or revoke such company's license if the commissioner deems  
413 it in the best interest of the public and the policyholders of such  
414 captive insurance company, notwithstanding any other provision of  
415 sections 1 to 18, inclusive, of this act or title 38a of the general statutes.

416 Sec. 10. (NEW) (*Effective October 1, 2005*) (a) Association captive  
417 insurance companies and risk retention groups shall comply with the  
418 investment requirements in chapter 698 of the general statutes, as  
419 applicable. Notwithstanding any other provision of sections 1 to 18,  
420 inclusive, of this act, the commissioner may approve the use of  
421 alternative reliable methods of valuation and rating.

422 (b) No pure captive insurance company or industrial insured  
423 captive insurance company shall be subject to any restrictions on  
424 allowable investments, except that the Insurance Commissioner may  
425 prohibit or limit any investment that threatens the solvency or  
426 liquidity of any such company.

427 (c) No pure captive insurance company may make a loan to or an  
428 investment in its parent company or affiliates without prior written  
429 approval of the commissioner, and any such loan or investment shall  
430 be evidenced by documentation approved by the commissioner. Loans  
431 of minimum capital and surplus funds required in section 4 of this act  
432 are prohibited.

433 Sec. 11. (NEW) (*Effective October 1, 2005*) (a) Any captive insurance

434 company may provide reinsurance on risks ceded by any other  
435 insurer.

436 (b) Any captive insurance company may take credit for the  
437 reinsurance of risks or portions of risks ceded to reinsurers that  
438 complies with the provisions of section 38a-85 or 38a-86 of the general  
439 statutes. Prior approval of the Insurance Commissioner shall be  
440 required for ceding or taking credit for the reinsurance of risks or  
441 portions of risks ceded to reinsurers not complying with section 38a-85  
442 or 38a-86 of the general statutes, except for business written by an alien  
443 captive insurance company outside of the United States.

444 (c) In addition to reinsurance authorized under the provisions of  
445 sections 38a-85 and 38a-86 of the general statutes, a captive insurance  
446 company may take credit for the reinsurance of risks or portions of  
447 risks ceded to a pool, exchange or association acting as a reinsurer  
448 which has been authorized by the commissioner. The commissioner  
449 may require any other documents, financial information or other  
450 evidence that such a pool, exchange or association will be able to  
451 provide adequate security for its financial obligations. The  
452 commissioner may deny authorization or impose any limitations on  
453 the activities of a reinsurance pool, exchange or association that, in the  
454 commissioner's judgment, are necessary and proper to provide  
455 adequate security for the ceding captive insurance company and for  
456 the protection and consequent benefit of the public.

457 (d) For purposes of sections 1 to 18, inclusive, of this act, insurance  
458 by a captive insurance company of any workers' compensation  
459 qualified self-insured plan of its parent and affiliates shall be deemed  
460 to be reinsurance.

461 Sec. 12. (NEW) (*Effective October 1, 2005*) No captive insurance  
462 company shall be required to join a rating organization.

463 Sec. 13. (NEW) (*Effective October 1, 2005*) No captive insurance  
464 company may join or contribute financially to any plan, pool,  
465 association or guaranty or insolvency fund in this state, nor shall any

466 such captive insurance company, or any insured or affiliate thereof,  
467 receive any benefit from any such plan, pool, association or guaranty  
468 or insolvency fund for claims arising out of the operations of such  
469 captive insurance company.

470       Sec. 14. (NEW) (*Effective October 1, 2005*) (a) Each captive insurance  
471 company shall pay to the Commissioner of Revenue Services, in the  
472 month of February of each year, a tax at the rate of thirty-eight  
473 hundredths of one per cent on the first twenty million dollars and two  
474 hundred eighty-five thousandths of one per cent on the next twenty  
475 million dollars and nineteen hundredths of one per cent on the next  
476 twenty million dollars and seventy-two thousandths of one per cent on  
477 each dollar thereafter on the direct premiums collected or contracted  
478 for on policies or contracts of insurance written by the captive  
479 insurance company during the year ending December thirty-first next  
480 preceding, after deducting from the direct premiums subject to the tax  
481 the amounts paid to policyholders as return premiums which shall  
482 include dividends on unabsorbed premiums or premium deposits  
483 returned or credited to policyholders, except that no tax shall be due or  
484 payable as to considerations received for annuity contracts.

485       (b) Each captive insurance company shall pay to the Commissioner  
486 of Revenue Services in the month of February of each year a tax at the  
487 rate of two hundred fourteen thousandths of one per cent on the first  
488 twenty million dollars of assumed reinsurance premium, and one  
489 hundred forty-three thousandths of one per cent on the next twenty  
490 million dollars and forty-eight thousandths of one per cent on the next  
491 twenty million dollars and twenty-four thousandths of one per cent of  
492 each dollar thereafter, except that no reinsurance tax shall apply to  
493 premiums for risks or portions of risks which are subject to taxation on  
494 a direct basis pursuant to subsection (a) of this section. No reinsurance  
495 premium tax shall be payable in connection with the receipt of assets  
496 in exchange for the assumption of loss reserves and other liabilities of  
497 another insurer under common ownership and control if (1) such  
498 transaction is part of a plan to discontinue the operations of such other  
499 insurer, and (2) the intent of the parties to such transaction is to renew

500 or maintain such business with the captive insurance company.

501 (c) The annual minimum aggregate tax to be paid by a captive  
502 insurance company calculated under subsections (a) and (b) of this  
503 section shall be seven thousand five hundred dollars, and the annual  
504 maximum aggregate tax shall be two hundred thousand dollars.

505 (d) A captive insurance company failing to file returns as required  
506 in this section or failing to pay within the time required all taxes  
507 assessed by this section shall be subject to penalty under section 12-229  
508 of the general statutes.

509 (e) Two or more captive insurance companies under common  
510 ownership and control shall be taxed as though they were a single  
511 captive insurance company.

512 (f) For the purposes of this section common ownership and control  
513 means:

514 (1) In the case of stock corporations, the direct or indirect ownership  
515 of eighty per cent or more of the outstanding voting stock of two or  
516 more corporations by the same shareholder or shareholders; and

517 (2) In the case of mutual or nonprofit corporations, the direct or  
518 indirect ownership of eighty per cent or more of the surplus and the  
519 voting power of two or more corporations by the same member or  
520 members.

521 (g) The tax provided for in this section shall constitute all taxes  
522 collectible under the laws of this state from any captive insurance  
523 company, and no other occupation tax or other taxes shall be levied or  
524 collected from any captive insurance company by the state or any  
525 county, city or municipality within this state, except taxes on real and  
526 personal property used in the production of income.

527 (h) The premium tax revenues collected pursuant to this section  
528 shall be deposited in the General Fund, except that annually, ten per  
529 cent of the revenues shall be transferred to the Insurance Fund

530 established in section 38a-52a of the general statutes for the purpose of  
531 regulating captive insurance companies under sections 1 to 18,  
532 inclusive, of this act.

533 (i) The tax provided for in this section shall be calculated on an  
534 annual basis, notwithstanding policies or contracts of insurance or  
535 contracts of reinsurance issued on a multiyear basis. In the case of  
536 multiyear policies or contracts, the premium shall be prorated for  
537 purposes of determining the tax under this section.

538 Sec. 15. (NEW) (*Effective October 1, 2005*) Except as otherwise  
539 provided in sections 1 to 18, inclusive, of this act, no provision of title  
540 38a of the general statutes shall apply to captive insurance companies.  
541 Risk retention groups shall have the privileges and be subject to the  
542 provisions of chapter 698c of the general statutes in addition to the  
543 applicable provisions of sections 1 to 18, inclusive, of this act.

544 Sec. 16. (NEW) (*Effective October 1, 2005*) Except as otherwise  
545 provided in sections 1 to 14, inclusive, and sections 17 and 18 of this  
546 act, the terms and conditions set forth in title 38a of the general statutes  
547 pertaining to insurance liquidations and receiverships shall apply to  
548 captive insurance companies formed or licensed under sections 1 to 18,  
549 inclusive, of this act.

550 Sec. 17. (NEW) (*Effective October 1, 2005*) (a) An association captive  
551 insurance company, risk retention group or industrial insured captive  
552 insurance company formed as a stock or mutual corporation may be  
553 converted to or merged with and into a reciprocal insurer in  
554 accordance with a plan for such conversion or merger and the  
555 provisions of this section.

556 (b) Any plan for such conversion or merger shall provide a fair and  
557 equitable plan for purchasing, retiring or otherwise extinguishing the  
558 interests of the stockholders and policyholders of a stock insurer, and  
559 the members and policyholders of a mutual insurer, including a fair  
560 and equitable provision for the rights and remedies of dissenting  
561 stockholders, members or policyholders.

562 (c) In the case of a conversion authorized under subsection (a) of  
563 this section:

564 (1) Such conversion shall be accomplished under such reasonable  
565 plan and procedure as may be approved by the commissioner, except  
566 that the Insurance Commissioner shall not approve any such plan of  
567 conversion unless such plan:

568 (A) Satisfies the provisions of subsection (b) of this section;

569 (B) Provides for a hearing, of which notice is given or to be given to  
570 the captive insurance company, its directors, officers and  
571 policyholders, and in the case of a stock insurer, its stockholders, and  
572 in the case of a mutual insurer, its members, all of which persons shall  
573 be entitled to attend and appear at such hearing, except that if notice of  
574 a hearing is given and no director, officer, policyholder, member or  
575 stockholder requests a hearing, the commissioner may cancel such  
576 hearing;

577 (C) Provides a fair and equitable plan for the conversion of  
578 stockholder, member or policyholder interests into subscriber interests  
579 in the resulting reciprocal insurer, substantially proportionate to the  
580 corresponding interests in the stock or mutual insurer, except that such  
581 plan shall not preclude the resulting reciprocal insurer from applying  
582 underwriting criteria that could affect ongoing ownership interests;  
583 and

584 (D) Is approved:

585 (i) In the case of a stock insurer, by a majority of the shares entitled  
586 to vote represented in person or by proxy at a duly called regular or  
587 special meeting at which a quorum is present; and

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

591 (2) The commissioner shall approve such plan of conversion if the

592 commissioner finds that the conversion will promote the general good  
593 of the state in conformity with those standards set forth in subdivision  
594 (2) of subsection (d) of section 6 of this act;

595 (3) If the commissioner approves the plan, the commissioner shall  
596 amend the converting insurer's certificate of authority to reflect  
597 conversion to a reciprocal insurer and issue such amended certificate  
598 of authority to the company's attorney-in-fact;

599 (4) The conversion shall be effective upon the issuance of an  
600 amended certificate of authority of a reciprocal insurer by the  
601 commissioner; and

602 (5) Upon the effective date of such conversion the corporate  
603 existence of the converting insurer shall cease and the resulting  
604 reciprocal insurer shall notify the Secretary of the State of such  
605 conversion.

606 (d) A merger authorized under subsection (a) of this section shall be  
607 accomplished substantially in accordance with the procedures set forth  
608 in chapter 698 of the general statutes, except that, solely for purposes  
609 of such merger:

610 (1) The plan of merger shall satisfy the provisions of subsection (b)  
611 of this section;

612 (2) The subscribers' advisory committee of a reciprocal insurer shall  
613 be equivalent to the board of directors of a stock or mutual insurance  
614 company;

615 (3) The subscribers of a reciprocal insurer shall be the equivalent of  
616 the policyholders of a mutual insurance company;

617 (4) If a subscribers' advisory committee does not have a president or  
618 secretary, the officers of such committee having substantially  
619 equivalent duties shall be deemed the president or secretary of such  
620 committee;

621 (5) The commissioner shall approve the articles of merger if the  
622 commissioner finds that the merger will promote the general good of  
623 the state in conformity with those standards set forth in subdivision (2)  
624 of subsection (d) of section 6 of this act. If the commissioner approves  
625 the articles of merger, the commissioner shall endorse the  
626 commissioner's approval thereon and the surviving insurer shall  
627 present the articles of merger to the Secretary of the State at the  
628 Secretary of the State's office;

629 (6) Notwithstanding section 4 of this act, the commissioner may  
630 permit the formation, without surplus, of a captive insurance company  
631 organized as a reciprocal insurer, into which an existing captive  
632 insurance company may be merged for the purpose of facilitating a  
633 transaction under this section, except that there shall be no more than  
634 one authorized insurance company surviving such merger; and

635 (7) An alien insurer may be a party to a merger authorized under  
636 subsection (a) of this section, except that the requirements for a merger  
637 between a domestic and a foreign insurer under chapter 698 of the  
638 general statutes shall apply to a merger between a domestic and an  
639 alien insurer under this subsection. Such alien insurer shall be treated  
640 as a foreign insurer under chapter 698 of the general statutes and such  
641 other jurisdictions shall be the equivalent of a state for purposes of  
642 chapter 698 of the general statutes.

643 (e) A conversion or merger under this section shall have the effects  
644 of conversion or merger set forth in chapter 698 of the general statutes  
645 to the extent such effects are not inconsistent with the provisions of  
646 sections 1 to 18, inclusive, of this act.

647 Sec. 18. (NEW) (*Effective October 1, 2005*) The Insurance  
648 Commissioner may adopt regulations, in accordance with chapter 54  
649 of the general statutes, to establish standards to ensure that a parent or  
650 affiliated company is able to exercise control of the risk management  
651 function of any controlled unaffiliated business to be insured by the  
652 pure captive insurance company, except that until such regulations are  
653 approved, the commissioner may approve the coverage of such risks

654 by a pure captive insurance company.

655 Sec. 19. Subsection (a) of section 38a-11 of the general statutes is  
656 repealed and the following is substituted in lieu thereof (*Effective*  
657 *October 1, 2005*):

658 (a) The commissioner shall demand and receive the following fees:  
659 (1) For the annual fee for each license issued to a domestic insurance  
660 company, one hundred dollars; (2) for receiving and filing annual  
661 reports of domestic insurance companies, twenty-five dollars; (3) for  
662 filing all documents prerequisite to the issuance of a license to an  
663 insurance company, one hundred seventy-five dollars, except that the  
664 fee for such filings by any health care center, as defined in section 38a-  
665 175, shall be one thousand one hundred dollars; (4) for filing any  
666 additional paper required by law, fifteen dollars; (5) for each certificate  
667 of valuation, organization, reciprocity or compliance, twenty dollars;  
668 (6) for each certified copy of a license to a company, twenty dollars; (7)  
669 for each certified copy of a report or certificate of condition of a  
670 company to be filed in any other state, twenty dollars; (8) for  
671 amending a certificate of authority, one hundred dollars; (9) for each  
672 license issued to a rating organization, one hundred dollars. In  
673 addition, insurance companies shall pay any fees imposed under  
674 section 12-211; (10) a filing fee of twenty-five dollars for each initial  
675 application for a license made pursuant to section 38a-769; (11) with  
676 respect to insurance agents' appointments: (A) A filing fee of twenty-  
677 five dollars for each request for any agent appointment; (B) a fee of  
678 forty dollars for each appointment issued to an agent of a domestic  
679 insurance company or for each appointment continued; and (C) a fee  
680 of twenty dollars for each appointment issued to an agent of any other  
681 insurance company or for each appointment continued, except that no  
682 fee shall be payable for an appointment issued to an agent of an  
683 insurance company domiciled in a state or foreign country which does  
684 not require any fee for an appointment issued to an agent of a  
685 Connecticut insurance company; (12) with respect to insurance  
686 producers: (A) An examination fee of seven dollars for each  
687 examination taken, except when a testing service is used, the testing

688 service shall pay a fee of seven dollars to the commissioner for each  
689 examination taken by an applicant; (B) a fee of forty dollars for each  
690 license issued; and (C) a fee of forty dollars for each license renewed;  
691 (13) with respect to public adjusters: (A) An examination fee of seven  
692 dollars for each examination taken, except when a testing service is  
693 used, the testing service shall pay a fee of seven dollars to the  
694 commissioner for each examination taken by an applicant; and (B) a fee  
695 of one hundred twenty-five dollars for each license issued or renewed;  
696 (14) with respect to casualty adjusters: (A) An examination fee of ten  
697 dollars for each examination taken, except when a testing service is  
698 used, the testing service shall pay a fee of ten dollars to the  
699 commissioner for each examination taken by an applicant; (B) a fee of  
700 forty dollars for each license issued or renewed; and (C) the expense of  
701 any examination administered outside the state shall be the  
702 responsibility of the entity making the request and such entity shall  
703 pay to the commissioner one hundred dollars for such examination  
704 and the actual traveling expenses of the examination administrator to  
705 administer such examination; (15) with respect to motor vehicle  
706 physical damage appraisers: (A) An examination fee of forty dollars  
707 for each examination taken, except when a testing service is used, the  
708 testing service shall pay a fee of forty dollars to the commissioner for  
709 each examination taken by an applicant; (B) a fee of forty dollars for  
710 each license issued or renewed; and (C) the expense of any  
711 examination administered outside the state shall be the responsibility  
712 of the entity making the request and such entity shall pay to the  
713 commissioner one hundred dollars for such examination and the  
714 actual traveling expenses of the examination administrator to  
715 administer such examination; (16) with respect to certified insurance  
716 consultants: (A) An examination fee of thirteen dollars for each  
717 examination taken, except when a testing service is used, the testing  
718 service shall pay a fee of thirteen dollars to the commissioner for each  
719 examination taken by an applicant; (B) a fee of two hundred dollars for  
720 each license issued; and (C) a fee of one hundred twenty-five dollars  
721 for each license renewed; (17) with respect to surplus lines brokers: (A)  
722 An examination fee of ten dollars for each examination taken, except

723 when a testing service is used, the testing service shall pay a fee of ten  
724 dollars to the commissioner for each examination taken by an  
725 applicant; and (B) a fee of five hundred dollars for each license issued  
726 or renewed; (18) with respect to fraternal agents, a fee of forty dollars  
727 for each license issued or renewed; (19) a fee of thirteen dollars for  
728 each license certificate requested, whether or not a license has been  
729 issued; (20) with respect to domestic and foreign benefit societies shall  
730 pay: (A) For service of process, twenty-five dollars for each person or  
731 insurer to be served; (B) for filing a certified copy of its charter or  
732 articles of association, five dollars; (C) for filing the annual report, ten  
733 dollars; and (D) for filing any additional paper required by law, three  
734 dollars; (21) with respect to foreign benefit societies: (A) For each  
735 certificate of organization or compliance, four dollars; (B) for each  
736 certified copy of permit, two dollars; and (C) for each copy of a report  
737 or certificate of condition of a society to be filed in any other state, four  
738 dollars; (22) with respect to reinsurance intermediaries: A fee of five  
739 hundred dollars for each license issued or renewed; (23) with respect  
740 to viatical settlement providers: (A) A filing fee of thirteen dollars for  
741 each initial application for a license made pursuant to section 38a-465a;  
742 and (B) a fee of twenty dollars for each license issued or renewed; (24)  
743 with respect to viatical settlement brokers: (A) A filing fee of thirteen  
744 dollars for each initial application for a license made pursuant to  
745 section 38a-465a; and (B) a fee of twenty dollars for each license issued  
746 or renewed; (25) with respect to viatical settlement investment agents:  
747 (A) A filing fee of thirteen dollars for each initial application for a  
748 license made pursuant to section 38a-465a; and (B) a fee of twenty  
749 dollars for each license issued or renewed; (26) with respect to  
750 preferred provider networks, a fee of two thousand five hundred  
751 dollars for each license issued or renewed; (27) with respect to rental  
752 companies, as defined in section 38a-799, a fee of forty dollars for each  
753 permit issued or renewed; (28) with respect to captive insurance  
754 companies, as defined in section 1 of this act, a fee of three hundred  
755 dollars for each license issued or renewed; and ~~[(28)]~~ (29) with respect  
756 to each duplicate license issued a fee of twenty-five dollars for each  
757 license issued.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>October 1, 2005</i>	New section
Sec. 11	<i>October 1, 2005</i>	New section
Sec. 12	<i>October 1, 2005</i>	New section
Sec. 13	<i>October 1, 2005</i>	New section
Sec. 14	<i>October 1, 2005</i>	New section
Sec. 15	<i>October 1, 2005</i>	New section
Sec. 16	<i>October 1, 2005</i>	New section
Sec. 17	<i>October 1, 2005</i>	New section
Sec. 18	<i>October 1, 2005</i>	New section
Sec. 19	<i>October 1, 2005</i>	38a-11(a)

**Statement of Legislative Commissioners:**

References to "sponsored captive insurance companies" were deleted because such companies are not licensed under the bill and the definition of "branch captive insurance company" was deleted because the term is not otherwise used in the bill.

**INS**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Insurance Dept.	IF - Cost	529,435	529,435
Insurance Dept.	IF - Revenue Gain	Potential	Potential
Department of Revenue Services	GF - Revenue Gain	Potential	Potential

Note: IF=Insurance Fund; GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill permits a captive insurance company (captive) to be licensed and domiciled in Connecticut and permits them to transact life insurance, annuity, health insurance, and commercial risk insurance business if it meets specified requirements.

**Licensing Captives**

To obtain a license a captive must pay a \$200 application fee plus reasonable legal, financial, and examination expenses that the commissioner incurs when retaining outside application review services. Once approved, the captive must pay an initial license fee of \$300, and when the license expires on April 1<sup>st</sup>, an annual renewal fee of \$300. While it is uncertain the amount of captives that will have to be licensed as a result of the bill, this could result in a revenue gain.

**Regulation and Audit Responsibilities**

The bill also requires the Insurance Commissioner to regulate captives and examine each at least once every three years or, for a captive subject to an annual independent financial audit, once every five years. Under the bill, a captive must give the commissioner a financial report prepared under two executive officers' oaths by March 1 each year. The Insurance Department would have to establish a separate unit in the Financial

Division with expertise in the captive insurance industry to adequately staff and regulate this industry. It is estimated that in FY 06 and FY 07 the Insurance Department would incur costs of \$529,435 for two Examiners (\$86,461 each, annually including fringe benefits), one Actuary (\$126,189 annually including fringe benefits), one Program Manager (\$119,250 annually including fringe benefits), and one Reinsurance Specialist (\$100,075 annually including fringe benefits). The Insurance Department would also incur \$11,000 in FY 06 and FY 07 for other expenses and equipment.

According to the bill, a captive must pay reasonable examination expenses to the Insurance Commissioner for deposit into the Insurance Fund. This could result in a minimal revenue gain to the Insurance Fund.

### **Premium Taxes**

Under current law, persons who purchase insurance from unauthorized insurers are subject to the Insurance Premiums tax. Unauthorized insurers, which currently include captive insurance companies, are defined as insurers who have not been granted a certificate of authority to transact business of insurance in Connecticut, or insurers transacting business not authorized by a valid certificate. Therefore, persons that have insurance provided by a captive insurer should be remitting taxes to the Department of Revenue Services.

However, because the liability of remitting the tax is the responsibility of the policyholder, compliance is very low because knowledge of the current law is not common. Since the bill requires the captive insurance companies to remit the tax instead of the policyholders it will likely lead to an increase in compliance and greater revenue. The amount of additional revenue cannot be quantified because there is insufficient data on the captive insurance market.

**OLR Bill Analysis**

sSB 27

**AN ACT CONCERNING CAPTIVE INSURERS****SUMMARY:**

This bill permits a captive insurance company (captive) to be licensed and domiciled in Connecticut to transact life insurance, annuity, health insurance, and commercial risk insurance business if it meets specified requirements. Requirements relate to formation, capital and surplus, local office presence, ability to meet policy obligations, payment of certain fees and premium taxes, and annual reporting, among other things. By law, a risk retention group (RRG), which is one type of captive, can already domicile in Connecticut and RRGs domiciled in other states can transact business in Connecticut if they register with the insurance department.

The bill requires the insurance commissioner to regulate captives and examine each at least once every three years or, for a captive subject to an annual independent financial audit, once every five years. It also authorizes her to suspend or revoke a captive's license for law violations or detrimental or unsound operations and to adopt regulations.

Under the bill, a captive cannot be required to join a rating organization. The bill prohibits a captive from joining or contributing to the state insolvency guaranty funds. It also prohibits it, its insureds, or its affiliates from receiving benefits from the funds if the captive becomes impaired or insolvent.

EFFECTIVE DATE: October 1, 2005

**CAPTIVE DEFINITION (§ 1)**

A captive insurance company can be a pure captive, an association captive, an industrial insured captive, or an RRG. A pure captive insures risks of its parent and affiliated companies or controlled unaffiliated businesses. An association captive insures risks of its member organizations and their affiliated companies.

An industrial insured captive insures risks of the industrial insureds comprising the industrial insured group and its affiliated companies. An industrial insured is one that (1) obtains insurance through a full-time employee insurance manager, (2) has total annual insurance premiums of at least \$25,000, and (3) has at least 25 full-time employees. An industrial insured group is any group of industrial insureds that together (1) control all outstanding voting securities of the captive, if it is formed as a stock insurer; (2) have complete voting control over the captive, if formed as a mutual insurer; or (3) are all of the subscribers of the captive, if formed as a reciprocal insurer.

An RRG is a captive organized under state law pursuant to the 1986 federal Liability Risk Retention Act (see BACKGROUND).

## **LICENSE (§ 2, 9)**

### ***Application, Fees, Issuance, Renewal***

To obtain a license, a captive must send the insurance commissioner (1) organizational documents; (2) a financial condition statement; and (3) coverage description, including deductibles, limits, and rates. It must maintain certain capital and surplus (see CAPITAL AND SURPLUS below) and send evidence of (1) asset liquidity relative to its assumed risk; (2) adequate management expertise, experience, and character; (3) a sound operation plan; and (4) adequate insured's loss prevention program. It must also pay a \$200 application fee plus reasonable legal, financial, and examination expenses that the commissioner incurs when retaining outside application review services.

The information provided is confidential and can be made public only with the captive's written consent, with two exceptions. The information is discoverable in a civil action in which the captive is a party if (1) relevant, (2) necessary, (3) unavailable elsewhere, and (4) for non-RRG captives, is the subject of a subpoena. The commissioner can also give another state's public officials with insurance regulation jurisdiction the information if they agree in writing to keep it confidential and the state's laws require it to be so kept.

If the commissioner approves the application, she will issue a license if the captive pays a \$300 license fee. The license expires on the next

April 1. It can be renewed annually for a \$300 annual renewal fee.

### ***Civil Immunity***

The commissioner can outsource the application review. No cause of action can be brought nor any liability imposed against her, her authorized representatives, or appointed examiners for (1) any good faith statements or conduct in connection with the review or (2) communicating or delivering information in good faith and without fraudulent or deceptive intent. Any common law and statutory privileges or immunity remains. The commissioner, representative, or examiner can receive attorney's fees and costs if prevailing in a libel, slander or any other relevant tort case if the moving party did not have a reasonable basis in law or fact when he initiated it.

### ***Suspension and Revocation***

The commissioner can suspend or revoke a captive's license for (1) insolvency or impaired capital and surplus; (2) not complying with capital and surplus requirements; (3) not submitting an annual financial report or any other statement required by her; (4) not complying with its charter, bylaws, or organizational document; (5) not cooperating with her examinations or paying examination-related expenses; (6) unsound conditions or operations detrimental to the public or its policyholders; or (7) not complying with any applicable state laws.

## **CAPTIVE FORMATION (§§ 2, 3, 6, 15, 18)**

### ***Organizational Structure***

A pure captive can form as a stock insurer, nonprofit corporation, or a limited liability company (LLC). An association captive, industrial insured captive, or RRG can form as a stock, mutual, or reciprocal insurer or LLC. Each captive must have at least three incorporators or organizers, one of which must be a state resident. The capital stock of a stock insurer can be authorized with no par value. A corporation's articles of incorporation or bylaws and a reciprocal insurer's organizing documents can permit a quorum of least one-third of the directors or members.

### ***Company Name***

A captive's name cannot be the same as or similar to an existing registered business name.

### ***Certificate of General Good***

A captive formed as a corporation, reciprocal insurer, or LLC must ask the insurance commissioner for a certificate giving her finding that the proposed company or association will promote the state's general good. To make this finding she must consider (1) the incorporator's character, reputation, financial standing, and purpose; (2) the officers' and directors' character, reputation, financial responsibility, insurance experience, and business qualifications; and (3) other things she deems advisable.

A captive formed as a corporation must give this certificate, along with its articles of incorporation and organization fee, to the secretary of the state. (The bill does not specify what a reciprocal insurer or LLC needs to do with their certificate, if anything.)

### ***Controlled Unaffiliated Business***

The commissioner can adopt regulations establishing standards for a pure captive's parent or affiliated company to control the risk management functions of a controlled unaffiliated business insured by the captive. Until such regulations exist, she can approve a pure captive's coverage of such risks.

### ***Insurance Transacted***

A captive can provide annuities and life, health, and commercial risk insurance. It cannot provide private passenger motor vehicle or homeowners insurance. It also cannot provide workers' compensation insurance, except it can provide excess workers' compensation insurance to its parent and affiliated companies if not prohibited by any state or federal law. A captive can reinsure a parent's or affiliated company's qualified self-insured workers' compensation plan, unless prohibited by federal law. It can also accept or cede reinsurance, but only as specified in the bill (see REINSURANCE below).

## **CAPITAL AND SURPLUS (§§ 4, 5)**

To receive or retain a license, a captive must maintain unimpaired paid-in capital and surplus of at least (1) \$250,000 if a pure captive, (2)

\$500,000 if an industrial insured, (3) \$750,000 if an association captive, or (4) \$1,000,000 if an RRG. The commissioner can adopt regulations for additional capital and surplus requirements based on the type, volume, and nature of insurance transacted. The required capital and surplus can be cash or an irrevocable bank-issued and commissioner-approved letter of credit.

### ***Distributions Contingent on Capital and Surplus***

Dividends and other payment distributions must have the commissioner's prior approval. Her approval of an ongoing distribution plan must be conditioned on keeping, at the time of each payment, capital and surplus levels in excess of those approved by her.

### **LOCAL OFFICE PRESENCE (§§ 2, 6)**

A state-domiciled captive must have (1) its principal place of business and one annual management meeting here; (2) at least one resident incorporator or organizer; (3) at least one resident corporation board member, reciprocal insurer advisory committee member, or LLC manager; and (4) a resident agent for service of process.

### **PREMIUM TAXES (§ 14)**

Annually in February a captive must pay the revenue services commissioner premium taxes (see COMMENT). The commissioner deposits the taxes into the General Fund and 10% are transferred annually to the Insurance Fund for the insurance commissioner's use to regulate captives.

A captive's annual aggregate premium tax due for direct-written and assumed reinsurance premiums is calculated as described below and subject to a minimum of \$7,500 and a maximum of \$200,000. For policies issued on a multiyear basis, premiums are prorated to determine the annual tax liability.

#### ***Direct-written Premiums***

Premium tax is due on direct-written premiums minus any premiums returned to policyholders, including dividends paid and deposits returned or credited. No tax is due on money received for an annuity.

The amount owed is 0.38% of the first \$20 million plus 0.285% of the

next \$20 million plus 0.19% of the next \$20 million plus 0.072% of each additional dollar of direct-written premiums collected or contracted for in the preceding calendar year.

### **Reinsurance Premium**

Premium tax is due on assumed reinsurance premiums not subject to the direct-written premium tax. No tax is due on assets received in exchange for assuming loss reserves or other liabilities of another insurer affiliated by common ownership and control, if the transaction is part of a plan to discontinue the affiliate and the parties intend to keep the business with the captive.

The amount owed is 0.214% of the first \$20 million plus 0.143% of the next \$20 million plus 0.048% of the next \$20 million plus 0.024% of each additional dollar of assumed reinsurance premiums. (The bill does not specify, but apparently the reinsurance premium tax is calculated on the premiums collected or contracted for in the preceding calendar year.)

Common ownership and control means the direct or indirect ownership of 80% or more (1) of the outstanding voting stock of two or more corporations by the same shareholders in the case of a stock corporation or (2) of the surplus and the voting power or two or more corporations by the same members in the case of a mutual or nonprofit corporation.

### **Failure to Pay Tax**

A captive that files a tax return but does not pay owed premium taxes on time is subject to a penalty of 10% of the unpaid tax due or \$50, whichever is greater, plus 1% interest for each full or partial month that the tax remains unpaid.

If a captive does not file a tax return within three months of being due, the revenue services commissioner may make such return based on the best information available. In addition to the tax due, a penalty of 10% of the tax due or \$50, whichever is greater, is owed. A 1% interest on the tax due accrues for each full or partial month that the tax remains unpaid.

## **ANNUAL FINANCIAL REPORT (§ 7)**

A captive must give the insurance commissioner a financial report prepared under two executive officers' oaths by March 1 each year. The report must be prepared using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, with any modifications or adaptations she requires or approves.

A pure or industrial insured captive can ask in writing for the commissioner's permission to file the report at its fiscal year end instead of March 1. If she agrees, (1) the report is due by 60 days after fiscal year end and (2) the captive must give her information that supports its premium tax return under two executives' oaths by March 1 each year.

An association captive and RRG must prepare its report based on the National Association of Insurance Commissioners' annual statement instructions. The commissioner can adopt regulations on how pure and industrial insured captives must report.

Any supplemental compensation exhibit or stockholder information reported is kept confidential if filed by a nonprofit with fewer than 150 employees, except for information related to the company's three most highly compensated officers.

### **REINSURANCE (§ 11)**

A captive can reinsure another insurer's risks. It can also take credit as an asset or deduction from liability for ceding risks to a reinsurer if the reinsurer is (1) a state-licensed insurer or reinsurer, (2) a state-accredited reinsurer, (3) domiciled and licensed in, or if a U.S. branch of a reinsurer chartered outside the United States (an "alien" reinsurer), conducts business through a state with similar reinsurance standards as Connecticut, or (4) maintains a trust fund in accordance with state law for U.S. policyholders' and ceding insurers' claim payments. Credit can also be taken if the reinsurance is on risks located in a jurisdiction that requires such reinsurance by law or regulation.

A captive can also take credit for ceding risks to a reinsurer that is not state-licensed or accredited if the reinsurer agrees that, in the event it fails to meet its financial obligations and at the request of the ceding

insurer, it will (1) submit to the jurisdiction of any U.S. court, (2) comply with requirements necessary to give such court jurisdiction, (3) abide by the court's final decision, and (4) appoint the commissioner or an attorney as agent for service of process in any lawsuit instituted against it by the ceding insurer. The company must obtain the commissioner's prior approval for ceding or taking credit for reinsurance of risks ceded to reinsurers not complying with these requirements, except for business written by an alien captive insurance company outside of the United States.

A captive can also take credit for the reinsurance of risks ceded to a pool, exchange, or association acting as a reinsurer that the commissioner has authorized. The commissioner can require any other documents, financial information, or other evidence that the pool, exchange, or association has adequate financial security. The commissioner can deny authorization or impose limitations on the activities of a reinsurance pool, exchange, or association that she deems necessary.

A captive's insurance of its parent's or affiliate's workers' compensation qualified self-insured plan is deemed to be reinsurance.

### **MERGERS, CONVERSIONS, LIQUIDATIONS (§§ 6, 16, 17)**

The bill specifies that state laws concerning mergers, consolidations, conversions, liquidations, and receiverships that apply to insurers generally also apply to captives.

The bill authorizes an association captive, RRG, or industrial insured captive formed as a stock or mutual corporation to convert to, or merge with and into, a reciprocal insurer. The transaction must provide a fair and equitable plan (1) for purchasing, retiring, or extinguishing stockholders' or members' and policyholders' interests and (2) that provides for dissenting stockholders', members', or policyholders' rights and remedies.

The commissioner must approve articles of merger or a conversion plan if she finds the transaction promotes the general good of the state. To make this finding she must consider (1) the incorporator's character, reputation, financial standing, and purpose; (2) the officers' and directors' character, reputation, financial responsibility, insurance experience, and business qualifications; and (3) other things she deems

advisable.

### ***Mergers***

Under the bill, a reciprocal insurer's advisory committee is equivalent to a stock or mutual insurer's board of directors. Its subscribers are equivalent to a mutual insurer's policyholders. If the advisory committee does not have a president or secretary, its officers with equivalent duties are the president and secretary.

If the commissioner approves the merger, the surviving insurer must give the articles of merger to the secretary of the state.

The commissioner can permit the formation of, without surplus, a captive organized as a reciprocal insurer, into which an existing captive can merge, except there can be only one authorized surviving insurer.

The bill allows an alien insurer (chartered outside the United States) to be party to a merger, subject to the insurance laws applying to mergers of domestic and foreign insurers. (A foreign insurer is organized under the laws of another U.S. state or territory.) In this instance, the alien insurer is treated as the foreign insurer.

### ***Conversions***

A conversion must take place in accordance with a plan that the commissioner approves. She is prohibited from approving a plan unless, in addition to meeting the other requirements, it (1) gives notice to affected persons of a hearing to be held at their request concerning the plan; (2) includes a fair and equitable plan for converting stockholder, member, or policyholder interests into substantially proportionate subscriber interests, but the plan cannot prevent the resulting reciprocal insurer from applying underwriting criteria that could affect ongoing ownership interests; and (3) is approved by a majority of voting interests at a meeting with a quorum.

If the commissioner approves the conversion, she must amend the converting insurer's certificate of authority to reflect it. The conversion is effective when the commissioner issues the amended certificate to the company's attorney. On that day, the converting insurer's corporate existence ceases and the resulting reciprocal insurer must

inform the secretary of state of the conversion.

### **EXAMINATIONS (§ 8)**

The commissioner or her designee must visit and examine each captive at least once every three years or, for a captive subject to an annual independent financial audit satisfactory to the commissioner, once every five years, or more often as she determines necessary. The examination purpose is to determine the captive's (1) financial condition, (2) ability to fulfill its obligations, and (3) compliance with this bill and any applicable provisions of the insurance code.

A captive must pay reasonable examination expenses to the commissioner for deposit into the Insurance Fund.

The commissioner may outsource the examination. The same civil immunity that applies with respect to license application reviews applies to company examinations.

Examination working papers, reports, and documents are confidential, not subject to subpoena, and cannot be made public without the captive's written consent. The commissioner can disclose the information to another state's or country's public officials with insurance regulation jurisdiction or state and federal law enforcement officers if they agree in writing hold the information confidential.

### **OTHER APPLICABLE LAWS (§§ 6, 10)**

In addition to this bill and unless the bill conflicts, in which case it controls, captives formed as (1) corporations, except for LLCs and nonprofits, are subject to state corporation laws; (2) LLCs are subject to the Connecticut Limited Liability Company Act; (3) nonprofits are subject to applicable provisions of state corporation laws; (4) reciprocal insurers are subject to state insurance laws; and (5) RRGs are subject to those state insurance laws that apply to all insurers generally.

A captive transacting life insurance, annuity, or health insurance business must also comply with all applicable state and federal laws.

### ***Investments and Loans***

Association captives and RRGs are subject to state insurance company

investment laws. Pure and industrial insured captives are not subject to investment restrictions, except the commissioner can limit or prohibit any investment that threatens the company's solvency or liquidity.

A pure captive cannot loan or invest in a parent company or affiliate without the commissioner's prior written approval of (1) the transaction and (2) documented evidence of it. The captive is prohibited from loaning any minimum required capital and surplus funds.

## **BACKGROUND**

### ***Domicile***

A company's domicile is the jurisdiction under whose laws a company is organized and in which it has its principle place of business.

### ***Risk Retention Group***

An RRG that domiciles in Connecticut must comply with all state insurance laws and must submit a plan of operation or feasibility study to the insurance commissioner. However, because of the federal act, Connecticut cannot require an RRG to become licensed in the state before it does business here.

Connecticut has limited regulatory authority over RRGs licensed in other states. Such RRGs must provide the insurance commissioner (1) information regarding its domicile licensure, (2) its plan of operation, and (3) a registration statement that designates the commissioner as agent for service of legal process in the state. It must also submit (1) its financial statement and (2) a copy of each financial examination and audit performed on it.

All RRGs, whether domiciled in Connecticut or another state, must (1) pay premium taxes on business written in the state and (2) give insureds notice that insurance insolvency guaranty funds are not available should the RRG fail. Any RRG that does not comply with Connecticut's RRG requirements is subject to fines and penalties, including revocation of its license and its right to conduct business in the state.

## ***Stock, Mutual, and Reciprocal Insurers***

---

A stock insurer is an insurance company owned and controlled by its stockholders and conducted for profit. A mutual insurer is an insurance company owned by its policyholders. A reciprocal insurer is an unincorporated association organized to write insurance for its subscribers, who each agree to be liable for a proportionate share of total liabilities and can be assessed for any needed additional funds.

**Reinsurance**

Reinsurance is a transaction between two insurers to apportion risk so that a large loss does not fall on one company. The insurer transferring part of its risk to another is the ceding insurer. The insurer accepting part of the risk is the assuming insurer or reinsurer.

**Related Bill**

Senate Bill 131 requires captives to give the insurance commissioner (1) quarterly closed medical malpractice claims reports, (2) its financial statement, and (3) a copy of each financial examination and audit performed on it.

**COMMENT**

Although section 14 of the bill establishes a premium tax rate for captives, existing law already subjects RRGs to a premium tax (CGS § 38a-254).

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 11      Nay 4