

STATE OF NEW YORK

5331

2005-2006 Regular Sessions

IN SENATE

May 11, 2005

Introduced by Sen. SEWARD -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to modifying criteria for formation of a captive insurance company in New York; authorizing the formation of a pure captive insurance company by the state of New York; and providing standards for which entities are affiliated to the owner of a captive insurance company in order to establish which such entities are eligible to be insured by a captive insurance company; to amend the public authorities law, in relation to permitting various public entities to form captive insurance companies as subsidiary corporations; to amend the workers' compensation law, in relation to permitting the state insurance fund to form a captive insurance company as a subsidiary corporation; and to amend the tax law, in relation to making conforming amendments regarding computation of tax for captive insurance companies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subsection (b) of section 7001 of the insurance law, as
2 added by section 146 of part A of chapter 389 of the laws of 1997, is
3 amended to read as follows:
4 (b) In addition to the provisions of this article and this chapter
5 specifically referred to in this article, the following provisions of
6 this chapter shall apply to captive insurance companies:
7 (1) article one of this chapter, pertaining to general provisions;
8 (2) sections three hundred one, three hundred two, three hundred
9 three, three hundred four, three hundred five, three hundred six, three
10 hundred eight, three hundred ten, three hundred eleven, three hundred
11 twelve, three hundred thirteen, three hundred twenty-six, three hundred
12 twenty-seven, three hundred twenty-nine, and three hundred thirty-two of

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 this chapter, pertaining to certain administrative and procedural
2 provisions; ~~and~~

3 (3) article seventy-four, pertaining to rehabilitation, liquidation,
4 conservation and dissolution of insurers; and

5 (4) section two thousand five hundred four of this chapter, pertain-
6 ing to public construction projects, provided, however, that such
7 section shall not apply to individual public construction projects
8 having an actual or estimated total value, exclusive of insurance and
9 surety costs, of fifty million dollars or more or for multiple public
10 construction projects having an actual or estimated total aggregate
11 value, exclusive of insurance and surety costs, of one hundred million
12 dollars or more. For purposes of this paragraph, the term "multiple
13 public construction projects" shall mean projects with phases, segments
14 or component parts relating to a common site or a unified program or
15 system involving the same state or city agency, public corporation or
16 public authority, but shall not include the bundling together of unre-
17 lated construction.

18 § 2. Subsections (a), (c), (e), (f) and (g) of section 7002 of the
19 insurance law, subsections (c) and (f) as added by section 146 of part A
20 of chapter 389 of the laws of 1997, subsections (a), (e) and (g) as
21 amended by chapter 188 of the laws of 2003, are amended to read as
22 follows:

23 (a) "Affiliated companies" means companies in the same corporate
24 system as an industrial insured by virtue of common ownership, control,
25 operation, or management; or, in the case of a pure captive insurance
26 company, shall also mean companies that maintain a contractual or sub-
27 contractual relationship with, and have risk management controlled by,
28 the industrial insured or its other affiliated companies, provided such
29 companies voluntarily elect such affiliated status. Such term shall also
30 include any statutory subsidiary~~[7]~~ or affiliate~~[7]~~ of a public entity
31 as well as contractor, subcontractor and consultant of any tier of a
32 city with a population of one million or more for liability related to
33 or arising out of activities in or near the World Trade Center site in
34 response to the attacks of September eleventh, two thousand one. Such
35 term shall also include employees who participate in an employee benefit
36 plan of the captive's parent and affiliated companies which is subject
37 to the provisions of the Employee Retirement Income Security Act of
38 1974, as amended.

39 (c) "Captive insurance company" means any pure captive insurance
40 company ~~or~~, any group captive insurance company or any sponsored
41 captive insurance company licensed to do a captive insurance business
42 under the provisions of this article.

43 (e) "Industrial insured" means:

44 (1) for a pure captive insurance company, an insured:

45 ~~[(1)]~~ (A) whose net worth or annual revenue exceeds ~~[one hundred]~~
46 twenty-five million dollars;

47 ~~[(2)]~~ (B) who is a member of a holding company system whose net worth
48 or annual revenue exceeds ~~[one hundred]~~ twenty-five million dollars;

49 ~~[(3)]~~ (C) who is ~~[the metropolitan transportation authority and its~~
50 ~~statutory subsidiaries. When filing an application to form a pure~~
51 ~~captive insurance company the metropolitan transportation authority~~
52 ~~shall submit written notice of such filing to the governor, the tempo-~~
53 ~~rary president of the senate and the speaker of the assembly]~~ a not-for-
54 profit organization or public entity with a total annual budget that
55 exceeds twenty-five million dollars; or

1 ~~[(4) who is a city with a population of one million or more. When~~
 2 ~~filing an application to form a pure captive insurance company, a city~~
 3 ~~with a population of one million or more shall submit written notice of~~
 4 ~~such filing to the governor, the temporary president of the senate and~~
 5 ~~the speaker of the assembly]~~

6 (D) who otherwise demonstrates to the superintendent that it is quali-
 7 fied to form and operate a captive insurance company as a subsidiary;

8 (2) for a group captive insurance company, an insured:

9 (A)(i) whose net worth or annual revenue exceeds seven million five
 10 hundred thousand dollars; provided however that the superintendent shall
 11 have the authority to reduce such net worth or annual revenue threshold
 12 to two million five hundred thousand dollars upon a determination made
 13 by the superintendent that there is a lack of meaningful coverage in a
 14 particular voluntary market; and

15 (ii) whose aggregate annual premiums for insurance on all risks total
 16 at least twenty-five thousand dollars; or

17 (B) who is a public entity.

18 (f) "Group captive insurance company" means any domestic insurance
 19 company licensed under the provisions of this article for the primary
 20 purpose of providing insurance or reinsurance covering the risks of the
 21 industrial insureds, or their affiliated companies, that comprise the
 22 industrial insured group.

23 (g) "Industrial insured group" means any group of unaffiliated indus-
 24 trial insureds that are engaged in similar or related businesses or
 25 activities, however, ~~[the metropolitan transportation authority and~~
 26 ~~cities with a population of one million or more shall not]~~ in the case
 27 of a public entity, a public entity may only be a member of an indus-
 28 trial insured group with other public entities, and that ~~[collectively]:~~

29 (1) own, control or hold with power to vote all of the outstanding
 30 voting shares of stock of a group captive insurance company incorporated
 31 as a stock insurer; ~~[or]~~

32 (2) represent one hundred percent of the voting members of a group
 33 captive insurance company organized as a mutual insurer; or

34 (3) is created under the Product Liability Risk Retention Act of 1981,
 35 15 U.S.C. § 3901 et seq., as amended, as a corporation or other limited
 36 liability association taxable as a stock insurance company or mutual
 37 insurer under the laws of New York.

38 § 3. Subsection (h) of section 7002 of the insurance law is relettered
 39 subsection (k) and six new subsections (h), (i), (j), (l), (m) and (n)
 40 are added to read as follows:

41 (h) "Participant" means an entity as defined in subsection (d) of
 42 section seven thousand three-a of this article, and any affiliates ther-
 43 eof, that are insured by a sponsored captive insurance company, where
 44 the losses of the participant are limited through a participant contract
 45 to the assets of a protected cell.

46 (i) "Participant contract" means a contract by which a sponsored
 47 captive insurance company insures the risks of a participant and limits
 48 the losses of such participant to the assets of a protected cell.

49 (j) "Protected cell" means a separate account established and main-
 50 tained by a sponsored captive insurance company for one participant.

51 (l) "Public entity" means:

52 (1) in the state of New York, any entity of the types listed in
 53 subparagraph (A), (B), (C) or (D) of this paragraph which is permitted
 54 under its governing laws or other authority to form and operate a
 55 subsidiary which would not be precluded from engaging in the activities
 56 of a captive insurance company;

1 (A) the state of New York and/or any department, bureau, division,
2 commission, board or other agency of the state of New York, including
3 any public benefit corporation or any public authority;

4 (B) any governmental entity, or combination of governmental entities,
5 operating a college, community college or university;

6 (C) any city with a population of one million or more persons; or

7 (D) any public corporation created pursuant to agreement or compact
8 with another state or Canada; and

9 (2) outside the state of New York, any entity of the types listed in
10 subparagraph (A), (B), (C) or (D) of paragraph one of this subsection
11 which is permitted under its governing laws or other authority to form
12 and operate a subsidiary which would not be precluded from engaging in
13 the activities of a captive insurance company.

14 (m) "Sponsor" means any entity that meets the requirements of
15 subsection (c) of section seven thousand three-a of this article and is
16 approved by the superintendent to provide all or part of the capital and
17 surplus required by paragraph three of subsection (a) of section seven
18 thousand four of this article and to organize and operate a sponsored
19 captive insurance company.

20 (n) "Sponsored captive insurance company" means any captive insurance
21 company:

22 (1) in which the minimum capital and surplus required by applicable
23 law is provided by one or more sponsors;

24 (2) that is formed or licensed under the provisions of this article;

25 (3) that insures the risks of separate participants through contract;
26 and

27 (4) that segregates each participant's liability through one or more
28 protected cells.

29 § 4. Subsection (a) of section 7003 of the insurance law, as added by
30 section 146 of part A of chapter 389 of the laws of 1997, the closing
31 paragraph as added by chapter 188 of the laws of 2003, is amended to
32 read as follows:

33 (a) Any captive insurance company, when permitted by its articles of
34 ~~[association]~~ organization or charter, shall apply to the superintendent
35 for a license to do a captive insurance business under this article. A
36 captive insurance business consists of the kinds of insurance set forth
37 in section one thousand one hundred thirteen and section one thousand
38 one hundred fourteen of this chapter, provided that:

39 (1) a pure captive insurance company shall insure, on a primary basis,
40 only risks of its parent and affiliated companies;

41 (2) a group captive insurance company shall insure, on a primary
42 basis, only risks of the industrial insureds that comprise the indus-
43 trial insured group;

44 (3) a ~~[pure captive insurance company or a group]~~ captive insurance
45 company shall not be authorized to provide, on a primary basis or as
46 reinsurance, the kinds of insurance specified in paragraphs one, two,
47 three, eighteen, twenty-three and twenty-five of subsection (a) of
48 section one thousand one hundred thirteen of this chapter, provided,
49 however, a pure captive insurance company or a group captive insurance
50 company shall be authorized to provide, on a reinsurance basis, the
51 kinds of insurance specified in paragraphs one and three of subsection
52 (a) of section one thousand one hundred thirteen of this chapter in
53 connection with an employee benefit plan of its parent and affiliated
54 companies which is subject to the provisions of the Employee Retirement
55 Income Security Act of 1974, as amended;

1 (4) a [~~pure captive insurance company or a group~~] captive insurance
2 company shall not be authorized to provide, on a primary basis:

3 (A) workers' compensation and employers' liability insurance; or

4 (B) any other kind of insurance, including motor vehicle liability
5 insurance, that is required, under the laws of this state or any poli-
6 tical subdivision of this state, as a demonstration of financial respon-
7 sibility for obtaining a license or permit to undertake specific activ-
8 ities when such requirement must be satisfied by obtaining insurance
9 coverage from an insurer authorized in this state, up to the minimum
10 amount of insurance so required under such laws; and

11 (C) except that subparagraphs (A) and (B) of this paragraph shall not
12 prohibit a pure captive insurance company from providing primary indem-
13 nity coverage to its parent and affiliated companies for any insurance
14 or self-insurance program specified in such subparagraphs (A) or (B),
15 provided the insurance or self-insurance program has qualified under the
16 applicable state or federal law requiring the program; and

17 (5) a sponsored captive insurance company may insure only risks of its
18 participants;

19 (6) a group captive insurance company insuring the risks of an indus-
20 trial insured group as defined in paragraph three of subsection (g) of
21 section seven thousand two of this article shall be subject to the
22 provisions of subsections (d) and (e) of section five thousand nine
23 hundred four and subsections (a), (b), (c) and (d) of section five thou-
24 sand nine hundred five of this chapter; and

25 (7) a [~~pure captive insurance company or a group~~] captive insurance
26 company shall reinsure only risks as set forth in section seven thousand
27 ten of this article.

28 [~~Notwithstanding any inconsistent provisions of paragraphs one through~~
29 ~~five of this subsection, a pure captive insurance company formed by a~~
30 ~~city with a population of one million or more may insure or provide~~
31 ~~reinsurance for its parent, statutory subsidiaries and affiliated compa-~~
32 ~~nies only for liability related to or arising out of activities in or~~
33 ~~near the World Trade Center site in response to the attacks of September~~
34 ~~eleventh, two thousand one.~~]

35 § 5. Paragraph 2 of subsection (b) of section 7003 of the insurance
36 law, as added by section 146 of part A of chapter 389 of the laws of
37 1997, is amended to read as follows:

38 (2) its board of directors or managers holds at least one meeting each
39 year in this state;

40 § 6. Subsection (c) of section 7003 of the insurance law, as added by
41 section 146 of part A of chapter 389 of the laws of 1997, paragraph 5 as
42 added by chapter 188 of the laws of 2003, is amended to read as follows:

43 (c)(1) Before receiving a license to do a captive insurance business,
44 a captive insurance company shall file an application for license with
45 the superintendent for review and approval. Such application shall
46 include a certified copy of its charter and bylaws or articles of organ-
47 ization and operating agreement, as appropriate, a financial statement
48 certified by two principal officers or managers, a plan of operation,
49 which shall include an actuarial report prepared by a qualified inde-
50 pendent actuary, and any other statements or documents required by the
51 superintendent.

52 (2) In evaluating the plan of operation, the superintendent shall
53 consider the following factors:

54 (A) the amount and liquidity of its assets relative to the risks to be
55 assumed;

1 (B) the adequacy of the expertise, experience, and character of the
2 person or persons who will manage it;

3 (C) the overall soundness of the plan and the projections contained
4 therein;

5 (D) the adequacy of the loss prevention programs of its parent, member
6 organizations, or industrial insureds as applicable; and

7 (E) such other factors deemed relevant by the superintendent in ascer-
8 taining whether the proposed captive insurance company will be able to
9 meet its policy obligations.

10 (3) In addition to the information required by paragraphs one and two
11 of this subsection, each applicant sponsored captive insurance company
12 shall file with the superintendent the following:

13 (A) a business plan demonstrating how the applicant will account for
14 the loss and expense experience of each protected cell at a level of
15 detail found to be sufficient by the superintendent and how it will
16 report such experience to the superintendent;

17 (B) a statement acknowledging that all financial records of the spon-
18 sored captive insurance company, including records pertaining to any
19 protected cells, shall be made available for inspection or examination
20 by the superintendent or the superintendent's designated agent;

21 (C) all contracts or sample contracts between the sponsored captive
22 insurance company and any participants; and

23 (D) evidence that expenses shall be allocated to each protected cell
24 in a fair and equitable manner.

25 (4) Any material filed with the superintendent pursuant to this
26 [subsection] article shall be given confidential treatment and shall not
27 be subject to public inspection under article six of the public officers
28 law, or to discovery under article thirty-one of the civil practice law
29 and rules, except to the extent the superintendent finds release of
30 information necessary to protect the public or necessary to initiate any
31 proceeding or action as provided by this article or except where a court
32 of competent jurisdiction in an action involving a private litigant and
33 a captive insurer finds that discovery of same should be allowed upon a
34 showing that such information is essential to the establishment of the
35 claim or defense brought or asserted and the party seeking discovery has
36 demonstrated to the satisfaction of the court that such party is unable
37 to otherwise obtain the substantial equivalent of the material.

38 [~~4~~] (5) In order to provide for the review of the application
39 submitted pursuant to this subsection in a timely manner, the super-
40 intendent may engage such other qualified persons and services as may be
41 necessary. Prior to retaining any such persons and services, the super-
42 intendent shall notify the applicant and provide an estimate of the cost
43 of such services. The superintendent shall recover such costs in the
44 manner prescribed in section three hundred thirteen of this chapter.

45 [~~5~~] (6) In the case of a pure captive insurance company formed by a
46 city with a population of one million or more to insure such city and
47 its affiliated companies for liability related to or arising out of
48 activities in or near the World Trade Center site in response to the
49 attacks of September eleventh, two thousand one, the superintendent, in
50 addition to the provisions set forth in paragraph two of this
51 subsection, shall consider such factors as the unique risk insured by
52 such captive and the source and limits of the premium payments along
53 with any limitations on the acceptance of claims and the payment of
54 accepted claims so long as such limitations provide an equitable basis
55 for the allocation of the assets of such company to pay claims.

1 § 7. Subsection (d) of section 7003 of the insurance law, as added by
2 section 146 of part A of chapter 389 of the laws of 1997, is amended to
3 read as follows:

4 (d) Any proposed amendments or revisions to the charter and bylaws or
5 articles of organization and operating agreement of a captive insurance
6 company shall be filed with the superintendent for review and approval.
7 Any proposed amendments to the charter of a not-for-profit captive
8 insurance company shall be submitted to the superintendent for approval
9 before filing with the secretary of state.

10 § 8. The insurance law is amended by adding a new section 7003-a to
11 read as follows:

12 § 7003-a. Sponsored captive insurance companies. (a) One or more spon-
13 sors may form a sponsored captive insurance company under this article.

14 (b) A sponsored captive insurance company formed or licensed under the
15 provisions of this article may establish and maintain one or more
16 protected cells to insure risks of one or more participants, subject to
17 the following conditions:

18 (1) the shareholders of a sponsored captive insurance company shall be
19 limited to its participants and sponsors;

20 (2) each protected cell shall be accounted for separately on the books
21 and records of the sponsored captive insurance company to reflect the
22 financial condition and results of operations of such protected cell,
23 net income or loss, dividends or other distributions to participants,
24 and such other factors as may be provided in the participant contract or
25 required by the superintendent;

26 (3) the assets of a protected cell shall not be chargeable with
27 liabilities arising out of any other insurance business the sponsored
28 captive insurance company may conduct;

29 (4) no sale, exchange or other transfer of assets may be made by such
30 sponsored captive insurance company between or among any of its
31 protected cells without the consent of such protected cells;

32 (5) no sale, exchange, transfer of assets, dividend or distribution
33 may be made from a protected cell to a sponsor or participant without
34 the superintendent's approval and in no event shall such approval be
35 given if the sale, exchange, transfer, dividend or distribution would
36 result in insolvency or impairment with respect to a protected cell;

37 (6) each sponsored captive insurance company shall annually file with
38 the superintendent such financial reports as the superintendent shall
39 require, which shall include, without limitation, accounting statements
40 detailing the financial experience of each protected cell;

41 (7) each sponsored captive insurance company shall notify the super-
42 intendent in writing within ten business days of any protected cell that
43 is insolvent or otherwise unable to meet its claim or expense obli-
44 gations;

45 (8) no participant contract shall take effect without the superinten-
46 dent's prior written approval, and the addition of each new protected
47 cell and withdrawal of any participant of any existing protected cell
48 shall constitute a change in the business plan requiring the superinten-
49 dent's prior written approval; and

50 (9) the business written by a sponsored captive insurance company,
51 with respect to each cell, shall be:

52 (A) fronted by an insurance company licensed under the laws of any
53 state;

54 (B) reinsured by a reinsurer authorized or approved by the state of
55 New York; or

1 (C) secured by a trust fund in the United States for the benefit of
2 policyholders and claimants funded by an irrevocable letter of credit or
3 other asset that is acceptable to the superintendent. The amount of
4 security provided by a trust fund shall be no less than the reserves
5 associated with those liabilities which are neither fronted nor rein-
6 sured, including reserves for losses, allocated loss adjustment
7 expenses, incurred but not reported losses and unearned premiums for
8 business written through the participant's protected cell. The super-
9 intendent may require the sponsored captive insurance company to
10 increase the funding of any trust as established under this subpara-
11 graph. If the form of security in the trust is a letter of credit, the
12 letter of credit must be established, issued or confirmed by a bank
13 chartered in this state, a member of the federal reserve system, or a
14 bank chartered by another state if such state chartered bank is accepta-
15 ble to the superintendent. A trust and trust instrument maintained
16 pursuant to this subsection shall be established in a form and upon such
17 terms approved by the superintendent.

18 (c) A sponsor of a sponsored captive insurance company shall be an
19 insurer licensed under the laws of any state, a reinsurer authorized or
20 approved under the laws of any state or a captive insurance company
21 formed or licensed under this article. A risk retention group shall not
22 be either a sponsor or a participant of a sponsored captive insurance
23 company.

24 (d) Associations, corporations, limited liability companies, partner-
25 ships, public entities, trusts and other business entities may be a
26 participant in any sponsored captive insurance company formed or
27 licensed under this article.

28 (e) A sponsor may be a participant in a sponsored captive insurance
29 company.

30 (f) A participant need not be a shareholder of the sponsored captive
31 insurance company or any affiliate thereof.

32 (g) A participant shall insure only its own risks through a sponsored
33 captive insurance company.

34 (h) Any sponsored captive insurance company and its fronting company
35 shall recognize and compensate any duly licensed agent or broker if such
36 agent or broker is authorized to provide insurance by a participant or
37 prospective participant as defined in subsection (h) of section seven
38 thousand two of this article.

39 § 9. Subsection (a) of section 7004 of the insurance law, as added by
40 section 146 of part A of chapter 389 of the laws of 1997, is amended to
41 read as follows:

42 (a) No pure captive insurance company or group captive insurance
43 company or sponsored captive insurance company shall be issued a license
44 unless it shall possess and thereafter maintain unimpaired paid-in capi-
45 tal and surplus as regards policyholders of:

46 (1) in the case of a pure captive insurance company incorporated as a
47 stock insurer, not less than two hundred fifty thousand dollars of total
48 surplus as regards policyholders, of which one hundred thousand dollars
49 shall represent paid-in capital;

50 (2) in the case of a pure captive insurance company incorporated as a
51 mutual insurer or organized as a limited liability company, not less
52 than two hundred fifty thousand dollars of total surplus as regards [~~to~~]
53 policyholders;

54 (3) in the case of a sponsored captive insurance company, not less
55 than one million dollars of paid-in capital and surplus or total surplus
56 as regards policyholders;

1 (4) in the case of a group captive insurance company incorporated as a
2 stock insurer, not less than five hundred thousand dollars of total
3 surplus as regards policyholders, of which two hundred thousand dollars
4 shall represent paid-in capital; and

5 [~~(4)~~] (5) in the case of a group captive insurance company incorpo-
6 rated as a mutual insurer or organized as a limited liability company,
7 not less than five hundred thousand dollars of total surplus as regards
8 policyholders.

9 § 10. Section 7005 of the insurance law, as added by section 146 of
10 part A of chapter 389 of the laws of 1997, subsection (a) as amended by
11 chapter 188 of the laws of 2003, is amended to read as follows:

12 § 7005. Organization and corporate procedure. (a) A pure captive
13 insurance company may be incorporated or organized (1) as a stock insur-
14 er with its capital divided into shares and held by the stockholders; or
15 (2) as a mutual insurer without capital stock, the governing body of
16 which is appointed by the parent industrial insured; or (3) as a limited
17 liability company; or (4) in the case of a public benefit corporation,
18 public authority or other public entity, as the applicable state law may
19 require. In the case of a city with a population of one million or more,
20 a pure captive insurance company also may be formed as a public benefit
21 corporation or not-for-profit corporation at the discretion of the mayor
22 of such city, for the purpose of providing insurance that is retroactive
23 to September eleventh, two thousand one, for risks incurred by such city
24 and its affiliated companies related to or arising out of activities in
25 or near the World Trade Center site in response to the attacks of
26 September eleventh, two thousand one. Such pure captive insurance compa-
27 ny formed by a city with a population of one million or more shall be
28 exempt from all state and local taxes. The members or directors, as the
29 case may be, of such pure captive insurance company shall be appointed
30 by the mayor of such city or by such other city official as the mayor
31 may designate. Neither the mayor of such city, nor any of the captive's
32 members, directors, officers, employees or agents appointed by or with
33 the approval of such city, nor any officials, officers, employees or
34 agents of the city, while acting within the scope of their authority,
35 shall be subject to any personal liability resulting from the exercise
36 or carrying out of any of the city's or captive's purposes or powers
37 under this article.

38 (b) A group captive insurance company may be incorporated or
39 organized:

40 (1) as a stock insurer with its capital divided into shares and held
41 by the stockholders, or

42 (2) as a mutual insurer without capital stock, the governing body of
43 which is elected by the member organizations of the industrial insured
44 group, or

45 (3) as a limited liability company, the members of which shall be the
46 members of the industrial insured group.

47 (c) A sponsored captive insurance company may be incorporated or
48 organized:

49 (1) as a stock insurer with its capital divided into shares and held
50 by the stockholders, or

51 (2) as a mutual insurer without capital stock, the governing body of
52 which is elected by the participants and sponsors of the sponsored
53 captive insurance company; or

54 (3) as a limited liability company.

1 (d) The proposed incorporators or organizers shall submit to the
2 superintendent the company's proposed charter or articles of organiza-
3 tion, which shall contain:

4 (1) the corporation's or limited liability company's name, which shall
5 not be the same as, deceptively similar to, or likely to be confused
6 with or mistaken for any other existing business name registered in this
7 state;

8 (2) the kind of insurance business to be transacted;

9 (3) the place where the principal office is to be located;

10 (4) the number of directors or managers;

11 (5) the amount of its capital, if a stock corporation; and

12 (6) any other particulars necessary to explain the corporation's or
13 limited liability company's objectives, management and control.

14 [~~(d)~~] (e) The charter or articles of organization and any organization
15 fee shall be transmitted to the attorney general, who shall record the
16 charter or articles of organization.

17 [~~(e)~~] (f) The recorded charter or articles of organization shall be
18 filed in the superintendent's office and a certified copy shall be
19 issued to the incorporators.

20 [~~(f)~~] (g) The capital stock of a captive insurance company incorpo-
21 rated as a stock insurer shall be issued at not less than par value.

22 [~~(g)~~] (h) The board of directors or managers of a captive insurance
23 company incorporated or organized in this state shall have at least
24 three members, with at least two of the members required to be residents
25 of this state.

26 [~~(h)~~] (i) The provisions of article seventy-one of this chapter shall
27 apply in determining the procedures to be followed by captive insurance
28 companies in carrying out any of the transactions described therein,
29 except the superintendent may waive or modify the requirements in
30 accordance with rules or regulations which the superintendent shall
31 adopt addressing such categories of transactions.

32 [~~(i)~~] (j) The articles of incorporation of a captive insurance company
33 incorporated as a corporation or the articles of organization or operat-
34 ing agreement of a captive organized as a limited liability company or
35 bylaws of a captive insurance company shall authorize a quorum of a
36 board of directors to consist of no fewer than one-third of the fixed
37 number of directors.

38 § 11. Subsections (a), (b) and (c) of section 7006 of the insurance
39 law, as added by section 146 of part A of chapter 389 of the laws of
40 1997, are amended to read as follows:

41 (a) annually [~~on or before March first~~], within two months of the end
42 of its previous fiscal year, a statement of its financial condition and
43 any amendment to the plan of operation [~~at last year-end~~], verified by
44 the oath of at least two of its executive officers or managers. The
45 statement shall be in the form prescribed by the superintendent except
46 that any group captive insurance company insuring the risks of an indus-
47 trial insured group as defined in paragraph three of subsection (g) of
48 section seven thousand two of this article shall file its report in the
49 form and according to the standards set forth in paragraphs one and two
50 of subsection (a) of section three hundred seven of this chapter; and

51 (b) annually [~~on or before July first~~], within six months of the end
52 of its previous fiscal year, a report of its financial condition at
53 [~~last year-end~~] the end of such fiscal year with an opinion of an inde-
54 pendent certified public accountant; and

55 (c) annually on or before July first, evidence in a form prescribed by
56 the superintendent, that the industrial insured or member of the indus-

1 trial insured group owning the captive insurance company continues to
2 meet the financial standards set forth in subsection (e) of section
3 seven thousand two of this article[~~+~~]; and

4 § 12. Paragraph 3 of subsection (a) of section 7008 of the insurance
5 law, as added by section 146 of part A of chapter 389 of the laws of
6 1997, is amended to read as follows:

7 (3) failure to comply with the provisions of its own charter or arti-
8 cles of incorporation of a captive incorporated as a corporation or the
9 articles of organization or operating agreement of a captive organized
10 as a limited liability company or bylaws or operating agreement;

11 § 13. Subsection (a) of section 7009 of the insurance law, as added by
12 section 146 of part A of chapter 389 of the laws of 1997, is amended to
13 read as follows:

14 (a) No captive insurance company shall be subject to any restrictions
15 on allowable investments, except as set forth in subsections (b) [~~and~~],
16 (c) and (d) of this section.

17 § 14. Section 7009 of the insurance law is amended by adding a new
18 subsection (d) to read as follows:

19 (d) A group captive insurance company insuring the risks of an indus-
20 trial insured group as defined in paragraph three of subsection (g) of
21 section seven thousand two of this article shall comply with the invest-
22 ment requirements set forth in paragraph two of subsection (a) of
23 section one thousand four hundred three of this chapter.

24 § 15. Article 9 of the public authorities law is amended by adding a
25 new title 12 to read as follows:

26 TITLE 12

27 CAPTIVE FORMATION BY PUBLIC AUTHORITIES

28 Section 2990. Powers of public authorities to form captive insurance
29 companies as subsidiary corporations.

30 § 2990. Powers of public authorities to form captive insurance compa-
31 nies as subsidiary corporations. Every public authority and every public
32 benefit corporation is authorized to form and operate a subsidiary as a
33 pure captive insurance company or as a group captive insurance company
34 pursuant to article seventy of the insurance law. Any such subsidiary
35 shall be established in the form of a public benefit corporation by
36 executing and filing with the secretary of state a certificate of incor-
37 poration, which may be amended from time to time by filing, which shall
38 set forth the name of such public benefit subsidiary corporation, its
39 duration, the location of its principal office and its corporate
40 purposes as provided in this section. Any public benefit corporation
41 shall be a body politic and corporate and shall, in the case of a pure
42 captive insurance company, have the privileges, immunities, tax
43 exemptions and other exemptions of the authority or corporation that
44 formed such public benefit corporation, and in the case of a group
45 captive insurance company, have the most favorable privileges, immuni-
46 ties, tax exemptions or other exemptions of any participating public
47 authority or public benefit corporation in such group captive insurance
48 company. The board of directors of the subsidiary shall be the members
49 of the board of the authority or officers or employees appointed by the
50 board of the authority. Neither the members of the board of the authori-
51 ty, nor any officers, employees or agents appointed by the board of the
52 authority, nor any officers, employees or agents of the authority, while
53 acting within the scope of their authority, shall be subject to any
54 personal liability resulting from the exercise or carrying out of any of
55 the authority's purposes or powers under this section and article seven-
56 ty of the insurance law.

1 § 16. Section 82 of the workers' compensation law is amended by adding
2 a new subdivision 6 to read as follows:

3 6. The commissioners of the state insurance fund are hereby authorized
4 to form and operate a subsidiary as a pure captive insurance company or
5 as a group captive insurance company pursuant to article seventy of the
6 insurance law exclusively for the purpose of reinsuring its own business
7 that is written on a primary basis. Any such subsidiary shall be estab-
8 lished in the form of a public benefit corporation by executing and
9 filing with the secretary of state a certificate of incorporation, which
10 may be amended from time to time by filing, which shall set forth the
11 name of such public benefit subsidiary corporation, its duration, the
12 location of its principal office and its corporate purposes as provided
13 in this subdivision. Any such public benefit corporation shall be a body
14 politic and corporate and shall have the privileges, immunities, tax
15 exemptions and other exemptions of the state insurance fund. The board
16 of directors of the subsidiary shall be the commissioners of the state
17 insurance fund or officers or employees appointed by the commissioners
18 of the state insurance fund. Neither the commissioners of the state
19 insurance fund, nor any officers, employees or agents appointed by the
20 commissioners of the state insurance fund nor any officer, employee or
21 agent of the state insurance fund, while acting within the scope of
22 their authority, shall be subject to any personal liability resulting
23 from the exercise or carrying out of any of the state insurance fund's
24 purposes or powers under this section and article seventy of the insur-
25 ance law.

26 § 17. Subdivision (a) of section 1502-b of the tax law, as separately
27 amended by section 3 of part H3 of chapter 62 and chapter 188 of the
28 laws of 2003, is amended to read as follows:

29 (a) In lieu of the taxes and tax surcharge imposed by sections fifteen
30 hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen
31 hundred ten of this article, every captive insurance company licensed by
32 the superintendent of insurance pursuant to the provisions of article
33 seventy of the insurance law, other than a captive insurance company
34 formed by the metropolitan transportation authority [~~and a~~] or any
35 public entity defined in subsection (1) of section seven thousand two of
36 the insurance law, including any public benefit corporation or not-for-
37 profit corporation formed by a city with a population of one million or
38 more pursuant to subsection (a) of section seven thousand five of the
39 insurance law, [~~each of~~] which is expressly exempt from the payment of
40 fees, taxes or assessments whether state or local, shall, for the privi-
41 lege of exercising its corporate franchise, pay a tax on (1) all gross
42 direct premiums, less return premiums thereon, written on risks located
43 or resident in this state and (2) all assumed reinsurance premiums, less
44 return premiums thereon, written on risks located or resident in this
45 state. The rate of the tax imposed on gross direct premiums shall be
46 four-tenths of one percent on all or any part of the first twenty
47 million dollars of premiums, three-tenths of one percent on all or any
48 part of the second twenty million dollars of premiums, two-tenths of one
49 percent on all or any part of the third twenty million dollars of premi-
50 ums, and seventy-five thousandths of one percent on each dollar of
51 premiums thereafter. The rate of the tax on assumed reinsurance premiums
52 shall be two hundred twenty-five thousandths of one percent on all or
53 any part of the first twenty million dollars of premiums, one hundred
54 and fifty thousandths of one percent on all or any part of the second
55 twenty million dollars of premiums, fifty thousandths of one percent on
56 all or any part of the third twenty million dollars of premiums and

1 twenty-five thousandths of one percent on each dollar of premiums there-
2 after. The tax imposed by this section shall be equal to the greater of
3 (i) the sum of the tax imposed on gross direct premiums and the tax
4 imposed on assumed reinsurance premiums or (ii) five thousand dollars.

5 § 18. Subdivision (a) of section 1500 of the tax law, as amended by
6 chapter 188 of the laws of 2003, is amended to read as follows:

7 (a) The term "insurance corporation" includes a corporation, associ-
8 ation, joint stock company or association, person, society, aggregation
9 or partnership, by whatever name known, doing an insurance business,
10 and, notwithstanding the provisions of section fifteen hundred twelve of
11 this article, shall include (1) a risk retention group as defined in
12 subsection (n) of section five thousand nine hundred two of the insur-
13 ance law, (2) the state insurance fund and (3) a corporation, associ-
14 ation, joint stock company or association, person, society, aggregation
15 or partnership doing an insurance business as a member of the New York
16 insurance exchange described in section six thousand two hundred one of
17 the insurance law. The definition of the "state insurance fund"
18 contained in this subdivision shall be limited in its effect to the
19 provisions of this article and the related provisions of this chapter
20 and shall have no force and effect other than with respect to such
21 provisions. The term "insurance corporation" shall also include a
22 captive insurance company doing a captive insurance business, as defined
23 in subsections (c) and (b), respectively, of section seven thousand two
24 of the insurance law; provided, however, "insurance corporation" shall
25 not include the metropolitan transportation authority, ~~or a~~ any public
26 entity defined in subsection (1) of section seven thousand two of the
27 insurance law, including any public benefit corporation or not-for-pro-
28 fit corporation formed by a city with a population of one million or
29 more pursuant to subsection (a) of section seven thousand five of the
30 insurance law, ~~each of~~ which is expressly exempt from the payment of
31 fees, taxes or assessments, whether state or local. The term "insurance
32 corporation" shall also include an unauthorized insurer operating from
33 an office within the state, pursuant to paragraph five of subsection (b)
34 of section one thousand one hundred one and subsection (i) of section
35 two thousand one hundred seventeen of the insurance law.

36 § 19. This act shall take effect immediately.
