

## CHAPTER 25

**AN ACT** regulating wholly -owned insurance subsidiaries and supplementing Title 17 of the Revised Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.17:47B-1 Definitions relative to captive insurers.

1. As used in this act:

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

"Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a jurisdiction other than this State which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that jurisdiction.

"Association" means a legal association of individuals, corporations, limited liability companies, partnerships, associations or other entities that has been in continuous existence for at least one year, the member organizations of which or which does itself, whether or not in conjunction with some or all of the member organizations:

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

(2) have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

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

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

"Branch business" means any insurance business transacted by a branch captive insurance company in this State.

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

"Branch operations" means any business operations of a branch captive insurance company in this State.

"Captive insurance company" means any pure captive insurance company, association captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of this act. For purposes of this act, a branch captive insurance company shall be a pure captive insurance company with respect to operations in the State, unless otherwise permitted by the commissioner.

"Commissioner" means the Commissioner of Banking and Insurance.

"Controlled unaffiliated business" means a company:

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

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

(3) whose risks are managed by a pure captive insurance company in accordance with section 15 of this act.

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

"Industrial insured" means an insured:

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

- (2) who has at least 25 full time employees; and
- (3) whose aggregate annual premiums for insurance on all risks total at least \$25,000.

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

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

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

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

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

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

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

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

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

"Sponsor" means an entity that meets the requirements of sections 17 and 18 of this act and that the commissioner has approved to provide all or part of the capital and surplus required by applicable law to operate a sponsored captive insurance company.

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

- (1) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;
- (2) that is formed or licensed under this act;
- (3) that insures the risks of separate participants through the contract; and
- (4) that segregates each participant's liability through one or more protected cells.

#### C.17:47B-2 Application by captive insurance company for license.

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

- (1) a pure captive insurance company shall not insure risks other than those of its parent and affiliated companies or controlled unaffiliated businesses;
- (2) an association captive insurance company shall not insure risks other than those of the member organizations of its association, and their affiliated companies;
- (3) an industrial insured captive insurance company shall not insure risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;
- (4) a captive insurance company shall not provide private passenger automobile insurance or homeowner's insurance coverage or any component thereof;
- (5) a captive insurance company shall not accept or cede reinsurance except as provided in section 10 of this act;
- (6) a captive insurance company may provide excess workers' compensation insurance to its parent

and affiliated companies, unless prohibited by the federal law or laws of the state having jurisdiction over the transaction. A captive insurance company, unless prohibited by federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies; and

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

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

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

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

(3) it maintains its principal place of business in this State with the appropriate number of in-State professional services provider staff to carry out the business of the captive, including but not limited to, attorneys, accountants, managers, actuaries, brokers, and third party administrators; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner; and

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

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

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

d. A captive insurance company shall pay to the commissioner a nonrefundable fee for examining, investigating and processing its application for license and the commissioner is authorized to retain

legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each year thereafter. The commissioner shall establish by regulation fees necessary for the administration of this act.

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

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

g. The commissioner may establish by regulation an expedited licensing process for a captive insurance company currently formed or licensed pursuant to the laws of a jurisdiction other than this State that applies for license to do business in this State.

#### C.17:47B-3 Conditions for issuance of license.

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

- (1) in the case of a pure captive insurance company, not less than \$250,000;
- (2) in the case of an association captive insurance company, not less than \$750,000;
- (3) in the case of an industrial insured captive insurance company, not less than \$500,000; and
- (4) in the case of a sponsored captive insurance company, not less than \$500,000.

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

c. Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the State of New Jersey or a member bank of the Federal Reserve System located in this State and approved by the commissioner.

#### C.17:47B-4 Approval required for payment of dividend.

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

#### C.17:47B-5 Incorporation, organization of captive insurance company.

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

- (1) a stock insurer with its capital divided into shares and held by the stockholders;
- (2) a nonprofit corporation with one or more members; or
- (3) a manager-managed limited liability company.

b. An association captive insurance company or an industrial insured captive insurance company may be:

- (1) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
- (2) incorporated as a mutual corporation;
- (3) organized as a reciprocal insurer in accordance with the provisions of P.L.1945, c.161 (C.17:50-1 et seq.); or
- (4) organized as a manager-managed limited liability company.

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

d. In the case of a captive insurance company:

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

- (i) the character, reputation, financial standing and purposes of the incorporators or organizers;
  - (ii) the character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and
  - (iii) any other aspects of the proposed corporation as the commissioner deems advisable.
- (b) the articles of incorporation, certificate and organization fee shall be transmitted to the Secretary of State, who shall record both the articles of incorporation and the certificate.

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

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

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

f. In the case of a captive insurance company:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### C.17:47B-6 Report of financial condition of captive insurance company.

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

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

#### C.17:47B-7 Visit, inspection, examination.

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

b. All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and shall not be made public by the commissioner without the written consent of the

company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using the information in furtherance of the commissioner's regulatory authority under this act. The commissioner may, in the commissioner's discretion, grant access to the information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this State or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

c. As to a branch captive insurance company, the commissioner shall only examine the branch operations and branch business of the branch captive insurance company, in a manner to be prescribed by the commissioner by regulation.

#### C.17:47B-8 Suspension, revocation of license.

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

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the capital surplus requirements of section 3 of this act;
- (3) Refusal or failure to submit an annual report, as required by this act, or any other report or statement required by law or by lawful order of the commissioner;
- (4) Failure to comply with the provisions of its own charter, bylaws or other organizational document;
- (5) Failure to submit to or pay the cost of examination or any legal obligation relative to an examination, as required by this act;
- (6) Use methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (7) Failure to otherwise comply with the laws of this State.

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

#### C.17:47B-9 Compliance with investment requirements.

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

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

#### C.17:47B-10 Provision of reinsurance on risks ceded by other insurers.

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

b. A captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of P.L.1993, c.243 (C.17:51B -1 et seq.). A captive insurance company shall not take credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with P.L.1993, c.243 (C.17:51B-1 et seq.).

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

#### C.17:47B-11 Regulations relative to captive insurance company.

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

b. A captive insurance company shall not be permitted to join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this State, including the New Jersey Life and Health

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

C.17:47B-12 Taxes paid by captive insurance company.

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

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

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

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

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

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

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

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

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

(2) in the case of mutual or nonprofit corporations, the direct or indirect ownership of 80 percent or



more of the surplus and the voting power of two or more corporations by the same member or members.

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

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

i. The tax provided for by this section shall only apply to the branch business of a branch captive insurance company.

#### C.17:47B-13 "Captive Insurance Regulation and Supervision Fund."

13. There is created within the Department of Banking and Insurance a fund to be known as the "Captive Insurance Regulation and Supervision Fund," for the purpose of providing the financial means for the commissioner to administer this act and for reasonable expenses incurred in promoting the captive insurance industry in this State. The commissioner may establish by regulation, fees necessary for the administration of this act. All fees and assessments received by the department pursuant to the administration of this act shall be credited to this fund. All fees received by the department from reinsurers who assume risk solely from captive insurance companies and are subject to the provisions of P.L.1993, c.243 (C.17:51B-1 et seq.), shall be deposited into the Captive Insurance Regulation and Supervision Fund.

#### C.17:47B-14 Applicability of C.17:30C-1 et seq.

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

#### C.17:47B-15 Rules.

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

#### C.17:47B-16 Conversion, merger into reciprocal insurer.

16. a. An association captive insurance company or industrial insured captive insurance company formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan of conversion or merger and the provisions of this section.

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

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

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

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

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

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

(d) is approved:

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

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

(2) the commissioner shall approve the plan of conversion if the commissioner finds that the conversion will promote the general good of the State in conformity with those standards set forth in paragraph (2) of subsection d. of section 5 of this act;

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

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

(5) the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion upon the conversion becoming effective.

d. A merger authorized under subsection a. of this section shall be accomplished substantially in accordance with the procedures to be prescribed by the commissioner, except that, solely for purposes of the merger:

(1) the plan of merger shall satisfy the provisions of subsection b. of this section;

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

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

(4) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;

(5) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the State in conformity with those standards set forth in paragraph (2) of subsection d. of section 5 of this act. If the commissioner approves the articles of merger, the commissioner shall indorse the commissioner's approval thereon and the surviving insurer shall present the same to the Secretary of State;

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

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

#### C.17:47B-17 Sponsored captive insurance company.

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

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

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

(2) A sponsored captive insurance company shall separately account for each protected cell in its books and records to reflect the financial condition and results of operations of each protected cell, net

income or loss of each protected cell, dividends or other distributions to participants of each protected cell and any other factors prescribed in the participant contract or required by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### C.17:47B-18 Regulations relative to risk retention group.

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

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

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

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

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

#### C.17:47B-19 No cause of action, imposition of liability against the commissioner.

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

initiated.

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

20. This act shall take effect on the 90th day following enactment.

Approved February 21, 2011.