



Senate

General Assembly

File No. 259

February Session, 2006

Substitute Senate Bill No. 31

Senate, March 31, 2006

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 INSURANCE COMPANIES.

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

1 Section 1. (NEW) (*Effective January 1, 2007*) 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 January 1, 2007*) (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 January 1, 2007*) 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 January 1, 2007*) (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 January 1, 2007*) 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 January 1, 2007*) (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 January 1, 2007*) (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 of the 2006
340 supplement to the general statutes and 38a-53a of the general statutes.
341 The commissioner may adopt regulations, in accordance with chapter
342 54 of the general statutes, to establish the manner in which pure
343 captive insurance companies and industrial insured captive insurance
344 companies shall report. The provisions of subsection (b) of section 38a-
345 69a of the general statutes shall apply to each report filed pursuant to
346 this section.

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

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

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

359 Sec. 8. (NEW) (*Effective January 1, 2007*) (a) At least once every three
360 years, and additionally whenever the Insurance Commissioner
361 determines it to be prudent, the commissioner or the commissioner's
362 designee shall visit each captive insurance company and thoroughly
363 inspect and examine its affairs to ascertain its financial condition, its
364 ability to fulfill its obligations and whether it has complied with the
365 provisions of sections 1 to 18, inclusive, of this act and any applicable
366 provisions of title 38a of the general statutes. The commissioner may
367 extend said three-year period to five years, provided the captive
368 insurance company is subject to a comprehensive annual audit during
369 such period of a scope satisfactory to the commissioner by
370 independent auditors approved by the commissioner. The expenses
371 and charges of the examination shall be paid to the commissioner for

372 deposit in the Insurance Fund by the company examined.

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

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

393 Sec. 9. (NEW) (*Effective January 1, 2007*) (a) The license of a captive
394 insurance company may be suspended or revoked by the Insurance
395 Commissioner for any of the following reasons:

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

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

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

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

403 (5) Failure to submit to or pay the cost of examination or any legal
404 obligation related to such examination as required by any provision of
405 section 8 of this act or title 38a of the general statutes;

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

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

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

417 Sec. 10. (NEW) (*Effective January 1, 2007*) (a) Association captive
418 insurance companies and risk retention groups shall comply with the
419 investment requirements in chapter 698 of the general statutes, as
420 applicable. Notwithstanding any other provision of sections 1 to 18,
421 inclusive, of this act, the commissioner may approve the use of
422 alternative reliable methods of valuation and rating.

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

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

434 Sec. 11. (NEW) (*Effective January 1, 2007*) (a) Any captive insurance
435 company may provide reinsurance on risks ceded by any other
436 insurer.

437 (b) A captive insurance company may only take credit for the
438 reinsurance of risks or portions of risks ceded to reinsurers that
439 complies with the provisions of section 38a-85 or 38a-86 of the general
440 statutes.

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

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

458 Sec. 12. (NEW) (*Effective January 1, 2007*) No captive insurance
459 company shall be required to join a rating organization.

460 Sec. 13. (NEW) (*Effective January 1, 2007*) No captive insurance
461 company may join or contribute financially to any plan, pool,
462 association or guaranty or insolvency fund in this state, nor shall any
463 such captive insurance company, or any insured or affiliate thereof,
464 receive any benefit from any such plan, pool, association or guaranty
465 or insolvency fund for claims arising out of the operations of such

466 captive insurance company.

467 Sec. 14. (NEW) (*Effective January 1, 2007*) (a) Each captive insurance
468 company shall pay to the Commissioner of Revenue Services, in the
469 month of February of each year, a tax at the rate of thirty-eight
470 hundredths of one per cent on the first twenty million dollars and two
471 hundred eighty-five thousandths of one per cent on the next twenty
472 million dollars and nineteen hundredths of one per cent on the next
473 twenty million dollars and seventy-two thousandths of one per cent on
474 each dollar thereafter on the direct premiums collected or contracted
475 for on policies or contracts of insurance written by the captive
476 insurance company during the year ending December thirty-first next
477 preceding, after deducting from the direct premiums subject to the tax
478 the amounts paid to policyholders as return premiums which shall
479 include dividends on unabsorbed premiums or premium deposits
480 returned or credited to policyholders, except that no tax shall be due or
481 payable as to considerations received for annuity contracts.

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

498 (c) The annual minimum aggregate tax to be paid by a captive

499 insurance company calculated under subsections (a) and (b) of this
500 section shall be seven thousand five hundred dollars, and the annual
501 maximum aggregate tax shall be two hundred thousand dollars.

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

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

509 (f) For the purposes of this section common ownership and control
510 means:

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

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

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

524 (h) The premium tax revenues collected pursuant to this section
525 shall be deposited in the Insurance Fund established in section 38a-52a
526 of the general statutes for the purpose of regulating captive insurance
527 companies under sections 1 to 18, inclusive, of this act.

528 (i) The tax provided for in this section shall be calculated on an

529 annual basis, notwithstanding policies or contracts of insurance or
530 contracts of reinsurance issued on a multiyear basis. In the case of
531 multiyear policies or contracts, the premium shall be prorated for
532 purposes of determining the tax under this section.

533 Sec. 15. (NEW) (*Effective January 1, 2007*) Except as otherwise
534 provided in sections 1 to 18, inclusive, of this act, no provision of title
535 38a of the general statutes shall apply to captive insurance companies.
536 Risk retention groups shall have the privileges and be subject to the
537 provisions of chapter 698c of the general statutes in addition to the
538 applicable provisions of sections 1 to 18, inclusive, of this act.

539 Sec. 16. (NEW) (*Effective January 1, 2007*) Except as otherwise
540 provided in sections 1 to 14, inclusive, and sections 17 and 18 of this
541 act, the terms and conditions set forth in title 38a of the general statutes
542 pertaining to insurance liquidations and receiverships shall apply to
543 captive insurance companies formed or licensed under sections 1 to 18,
544 inclusive, of this act.

545 Sec. 17. (NEW) (*Effective January 1, 2007*) (a) An association captive
546 insurance company, risk retention group or industrial insured captive
547 insurance company formed as a stock or mutual corporation may be
548 converted to or merged with and into a reciprocal insurer in
549 accordance with a plan for such conversion or merger and the
550 provisions of this section.

551 (b) Any plan for such conversion or merger shall provide a fair and
552 equitable plan for purchasing, retiring or otherwise extinguishing the
553 interests of the stockholders and policyholders of a stock insurer, and
554 the members and policyholders of a mutual insurer, including a fair
555 and equitable provision for the rights and remedies of dissenting
556 stockholders, members or policyholders.

557 (c) In the case of a conversion authorized under subsection (a) of
558 this section:

559 (1) Such conversion shall be accomplished under such reasonable

560 plan and procedure as may be approved by the commissioner, except
561 that the Insurance Commissioner shall not approve any such plan of
562 conversion unless such plan:

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

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

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

579 (D) Is approved:

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

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

586 (2) The commissioner shall approve such plan of conversion if the
587 commissioner finds that the conversion will promote the general good
588 of the state in conformity with those standards set forth in subdivision
589 (2) of subsection (d) of section 6 of this act;

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

594 (4) The conversion shall be effective upon the issuance of an
595 amended certificate of authority of a reciprocal insurer by the
596 commissioner; and

597 (5) Upon the effective date of such conversion the corporate
598 existence of the converting insurer shall cease and the resulting
599 reciprocal insurer shall notify the Secretary of the State of such
600 conversion.

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

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

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

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

612 (4) If a subscribers' advisory committee does not have a president or
613 secretary, the officers of such committee having substantially
614 equivalent duties shall be deemed the president or secretary of such
615 committee;

616 (5) The commissioner shall approve the articles of merger if the
617 commissioner finds that the merger will promote the general good of
618 the state in conformity with those standards set forth in subdivision (2)
619 of subsection (d) of section 6 of this act. If the commissioner approves

620 the articles of merger, the commissioner shall endorse the
621 commissioner's approval thereon and the surviving insurer shall
622 present the articles of merger to the Secretary of the State at the
623 Secretary of the State's office;

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

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

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

642 Sec. 18. (NEW) (*Effective January 1, 2007*) The Insurance
643 Commissioner may adopt regulations, in accordance with chapter 54
644 of the general statutes, to establish standards to ensure that a parent or
645 affiliated company is able to exercise control of the risk management
646 function of any controlled unaffiliated business to be insured by the
647 pure captive insurance company, except that until such regulations are
648 approved, the commissioner may approve the coverage of such risks
649 by a pure captive insurance company.

650 Sec. 19. Subsection (a) of section 38a-11 of the 2006 supplement to
651 the general statutes is repealed and the following is substituted in lieu

652 thereof (*Effective January 1, 2007*):

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

687 service shall pay a fee of seven dollars to the commissioner for each
688 examination taken by an applicant; (B) a fee of forty dollars for each
689 license issued; (C) a fee of forty dollars per year, or any portion thereof,
690 for each license renewed; and (D) a fee of forty dollars for any license
691 renewed under the transitional process established in section 38a-784_z
692 as amended; (13) with respect to public adjusters: (A) An examination
693 fee of seven dollars for each examination taken, except when a testing
694 service is used, the testing service shall pay a fee of seven dollars to the
695 commissioner for each examination taken by an applicant; and (B) a fee
696 of one hundred twenty-five dollars for each license issued or renewed;
697 (14) with respect to casualty adjusters: (A) An examination fee of ten
698 dollars for each examination taken, except when a testing service is
699 used, the testing service shall pay a fee of ten dollars to the
700 commissioner for each examination taken by an applicant; (B) a fee of
701 forty dollars for each license issued or renewed; and (C) the expense of
702 any examination administered outside the state shall be the
703 responsibility of the entity making the request and such entity shall
704 pay to the commissioner one hundred dollars for such examination
705 and the actual traveling expenses of the examination administrator to
706 administer such examination; (15) with respect to motor vehicle
707 physical damage appraisers: (A) An examination fee of forty dollars
708 for each examination taken, except when a testing service is used, the
709 testing service shall pay a fee of forty dollars to the commissioner for
710 each examination taken by an applicant; (B) a fee of forty dollars for
711 each license issued or renewed; and (C) the expense of any
712 examination administered outside the state shall be the responsibility
713 of the entity making the request and such entity shall pay to the
714 commissioner one hundred dollars for such examination and the
715 actual traveling expenses of the examination administrator to
716 administer such examination; (16) with respect to certified insurance
717 consultants: (A) An examination fee of thirteen dollars for each
718 examination taken, except when a testing service is used, the testing
719 service shall pay a fee of thirteen dollars to the commissioner for each
720 examination taken by an applicant; (B) a fee of two hundred dollars for
721 each license issued; and (C) a fee of one hundred twenty-five dollars

722 for each license renewed; (17) with respect to surplus lines brokers: (A)
723 An examination fee of ten dollars for each examination taken, except
724 when a testing service is used, the testing service shall pay a fee of ten
725 dollars to the commissioner for each examination taken by an
726 applicant; and (B) a fee of five hundred dollars for each license issued
727 or renewed; (18) with respect to fraternal agents, a fee of forty dollars
728 for each license issued or renewed; (19) a fee of thirteen dollars for
729 each license certificate requested, whether or not a license has been
730 issued; (20) with respect to domestic and foreign benefit societies shall
731 pay: (A) For service of process, twenty-five dollars for each person or
732 insurer to be served; (B) for filing a certified copy of its charter or
733 articles of association, five dollars; (C) for filing the annual report, ten
734 dollars; and (D) for filing any additional paper required by law, three
735 dollars; (21) with respect to foreign benefit societies: (A) For each
736 certificate of organization or compliance, four dollars; (B) for each
737 certified copy of permit, two dollars; and (C) for each copy of a report
738 or certificate of condition of a society to be filed in any other state, four
739 dollars; (22) with respect to reinsurance intermediaries: A fee of five
740 hundred dollars for each license issued or renewed; (23) with respect
741 to viatical settlement providers: (A) A filing fee of thirteen dollars for
742 each initial application for a license made pursuant to section 38a-465a;
743 and (B) a fee of twenty dollars for each license issued or renewed; (24)
744 with respect to viatical settlement brokers: (A) A filing fee of thirteen
745 dollars for each initial application for a license made pursuant to
746 section 38a-465a; and (B) a fee of twenty dollars for each license issued
747 or renewed; (25) with respect to viatical settlement investment agents:
748 (A) A filing fee of thirteen dollars for each initial application for a
749 license made pursuant to section 38a-465a; and (B) a fee of twenty
750 dollars for each license issued or renewed; (26) with respect to
751 preferred provider networks, a fee of two thousand five hundred
752 dollars for each license issued or renewed; (27) with respect to rental
753 companies, as defined in section 38a-799, a fee of forty dollars for each
754 permit issued or renewed; (28) with respect to medical discount plan
755 organizations licensed under section 38a-479rr, a fee of five hundred
756 dollars for each license issued or renewed; (29) with respect to captive

757 insurance companies, as defined in section 1 of this act, a fee of three
 758 hundred dollars for each license issued or renewed; and [(29)] (30)
 759 with respect to each duplicate license issued a fee of twenty-five
 760 dollars for each license issued.

761 Sec. 20. Section 38a-254 of the general statutes is repealed and the
 762 following is substituted in lieu thereof (*Effective January 1, 2007*):

763 All premiums paid for coverages within this state to a risk retention
 764 [groups and insurers] group or insurer, other than a captive insurance
 765 company, as defined in section 1 of this act, or a licensed or eligible
 766 surplus lines [insurers] insurer, shall be subject to taxation as provided
 767 in section 38a-277.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2007</i>	New section
Sec. 2	<i>January 1, 2007</i>	New section
Sec. 3	<i>January 1, 2007</i>	New section
Sec. 4	<i>January 1, 2007</i>	New section
Sec. 5	<i>January 1, 2007</i>	New section
Sec. 6	<i>January 1, 2007</i>	New section
Sec. 7	<i>January 1, 2007</i>	New section
Sec. 8	<i>January 1, 2007</i>	New section
Sec. 9	<i>January 1, 2007</i>	New section
Sec. 10	<i>January 1, 2007</i>	New section
Sec. 11	<i>January 1, 2007</i>	New section
Sec. 12	<i>January 1, 2007</i>	New section
Sec. 13	<i>January 1, 2007</i>	New section
Sec. 14	<i>January 1, 2007</i>	New section
Sec. 15	<i>January 1, 2007</i>	New section
Sec. 16	<i>January 1, 2007</i>	New section
Sec. 17	<i>January 1, 2007</i>	New section
Sec. 18	<i>January 1, 2007</i>	New section
Sec. 19	<i>January 1, 2007</i>	38a-11(a)
Sec. 20	<i>January 1, 2007</i>	38a-254

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 07 \$	FY 08 \$
Secretary of the State - Commercial Recording Division	SF - Cost	Minimal	Minimal
Insurance Dept.	IF - Revenue Gain	Potential	Potential
Insurance Dept.	IF - Cost	492,579	606,061
Department of Revenue Services	GF - Revenue Gain	Potential	Potential

Note: SF=Special Fund (Non-appropriated); 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 1st, 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.

It is anticipated that modifications to the CONCORD computer system to accommodate the provisions contained in the bill will cost the Commercial Recording Division within the Secretary of the State's Office \$10,000 for one-time coding changes.

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. Regulation of the captive industry would involve ensuring that these new companies meet licensing requirements, solvency requirements, reporting deadlines and accuracy, and company on-site Field Exams/Audits. 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. In FY 07 the Insurance Department would incur costs of \$471,579 for two Examiners (annual salary of \$61,646 each), one Actuary (annual salary of \$91,109), one Program Manager (annual salary of \$87,603), and one Reinsurance Specialist (annual salary of \$71,376).¹

Description	FY 07	FY 08
Personal Services	\$471,579	\$591,061
Other Expenses	\$15,000	\$15,000
Equipment	\$6,000	
Total	\$492,579	\$606,061

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.

¹ The estimated first year fringe benefit rate as a percentage of payroll is 23.6%, effective July 1, 2005. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2005-06 fringe benefit rate is 34.7%, which when combined with the non pension fringe benefit rate would total 58.3%.

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.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 31*****AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES.*****SUMMARY:**

This bill permits a captive insurance company (“captive”) to be licensed and domiciled (have its principle place of business) in Connecticut to transact life insurance, annuity, health insurance, and commercial risk insurance business if it meets requirements concerning 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. The captive may form as a pure captive, an association captive, an industrial insured captive, or a risk retention group (RRG). By law, an RRG 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.

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: January 1, 2007

§ 1 - CAPTIVE DEFINITION

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 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 *Risk Retention Group* in BACKGROUND).

§§ 2 & 9 - LICENSE

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 or 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.

§§ 2, 3, 6, 15, 18 - CAPTIVE FORMATION

Organizational Structure and Company Name

A pure captive can form as a stock insurer, nonprofit corporation, or a manager-managed limited liability company (LLC). An association captive, industrial insured captive, or RRG can form as a stock, mutual, or reciprocal insurer or LLC. The capital stock of a stock insurer can be authorized with no par value. Each captive must have at least three incorporators or organizers, one of which must be a state resident. 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.

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' characters, 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 its 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 (1) provide annuities and life, health, and commercial risk insurance; (2) reinsure a parent's or affiliated company's qualified self-insured workers' compensation plan, unless prohibited by federal law; and (3) accept or cede reinsurance, but only as specified in the bill (see REINSURANCE below). It cannot provide (1) private passenger motor vehicle or homeowners insurance or (2) workers' compensation insurance, but it can provide excess workers' compensation insurance to its parent and affiliated companies if not prohibited by any state or federal law.

§§ 4 & 5 - CAPITAL AND SURPLUS

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 million 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 the captive's keeping, at the time of each payment, capital and surplus levels in excess of those approved by her.

§§ 2 & 6 - LOCAL OFFICE PRESENCE

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.

§ 14 & 20 - PREMIUM TAXES

Annually in February a captive licensed under the provisions of the

bill must pay premium taxes to the revenue services commissioner, who deposits them in the Insurance Fund for the insurance commissioner's use to regulate captives. By law, and unchanged by this bill, RRGs formed under other law are subject to a 4% premium tax rate.

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.

Two or more captives under common ownership and control are taxed as though they were a single captive. 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 of two or more corporations by the same members in the case of a mutual or nonprofit corporation.

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 of direct-written premiums collected or contracted for in the preceding calendar year plus 0.285% of the next \$20 million plus 0.19% of the next \$20 million plus 0.072% of each additional dollar.

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.)

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 the 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.

§ 7 - ANNUAL FINANCIAL REPORT

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.

§ 11 - REINSURANCE

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 reinsurance standards similar to Connecticut's; or (4) maintains a trust fund in accordance with state law for U.S. policyholders' and ceding insurers' claim payments. If the reinsurer does not meet any of these criteria, the captive can still reduce its liability if the reinsurer holds securities in an amount adequate to cover claims that could arise under the reinsurance contract. 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 a 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.

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.

§§ 6, 16, 17 - MERGERS, CONVERSIONS, LIQUIDATIONS

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.

§ 8 - EXAMINATIONS

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.

§§ 6 & 10 - OTHER APPLICABLE LAWS

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

SB 33 establishes a Division of Risk Management within the Insurance Department to regulate captive insurance companies.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 12 Nay 7 (03/14/2006)