



General Assembly

Substitute Bill No. 281

February Session, 2008

* SB00281INS__031108__ *

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, 2009*) As used in sections 1 to
2 17, 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 that is domiciled in
24 this state and formed or licensed under the provisions of sections 1 to
25 17, inclusive, of this act.

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

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

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

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

32 (C) Whose risks are insured by a pure captive insurance company in
33 accordance with section 17 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

79 Sec. 2. (NEW) (*Effective January 1, 2009*) (a) Any captive insurance
80 company, when permitted by its articles of association, charter or other
81 organizational document, may apply to the Insurance Commissioner
82 for a license to do the business of life insurance, annuities, health
83 insurance, as defined in section 38a-469 of the general statutes, and
84 commercial risk insurance, as defined in section 38a-663 of the general
85 statutes, provided:

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

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

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

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

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

100 (6) No captive insurance company may accept or cede reinsurance
101 except as provided in section 11 of this act;

102 (7) No captive insurer may provide workers' compensation
103 insurance, except that any captive insurance company may provide

104 excess workers' compensation insurance to its parent and affiliated
105 companies, unless prohibited by federal law or the laws of the state
106 having jurisdiction over the transaction. Any captive insurance
107 company, unless prohibited by federal law, may reinsure workers'
108 compensation of a qualified self-insured plan of its parent and
109 affiliated companies; and

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

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

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

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

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

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

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

129 (A) File with the commissioner a certified copy of its organizational
130 documents, a statement under oath of its president and secretary
131 showing its financial condition, and any other statements or
132 documents required by the commissioner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

187 (2) Each captive insurance company shall pay a license fee for the
188 first year of licensure and a renewal fee for each year thereafter as set
189 forth in section 38a-11 of the 2008 supplement to the general statutes,
190 as amended by this act.

191 (e) If the commissioner finds that the documents and statements
192 that a captive insurance company has filed comply with the provisions

193 of sections 1 to 17, inclusive, of this act, the commissioner may grant a
194 license authorizing the company to do insurance business in this state
195 until April first thereafter. The captive insurance company may apply
196 to renew such license on such forms as the commissioner prescribes.

197 Sec. 3. (NEW) (*Effective January 1, 2009*) No captive insurance
198 company shall adopt a name that is the same, deceptively similar or
199 likely to be confused with or mistaken for any other existing business
200 name registered in this state.

201 Sec. 4. (NEW) (*Effective January 1, 2009*) (a) The Insurance
202 Commissioner shall not issue a license to a captive insurance company
203 or allow the company to retain such license unless the company has
204 and maintains unimpaired paid-in capital and surplus of:

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

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

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

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

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

217 (c) Capital and surplus may be in the form of cash or an irrevocable
218 letter of credit issued by a bank chartered by this state or a member
219 bank of the Federal Reserve System and approved by the
220 commissioner.

221 Sec. 5. (NEW) (*Effective January 1, 2009*) No captive insurance

222 company may pay a dividend out of, or other distribution with respect
223 to, capital or surplus without the prior approval of the Insurance
224 Commissioner. Approval of an ongoing plan for the payment of
225 dividends or other distributions shall be conditioned on the retention,
226 at the time of each payment, of capital or surplus in excess of amounts
227 specified by, or determined in accordance with formulas approved by,
228 the commissioner.

229 Sec. 6. (NEW) (*Effective January 1, 2009*) (a) A pure captive insurance
230 company may be incorporated as a stock insurer with its capital
231 divided into shares and held by the stockholders, as a nonprofit
232 corporation with one or more members or as a manager-managed
233 limited liability company.

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

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

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

240 (3) Organized as a reciprocal insurer; or

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

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

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

246 (1) (A) Formed as a corporation, before the articles of incorporation
247 are transmitted to the Secretary of the State, the incorporators shall
248 petition the Insurance Commissioner to issue a certificate setting forth
249 the commissioner's finding that the establishment and maintenance of
250 the proposed corporation will promote the general good of the state. In

251 arriving at such a finding the commissioner shall consider:

252 (i) The character, reputation, financial standing and purposes of the
253 incorporators;

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

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

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

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

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

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

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

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

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

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

284 (g) Other than captive insurance companies formed as limited
285 liability companies or as nonprofit corporations, captive insurance
286 companies formed as corporations under the provisions of sections 1
287 to 17, inclusive, of this act shall have the privileges and be subject to
288 the provisions of title 33 of the general statutes as well as the
289 applicable provisions in sections 1 to 17, inclusive, of this act. In the
290 event of conflict between the provisions of title 33 of the general
291 statutes and sections 1 to 17, inclusive, of this act, the provisions of
292 sections 1 to 17, inclusive, of this act shall control.

293 (h) Captive insurance companies formed under the provisions of
294 sections 1 to 17, inclusive, of this act:

295 (1) As limited liability companies shall have the privileges and be
296 subject to the provisions of chapter 613 of the general statutes and
297 applicable provisions in sections 1 to 17, inclusive, of this act. In the
298 event of a conflict between the provisions of chapter 613 of the general
299 statutes and sections 1 to 17, inclusive, of this act, the provisions of
300 sections 1 to 17, inclusive, of this act shall control; or

301 (2) As nonprofit corporations shall have the privileges and be
302 subject to the applicable provisions of title 33 of the general statutes
303 and applicable provisions in sections 1 to 17, inclusive, of this act. In
304 the event of conflict between the provisions of title 33 of the general
305 statutes and sections 1 to 17, inclusive, of this act, the provisions of
306 sections 1 to 17, inclusive, of this act shall control.

307 (i) The provisions of chapter 698 of the general statutes pertaining to
308 mergers, consolidations and conversions shall apply in determining
309 the procedures to be followed by captive insurance companies in
310 carrying out any of the transactions described in said chapter 698.

311 (j) Captive insurance companies formed as reciprocal insurers under
312 the provisions of sections 1 to 17, inclusive, of this act shall have the
313 privileges and be subject to the provisions of title 38a of the general
314 statutes in addition to the applicable provisions of sections 1 to 17,
315 inclusive, of this act. In the event of a conflict between the provisions
316 of sections 1 to 17, inclusive, of this act and title 38a of the general
317 statutes, the provisions of sections 1 to 17, inclusive, of this act shall
318 control.

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

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

327 Sec. 7. (NEW) (*Effective January 1, 2009*) (a) Captive insurance
328 companies shall not be required to make any annual report except as
329 provided in sections 1 to 17, inclusive, of this act.

330 (b) Prior to March first of each year, each captive insurance
331 company shall submit to the Insurance Commissioner a report of its
332 financial condition verified by oath of two of its executive officers.
333 Each captive insurance company shall report using generally accepted
334 accounting principles, unless the commissioner approves the use of
335 statutory accounting principles, with any appropriate or necessary
336 modifications or adaptations required or approved or accepted by the
337 commissioner for the type of insurance and kinds of insurers to be
338 reported upon, and as supplemented by additional information
339 required by the commissioner. Except as otherwise provided, each
340 association captive insurance company and each risk retention group
341 shall file its report in the form required by sections 38a-53 of the 2008
342 supplement to the general statutes and 38a-53a of the general statutes.

343 The commissioner may adopt regulations, in accordance with chapter
344 54 of the general statutes, to establish the manner in which pure
345 captive insurance companies and industrial insured captive insurance
346 companies shall report. The provisions of subsection (b) of section 38a-
347 69a of the general statutes shall apply to each report filed pursuant to
348 this section.

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

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

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

361 Sec. 8. (NEW) (*Effective January 1, 2009*) (a) At least once every five
362 years, and additionally whenever the Insurance Commissioner
363 determines it to be prudent, the commissioner or the commissioner's
364 designee shall visit each captive insurance company and thoroughly
365 inspect and examine its affairs to ascertain its financial condition, its
366 ability to fulfill its obligations and whether it has complied with the
367 provisions of sections 1 to 17, inclusive, of this act and any applicable
368 provisions of title 38a of the general statutes.

369 (b) In scheduling and determining the nature, scope and frequency
370 of such examinations, the commissioner shall consider such matters as
371 the results of financial statement analyses and ratios, changes in
372 management or ownership, actuarial opinions, reports of independent
373 certified public accountants, and such other criteria as set forth in the
374 examiners' handbook adopted by the National Association of

375 Insurance Commissioners and in effect at the time the commissioner
376 exercises discretion under this section.

377 (c) (1) To carry out examinations under this section, the
378 commissioner may appoint as examiners one or more competent
379 persons, not officers of or connected with or interested in any
380 insurance company, other than as a policyholder. The commissioner
381 may engage the services of attorneys, appraisers, independent
382 actuaries, independent certified public accountants, or other
383 professionals and specialists to assist in conducting the examinations
384 under this section as examiners, the cost of which shall be borne by the
385 company which is the subject of the examination. Notwithstanding the
386 provisions of this subdivision, no domestic captive insurance company
387 subject to examination under this section shall pay, as costs associated
388 with the examination, the salaries, fringe benefits, traveling and
389 maintenance expenses of examining personnel of the Insurance
390 Department engaged in such examination if such domestic company is
391 otherwise liable to assessment levied under section 38a-47 of the
392 general statutes, except that such company shall pay the traveling and
393 maintenance expenses of examining personnel of the department when
394 such company is examined outside the state.

395 (2) In conducting the examination, the commissioner, the
396 commissioner's actuary or any examiner authorized by the
397 commissioner may examine, under oath, the officers and agents of
398 such a company and all persons deemed to have material information
399 regarding the company's property or business. Each such company, its
400 officers and agents shall produce the books and papers, in its or their
401 possession, relating to its business or affairs, and any other person may
402 be required to produce any book or paper, in his custody, deemed to
403 be relevant to such examination for the inspection of the
404 commissioner, the commissioner's actuary or examiners, when
405 required. The officers and agents of the company shall facilitate the
406 examination and aid the examiners in making the same so far as it is in
407 their power to do so. The refusal of any company by its officers,
408 directors, employees or agents to submit to examination or to comply

409 with any reasonable written request of the examiners shall be grounds
410 for suspension of, or refusal of or nonrenewal of any license or
411 authority held by the company to engage in an insurance or other
412 business subject to the commissioner's jurisdiction. Any such
413 proceedings for suspension, revocation or refusal of any license or
414 authority shall be conducted pursuant to section 9 of this act.

415 (3) In conducting the examination, the examiner shall observe those
416 guidelines and procedures set forth in the examiners' handbook
417 adopted by the National Association of Insurance Commissioners. The
418 commissioner may also adopt such other guidelines or procedures as
419 the commissioner may deem appropriate.

420 (d) (1) Nothing contained in this section shall be construed to limit
421 the commissioner's authority to terminate or suspend any examination
422 in order to pursue legal or regulatory action pursuant to the insurance
423 laws of this state. Findings of fact and conclusions made pursuant to
424 any examination shall be prima facie evidence in any legal or
425 regulatory action.

426 (2) Nothing contained in this section shall be construed to limit the
427 commissioner's authority in such legal or regulatory action to use and,
428 if appropriate, to make public any final or preliminary examination
429 report, any examiner or company workpapers or other documents, or
430 any other information discovered or developed during the course of
431 any examination.

432 (3) Not later than sixty days after completion of the examination, the
433 examiner in charge shall file, under oath, with the Insurance
434 Department a verified written report of examination. Upon receipt of
435 the verified report, the Insurance Department shall transmit the report
436 to the company examined, together with a notice which shall afford
437 the company examined a reasonable opportunity, not to exceed thirty
438 days, to make a written submission or rebuttal with respect to any
439 matters contained in the examination report. Not later than thirty days
440 after the period allowed for the receipt of written submissions or

441 rebuttals, the commissioner shall fully consider and review the report,
442 together with any written submissions or rebuttals and any relevant
443 portions of the examiner's workpapers and enter an order: (A)
444 Adopting the examination report as filed or with modification or
445 corrections. If the examination report reveals that the company is
446 operating in violation of any law, regulation or prior order of the
447 commissioner, the commissioner may order the company to take any
448 action the commissioner considers necessary and appropriate to cure
449 such violation; or (B) rejecting the examination report with directions
450 to the examiners to reopen the examination for purposes of obtaining
451 additional data, documentation or information, and refile pursuant
452 to subparagraph (A) of this subdivision; or (C) calling for an
453 investigatory hearing with no less than twenty days notice to the
454 company for purposes of obtaining additional documentation, data,
455 information and testimony.

456 (e) (1) All orders entered pursuant to subdivision (3) of subsection
457 (d) of this section shall be accompanied by findings and conclusions
458 resulting from the commissioner's consideration and review of the
459 examination report, relevant examiner workpapers and any written
460 submissions or rebuttals. The findings and conclusions, which form
461 the basis of any such order of the commissioner, shall be subject to
462 review as provided in section 38a-19 of the 2008 supplement to the
463 general statutes.

464 (2) Any investigatory hearing conducted under subparagraph (C) of
465 subdivision (3) of subsection (d) of this section by the commissioner or
466 authorized representative shall be conducted as a nonadversarial
467 confidential investigatory proceeding as necessary for the resolution of
468 any inconsistencies, discrepancies or disputed issues apparent (A)
469 upon the filed examination report, (B) raised by or as a result of the
470 commissioner's review of relevant workpapers, or (C) by the written
471 submission or rebuttal of the company. Not later than twenty days
472 after conclusions of any such hearing, the commissioner shall enter an
473 order pursuant to subparagraph (A) of subdivision (3) of subsection
474 (d) of this section. The commissioner shall not appoint an examiner as

475 an authorized representative to conduct the hearing. The hearing shall
476 proceed expeditiously with discovery by the company limited to the
477 examiner's workpapers which tend to substantiate any assertions set
478 forth in any written submission or rebuttal. The commissioner or the
479 commissioner's authorized representative may issue subpoenas for the
480 attendance of any witnesses or the production of any documents
481 deemed relevant to the investigation whether under the control of the
482 department, the company or other persons. The documents produced
483 shall be included in the record and testimony taken by the
484 commissioner or the commissioner's authorized representative shall be
485 under oath and preserved for the record. Nothing contained in this
486 section shall require the department to disclose any information or
487 records which would indicate or show the existence or content of any
488 investigation or activity of a criminal justice agency. The hearing shall
489 proceed with the commissioner or the commissioner's authorized
490 representative posing questions to the persons subpoenaed. Thereafter
491 the company and the Insurance Department may present testimony
492 relevant to the investigation. Cross-examination shall be conducted
493 only by the commissioner or the commissioner's authorized
494 representative. The company and the Insurance Department shall be
495 permitted to make closing statements and may be represented by
496 counsel of their choice.

497 (f) The commissioner may, if the commissioner deems it in the
498 public interest, publish any such report or the result of any such
499 examination contained in such report in one or more newspapers of
500 the state.

501 (g) Nothing contained in this section shall prevent or be construed
502 as prohibiting the commissioner from disclosing the content of an
503 examination report, preliminary examination report or results, or any
504 matter relating to such report to (1) the Insurance Department of this
505 or any other state or country, (2) law enforcement officials of this or
506 any other state, or (3) any agency of the federal government at any
507 time, unless such agency or office receiving the report or matters
508 relating to such report agrees, in writing, that such documents shall be

509 confidential.

510 (h) All working papers, recorded information, documents and
511 copies thereof produced by, obtained by or disclosed to the
512 commissioner or any other person in the course of an examination
513 made under this section shall (1) be confidential, (2) not be subject to
514 subpoena, and (3) not be made public by the commissioner or any
515 other person, except to the extent provided in subsection (g) of this
516 section. Access to such information may be granted by the
517 commissioner to the National Association of Insurance
518 Commissioners, unless it agrees, in writing, that such information shall
519 be confidential.

520 (i) (1) The commissioner may engage the services of, from time to
521 time, on an individual basis, qualified actuaries, certified public
522 accountants or other similar individuals who are independently
523 practicing their professions, even though said persons may, from time
524 to time, be similarly employed or retained by persons subject to
525 examination under this section.

526 (2) No cause of action shall arise nor shall any liability be imposed
527 against the commissioner, the commissioner's authorized
528 representatives or any examiner appointed by the commissioner for
529 any statements made or conduct performed in good faith while
530 carrying out the provisions of this section.

531 (3) No cause of action shall arise, nor shall any liability be imposed,
532 against any person for the act of communicating or delivering
533 information or data to the commissioner or the commissioner's
534 authorized representative examiner pursuant to an examination made
535 under this section, if such act of communication or delivery was
536 performed in good faith and without fraudulent intent or the intent to
537 deceive.

538 (4) This section does not abrogate or modify in any way any
539 common law or statutory privilege or immunity heretofore enjoyed by
540 any person identified in subdivision (2) of this subsection.

541 (5) A person identified in subdivision (2) of this subsection shall be
542 entitled to an award of attorney's fees and costs if he is the prevailing
543 party in a civil cause of action for libel, slander or any other relevant
544 tort arising out of activities in carrying out the provisions of this
545 section and the party bringing the action was not substantially justified
546 in doing so. For purposes of this section, a proceeding is "substantially
547 justified" if it had a reasonable basis in law or fact at the time that it
548 was initiated.

549 Sec. 9. (NEW) (*Effective January 1, 2009*) (a) The commissioner may,
550 at any time, for cause, suspend, revoke or refuse to renew any license
551 of a captive insurance company, or in lieu of or in addition to
552 suspension or revocation of such license, the commissioner, after
553 reasonable notice to and hearing of any holder of such license, may
554 impose a fine not to exceed ten thousand dollars. Such hearings may
555 be held by the commissioner or any person designated by the
556 commissioner.

557 (b) Any captive insurance company aggrieved by the action of the
558 commissioner in suspending, revoking or refusing to renew a license
559 or in imposing a fine may appeal therefrom, in accordance with the
560 provisions of section 4-183 of the general statutes, except venue for
561 such appeal shall be in the judicial district of New Britain. Appeals
562 under this section shall be privileged in respect to the order of trial
563 assignment.

564 Sec. 10. (NEW) (*Effective January 1, 2009*) (a) Association captive
565 insurance companies and risk retention groups shall comply with the
566 investment requirements in chapter 698 of the general statutes, as
567 applicable. Notwithstanding any other provision of sections 1 to 17,
568 inclusive, of this act, the commissioner may approve the use of
569 alternative reliable methods of valuation and rating.

570 (b) No pure captive insurance company or industrial insured
571 captive insurance company shall be subject to any restrictions on
572 allowable investments, except that the Insurance Commissioner may

573 prohibit or limit any investment that threatens the solvency or
574 liquidity of any such company.

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

581 Sec. 11. (NEW) (*Effective January 1, 2009*) (a) Any captive insurance
582 company may provide reinsurance on risks ceded by any other
583 insurer.

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

588 (c) In addition to reinsurance authorized under the provisions of
589 sections 38a-85 and 38a-86 of the general statutes, a captive insurance
590 company may take credit for the reinsurance of risks or portions of
591 risks ceded to a pool, exchange or association acting as a reinsurer
592 which has been authorized by the commissioner. The commissioner
593 may require any other documents, financial information or other
594 evidence that such a pool, exchange or association will be able to
595 provide adequate security for its financial obligations. The
596 commissioner may deny authorization or impose any limitations on
597 the activities of a reinsurance pool, exchange or association that, in the
598 commissioner's judgment, are necessary and proper to provide
599 adequate security for the ceding captive insurance company and for
600 the protection and consequent benefit of the public.

601 (d) For purposes of sections 1 to 17, inclusive, of this act, insurance
602 by a captive insurance company of any workers' compensation
603 qualified self-insured plan of its parent and affiliates shall be deemed
604 to be reinsurance.

605 Sec. 12. (NEW) (*Effective January 1, 2009*) No captive insurance
606 company shall be required to join a rating organization.

607 Sec. 13. (NEW) (*Effective January 1, 2009*) No captive insurance
608 company may join or contribute financially to any plan, pool,
609 association or guaranty or insolvency fund in this state, nor shall any
610 such captive insurance company, or any insured or affiliate thereof,
611 receive any benefit from any such plan, pool, association or guaranty
612 or insolvency fund for claims arising out of the operations of such
613 captive insurance company.

614 Sec. 14. (NEW) (*Effective January 1, 2009*) (a) Each captive insurance
615 company shall pay to the Commissioner of Revenue Services, in the
616 month of February of each year, a tax at the rate of thirty-eight
617 hundredths of one per cent on the first twenty million dollars and two
618 hundred eighty-five thousandths of one per cent on the next twenty
619 million dollars and nineteen hundredths of one per cent on the next
620 twenty million dollars and seventy-two thousandths of one per cent on
621 each dollar thereafter on the direct premiums collected or contracted
622 for on policies or contracts of insurance written by the captive
623 insurance company during the year ending December thirty-first next
624 preceding, after deducting from the direct premiums subject to the tax
625 the amounts paid to policyholders as return premiums which shall
626 include dividends on unabsorbed premiums or premium deposits
627 returned or credited to policyholders, except that no tax shall be due or
628 payable as to considerations received for annuity contracts.

629 (b) Each captive insurance company shall pay to the Commissioner
630 of Revenue Services in the month of February of each year a tax at the
631 rate of two hundred fourteen thousandths of one per cent on the first
632 twenty million dollars of assumed reinsurance premium, and one
633 hundred forty-three thousandths of one per cent on the next twenty
634 million dollars and forty-eight thousandths of one per cent on the next
635 twenty million dollars and twenty-four thousandths of one per cent of
636 each dollar thereafter, except that no reinsurance tax shall apply to
637 premiums for risks or portions of risks which are subject to taxation on

638 a direct basis pursuant to subsection (a) of this section. No reinsurance
639 premium tax shall be payable in connection with the receipt of assets
640 in exchange for the assumption of loss reserves and other liabilities of
641 another insurer under common ownership and control if (1) such
642 transaction is part of a plan to discontinue the operations of such other
643 insurer, and (2) the intent of the parties to such transaction is to renew
644 or maintain such business with the captive insurance company.

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

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

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

656 (f) For the purposes of this section common ownership and control
657 means:

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

661 (2) In the case of mutual or nonprofit corporations, the direct or
662 indirect ownership of eighty per cent or more of the surplus and the
663 voting power of two or more corporations by the same member or
664 members.

665 (g) The tax provided for in this section shall constitute all taxes
666 collectible under the laws of this state from any captive insurance
667 company, and no other occupation tax or other taxes shall be levied or

668 collected from any captive insurance company by the state or any
669 county, city or municipality within this state, except taxes on real and
670 personal property used in the production of income.

671 (h) The tax provided for in this section shall be calculated on an
672 annual basis, notwithstanding policies or contracts of insurance or
673 contracts of reinsurance issued on a multiyear basis. In the case of
674 multiyear policies or contracts, the premium shall be prorated for
675 purposes of determining the tax under this section.

676 Sec. 15. (NEW) (*Effective January 1, 2009*) Unless otherwise provided
677 in sections 1 to 17, inclusive, of this act, no provision of title 38a of the
678 general statutes shall apply to captive insurance companies, unless
679 expressly included therein, except for the following: Sections 38a-16,
680 38a-17, section 38a-54 of the 2008 supplement to the general statutes,
681 sections 38a-55 to 38a-57, inclusive, 38a-59, 38a-69a, sections 38a-250 to
682 38a-266, inclusive, sections 38a-903 to 38a-961, inclusive, and sections
683 38a-962 to 38a-962j, inclusive, of the general statutes or the 2008
684 supplement to the general statutes.

685 Sec. 16. (NEW) (*Effective January 1, 2009*) (a) An association captive
686 insurance company, risk retention group or industrial insured captive
687 insurance company formed as a stock or mutual corporation may be
688 converted to or merged with and into a reciprocal insurer in
689 accordance with a plan for such conversion or merger and the
690 provisions of this section.

691 (b) Any plan for such conversion or merger shall provide a fair and
692 equitable plan for purchasing, retiring or otherwise extinguishing the
693 interests of the stockholders and policyholders of a stock insurer, and
694 the members and policyholders of a mutual insurer, including a fair
695 and equitable provision for the rights and remedies of dissenting
696 stockholders, members or policyholders.

697 (c) In the case of a conversion authorized under subsection (a) of
698 this section:

699 (1) Such conversion shall be accomplished under such reasonable
700 plan and procedure as may be approved by the commissioner, except
701 that the Insurance Commissioner shall not approve any such plan of
702 conversion unless such plan:

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

704 (B) Provides for a hearing, of which notice is given or to be given to
705 the captive insurance company, its directors, officers and
706 policyholders, and in the case of a stock insurer, its stockholders, and
707 in the case of a mutual insurer, its members, all of which persons shall
708 be entitled to attend and appear at such hearing, except that if notice of
709 a hearing is given and no director, officer, policyholder, member or
710 stockholder requests a hearing, the commissioner may cancel such
711 hearing;

712 (C) Provides a fair and equitable plan for the conversion of
713 stockholder, member or policyholder interests into subscriber interests
714 in the resulting reciprocal insurer, substantially proportionate to the
715 corresponding interests in the stock or mutual insurer, except that such
716 plan shall not preclude the resulting reciprocal insurer from applying
717 underwriting criteria that could affect ongoing ownership interests;
718 and

719 (D) Is approved:

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

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

726 (2) The commissioner shall approve such plan of conversion if the
727 commissioner finds that the conversion will promote the general good
728 of the state in conformity with those standards set forth in subdivision

729 (2) of subsection (d) of section 6 of this act;

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

734 (4) The conversion shall be effective upon the issuance of an
735 amended certificate of authority of a reciprocal insurer by the
736 commissioner; and

737 (5) Upon the effective date of such conversion the corporate
738 existence of the converting insurer shall cease and the resulting
739 reciprocal insurer shall notify the Secretary of the State of such
740 conversion.

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

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

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

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

752 (4) If a subscribers' advisory committee does not have a president or
753 secretary, the officers of such committee having substantially
754 equivalent duties shall be deemed the president or secretary of such
755 committee;

756 (5) The commissioner shall approve the articles of merger if the
757 commissioner finds that the merger will promote the general good of

758 the state in conformity with those standards set forth in subdivision (2)
759 of subsection (d) of section 6 of this act. If the commissioner approves
760 the articles of merger, the commissioner shall endorse the
761 commissioner's approval thereon and the surviving insurer shall
762 present the articles of merger to the Secretary of the State at the
763 Secretary of the State's office;

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

770 (7) An alien insurer may be a party to a merger authorized under
771 subsection (a) of this section, except that the requirements for a merger
772 between a domestic and a foreign insurer under chapter 698 of the
773 general statutes shall apply to a merger between a domestic and an
774 alien insurer under this subsection. Such alien insurer shall be treated
775 as a foreign insurer under chapter 698 of the general statutes and such
776 other jurisdictions shall be the equivalent of a state for purposes of
777 chapter 698 of the general statutes.

778 (e) A conversion or merger under this section shall have the effects
779 of conversion or merger set forth in chapter 698 of the general statutes
780 to the extent such effects are not inconsistent with the provisions of
781 sections 1 to 17, inclusive, of this act.

782 Sec. 17. (NEW) (*Effective January 1, 2009*) The Insurance
783 Commissioner may adopt regulations, in accordance with chapter 54
784 of the general statutes, to establish standards to ensure that a parent or
785 affiliated company is able to exercise control of the risk management
786 function of any controlled unaffiliated business to be insured by the
787 pure captive insurance company, except that until such regulations are
788 approved, the commissioner may approve the coverage of such risks
789 by a pure captive insurance company.

790 Sec. 18. Subsection (a) of section 38a-11 of the 2008 supplement to
791 the general statutes is repealed and the following is substituted in lieu
792 thereof (*Effective January 1, 2009*):

793 (a) The commissioner shall demand and receive the following fees:
794 (1) For the annual fee for each license issued to a domestic insurance
795 company, one hundred dollars; (2) for receiving and filing annual
796 reports of domestic insurance companies, twenty-five dollars; (3) for
797 filing all documents prerequisite to the issuance of a license to an
798 insurance company, one hundred seventy-five dollars, except that the
799 fee for such filings by any health care center, as defined in section 38a-
800 175, shall be one thousand one hundred dollars; (4) for filing any
801 additional paper required by law, fifteen dollars; (5) for each certificate
802 of valuation, organization, reciprocity or compliance, twenty dollars;
803 (6) for each certified copy of a license to a company, twenty dollars; (7)
804 for each certified copy of a report or certificate of condition of a
805 company to be filed in any other state, twenty dollars; (8) for
806 amending a certificate of authority, one hundred dollars; (9) for each
807 license issued to a rating organization, one hundred dollars. In
808 addition, insurance companies shall pay any fees imposed under
809 section 12-211; (10) a filing fee of twenty-five dollars for each initial
810 application for a license made pursuant to section 38a-769; (11) with
811 respect to insurance agents' appointments: (A) A filing fee of twenty-
812 five dollars for each request for any agent appointment, except that no
813 filing fee shall be payable for a request for agent appointment by an
814 insurance company domiciled in a state or foreign country which does
815 not require any filing fee for a request for agent appointment for a
816 Connecticut insurance company; (B) a fee of forty dollars for each
817 appointment issued to an agent of a domestic insurance company or
818 for each appointment continued; and (C) a fee of twenty dollars for
819 each appointment issued to an agent of any other insurance company
820 or for each appointment continued, except that no fee shall be payable
821 for an appointment issued to an agent of an insurance company
822 domiciled in a state or foreign country which does not require any fee
823 for an appointment issued to an agent of a Connecticut insurance

824 company; (12) with respect to insurance producers: (A) An
825 examination fee of seven dollars for each examination taken, except
826 when a testing service is used, the testing service shall pay a fee of
827 seven dollars to the commissioner for each examination taken by an
828 applicant; (B) a fee of forty dollars for each license issued; (C) a fee of
829 forty dollars per year, or any portion thereof, for each license renewed;
830 and (D) a fee of forty dollars for any license renewed under the
831 transitional process established in section 38a-784; (13) with respect to
832 public adjusters: (A) An examination fee of seven dollars for each
833 examination taken, except when a testing service is used, the testing
834 service shall pay a fee of seven dollars to the commissioner for each
835 examination taken by an applicant; and (B) a fee of one hundred
836 twenty-five dollars for each license issued or renewed; (14) with
837 respect to casualty adjusters: (A) An examination fee of ten dollars for
838 each examination taken, except when a testing service is used, the
839 testing service shall pay a fee of ten dollars to the commissioner for
840 each examination taken by an applicant; (B) a fee of forty dollars for
841 each license issued or renewed; and (C) the expense of any
842 examination administered outside the state shall be the responsibility
843 of the entity making the request and such entity shall pay to the
844 commissioner one hundred dollars for such examination and the
845 actual traveling expenses of the examination administrator to
846 administer such examination; (15) with respect to motor vehicle
847 physical damage appraisers: (A) An examination fee of forty dollars
848 for each examination taken, except when a testing service is used, the
849 testing service shall pay a fee of forty dollars to the commissioner for
850 each examination taken by an applicant; (B) a fee of forty dollars for
851 each license issued or renewed; and (C) the expense of any
852 examination administered outside the state shall be the responsibility
853 of the entity making the request and such entity shall pay to the
854 commissioner one hundred dollars for such examination and the
855 actual traveling expenses of the examination administrator to
856 administer such examination; (16) with respect to certified insurance
857 consultants: (A) An examination fee of thirteen dollars for each
858 examination taken, except when a testing service is used, the testing

859 service shall pay a fee of thirteen dollars to the commissioner for each
860 examination taken by an applicant; (B) a fee of two hundred dollars for
861 each license issued; and (C) a fee of one hundred twenty-five dollars
862 for each license renewed; (17) with respect to surplus lines brokers: (A)
863 An examination fee of ten dollars for each examination taken, except
864 when a testing service is used, the testing service shall pay a fee of ten
865 dollars to the commissioner for each examination taken by an
866 applicant; and (B) a fee of five hundred dollars for each license issued
867 or renewed; (18) with respect to fraternal agents, a fee of forty dollars
868 for each license issued or renewed; (19) a fee of thirteen dollars for
869 each license certificate requested, whether or not a license has been
870 issued; (20) with respect to domestic and foreign benefit societies shall
871 pay: (A) For service of process, twenty-five dollars for each person or
872 insurer to be served; (B) for filing a certified copy of its charter or
873 articles of association, five dollars; (C) for filing the annual report, ten
874 dollars; and (D) for filing any additional paper required by law, three
875 dollars; (21) with respect to foreign benefit societies: (A) For each
876 certificate of organization or compliance, four dollars; (B) for each
877 certified copy of permit, two dollars; and (C) for each copy of a report
878 or certificate of condition of a society to be filed in any other state, four
879 dollars; (22) with respect to reinsurance intermediaries: A fee of five
880 hundred dollars for each license issued or renewed; (23) with respect
881 to viatical settlement providers: (A) A filing fee of thirteen dollars for
882 each initial application for a license made pursuant to section 38a-465a;
883 and (B) a fee of twenty dollars for each license issued or renewed; (24)
884 with respect to viatical settlement brokers: (A) A filing fee of thirteen
885 dollars for each initial application for a license made pursuant to
886 section 38a-465a; and (B) a fee of twenty dollars for each license issued
887 or renewed; (25) with respect to viatical settlement investment agents:
888 (A) A filing fee of thirteen dollars for each initial application for a
889 license made pursuant to section 38a-465a; and (B) a fee of twenty
890 dollars for each license issued or renewed; (26) with respect to
891 preferred provider networks, a fee of two thousand five hundred
892 dollars for each license issued or renewed; (27) with respect to rental
893 companies, as defined in section 38a-799, a fee of forty dollars for each

894 permit issued or renewed; (28) with respect to medical discount plan
 895 organizations licensed under section 38a-479rr, a fee of five hundred
 896 dollars for each license issued or renewed; (29) with respect to
 897 pharmacy benefits managers, an application fee of fifty dollars for each
 898 registration issued or renewed; ~~(30) with respect to captive insurance~~
 899 ~~companies, as defined in section 1 of this act, a fee of three hundred~~
 900 ~~dollars for each license issued or renewed;~~ and [(30)] (31) with respect
 901 to each duplicate license issued a fee of twenty-five dollars for each
 902 license issued.

903 Sec. 19. Section 38a-254 of the general statutes is repealed and the
 904 following is substituted in lieu thereof (*Effective January 1, 2009*):

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2009	New section
Sec. 2	January 1, 2009	New section
Sec. 3	January 1, 2009	New section
Sec. 4	January 1, 2009	New section
Sec. 5	January 1, 2009	New section
Sec. 6	January 1, 2009	New section
Sec. 7	January 1, 2009	New section
Sec. 8	January 1, 2009	New section
Sec. 9	January 1, 2009	New section
Sec. 10	January 1, 2009	New section
Sec. 11	January 1, 2009	New section
Sec. 12	January 1, 2009	New section
Sec. 13	January 1, 2009	New section
Sec. 14	January 1, 2009	New section
Sec. 15	January 1, 2009	New section
Sec. 16	January 1, 2009	New section
Sec. 17	January 1, 2009	New section

Sec. 18	<i>January 1, 2009</i>	38a-11(a)
Sec. 19	<i>January 1, 2009</i>	38a-254

Statement of Legislative Commissioners:

In section 15, the reference for the general statutes following the string citations was moved for clarity; and other technical changes were made for accuracy and consistency.

INS *Joint Favorable Subst.-LCO*