

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1787

H.P. 1260

House of Representatives, April 14, 1997

An Act to Authorize Captive Insurance Companies.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MAYO of Bath.
Cosponsored by Senator MURRAY of Penobscot and
Representatives: KERR of Old Orchard Beach, KNEELAND of Easton, McALEVEY of
Waterboro, SPEAR of Nobleboro.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 24-A MRSA c. 83 is enacted to read:

6 CHAPTER 83

8 CAPTIVE INSURANCE COMPANIES

10 §6701. Definitions

12 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

14 1. **Affiliated company.** "Affiliated company" means any company in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation or management.

18 2. **Association.** "Association" means any legal association of individuals, corporations, partnerships or associations, except labor organizations, the member organizations of which collectively:

24 A. 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; or

28 B. Have complete voting control over an association captive insurance company incorporated as a mutual insurer.

30 3. **Association captive insurance company.** "Association captive insurance company" means any company that insures risks of the member organizations of the association and their affiliated companies.

36 4. **Captive insurance company.** "Captive insurance company" means any pure captive insurance company, association captive insurance company or industrial insured captive insurance company formed or licensed under this chapter.

40 5. **Controlled unaffiliated business.** "Controlled unaffiliated business" means a company that:

44 A. Is not in the corporate system of a parent and affiliated companies;

46 B. Has an existing contractual relationship with a parent or affiliated company; and

2 C. Is subject to rules adopted by the superintendent
4 concerning risk management by a parent or affiliated
6 company; however, the superintendent may grant authority
8 over risk management issues by temporary order until rules
10 are adopted.

12 **6. Industrial insured.** "Industrial insured" means an
14 insured:

16 A. Who procures the insurance of any risk or risks by use
18 of the services of a full-time employee acting as an
20 insurance manager or buyer;

22 B. Whose aggregate annual premium for insurance on all
24 risks totals at least \$25,000; and

26 C. Who has at least 25 full-time employees.

28 **7. Industrial insured captive insurance company.**
30 "Industrial insured captive insurance company" means any company
32 that insures risks of the industrial insureds that comprise the
34 industrial insured group and their affiliated companies.

36 **8. Industrial insured group.** "Industrial insured group"
38 means any group that meets either of the following criteria:

40 A. A group of industrial insureds that collectively:

42 (1) Owns, controls or holds with power to vote all of
44 the outstanding voting securities of an industrial
46 insured captive insurance company incorporated as a
48 stock insurer; or

(2) Has complete voting control over an industrial
insured captive insurance company incorporated as a
mutual insurer; or

B. Any group created under the Product Liability Risk
Retention Act of 1981, 15 United States Code, Section 3901
et seq., as amended, as a corporation or other limited
liability association taxable as a stock insurance company
or a mutual insurer under the laws of the State.

9. Member organization. "Member organization" means any
individual, corporation, partnership or association that belongs
to an association.

10. Parent. "Parent" means a corporation, partnership or
individual that directly or indirectly owns, controls or holds

with power to vote more than 50% of the outstanding voting securities of a pure captive insurance company.

11. Pure captive insurance company. "Pure captive insurance company" means any company that insures risks of its parent, affiliated companies or controlled unaffiliated businesses, but does not include those insurers that otherwise qualify for a certificate of authority as an insurer.

12. Pure nonprofit captive insurance company. "Pure nonprofit captive insurance company" means a pure captive insurance company formed without capital stock as a nonprofit corporation, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by a nonprofit parent, its or controlled unaffiliated business affiliated companies but does not include those insurers otherwise qualifying for a certificate of authority as an insurer.

§6702. Licensing

1. Authority. A captive insurance company may not engage in the business of insurance in this State unless the company:

A. Obtains a license from the superintendent authorizing the company to do insurance business in this State;

B. Holds at least one meeting of its board of directors each year in this State;

C. Maintains its principal place of business in this State; and

D. Appoints a resident agent to accept service of process and to otherwise act on its behalf in this State.

2. Charter and bylaws. In order to receive a license, a captive insurance company must file with the superintendent a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition and any other statements or documents required by the superintendent.

3. Information required. In addition to the information required by subsection 2, an applicant captive insurance company must file with the superintendent evidence of the following:

A. The amount and liquidity of its assets relative to the risks to be assumed;

2 B. The adequacy of the expertise, experience and character
3 of the person or persons who will manage it;

4 C. The overall soundness of its plan of operation;

6 D. The adequacy of the loss prevention programs of its
7 parent or member organizations, as applicable;

8 E. The character, reputation, financial standing and
9 purposes of the incorporators;

12 F. The character, reputation, financial responsibility,
13 insurance experience and business qualifications of the
14 officers and directors; and

16 G. Any other factors determined relevant by the
17 superintendent in ascertaining whether the proposed captive
18 insurance company will be able to meet its policy
19 obligations.

20 4. License. If the superintendent is satisfied that the
21 documents and statements filed by the captive insurance company
22 under subsections 2 and 3 comply with this chapter, the
23 superintendent may grant a license authorizing it to do insurance
24 business.

26 5. Fees. A captive insurance company shall pay filing,
27 issuance, annual continuation and reinstatement fees as provided
28 for domestic insurers pursuant to section 601, subsection 1.

30 6. Activities. A captive insurance company may engage in
31 the business of the following types of insurance:

34 A. Casualty insurance as defined by section 707, excluding
35 the direct writing of workers' compensation insurance.
36 Workers' compensation risks may be reinsured by a captive
37 insurer only as provided in section 6711;

38 B. Marine and transportation insurance as defined by
39 section 708, subsection 1;

42 C. Marine protection and indemnity insurance, as defined by
43 section 708, subsection 1;

44 D. Wet marine and transportation insurance as defined by
45 section 708, subsection 2;

48 E. Property insurance as defined by section 705;

50 F. Surety insurance as described in section 706;

2 G. Title insurance as defined by section 709; and

4 H. Credit life insurance and credit health insurance as
6 defined by section 2853, relating to specific loans or other
8 credit transactions between its parent or affiliated
 companies and any of their directors, officers and employees.

10 7. Exceptions. A captive insurance company, when permitted
12 by its articles of association or charter, may apply to the
 superintendent for a license to provide any insurance described
 in subsection 6, except that:

14 A. A pure captive insurance company may not insure any
16 risks other than those of its parent and affiliated
 companies or controlled unaffiliated businesses;

18 B. An association captive insurance company may not insure
20 any risks other than those of the member organizations of
 its association and their affiliated companies;

22 C. An industrial insured captive insurance company may not
24 insure any risks other than those of the industrial insureds
 that comprise the industrial insured group and their
 affiliated companies;

26 D. A captive insurance company may not provide personal
28 motor vehicle or homeowner's insurance coverage or any
 component thereof; and

30 E. A captive insurance company may not accept or cede
32 reinsurance except as provided in section 6711.

34 **§6703. Names of companies**

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

40 **§6704. Minimum capital**

42 1. Minimum capital. A pure captive insurance company, an
44 association captive insurance company incorporated as a stock
46 insurer or an industrial insured captive insurance company
 incorporated as a stock insurer may not be issued a license
48 unless the company has and maintains unimpaired paid-in capital
 of:

- 2 A. In the case of a pure captive insurance company, not
3 less than \$100,000;
- 4 B. In the case of an association captive insurance company
5 incorporated as a stock insurer, not less than \$400,000; and
6
- 7 C. In the case of an industrial insured captive insurance
8 company incorporated as a stock insurer, not less than
9 \$200,000.

10 The superintendent may prescribe additional capital based upon
11 the type, volume and nature of insurance business transacted.

12 2. Letter of credit. The required capital may be in the
13 form of cash, an irrevocable letter of credit issued by a bank
14 chartered in this State or a member bank of the Federal Reserve
15 System or any other security approved by the superintendent.

16 3. Dividends. A captive insurance company may not pay a
17 dividend out or make any other distribution with respect to
18 capital and surplus in excess of the limitations under section
19 222 without the prior approval of the superintendent. Approval
20 of an ongoing plan for the payment of dividends or other
21 distributions must be conditioned upon the retention, at the time
22 of each payment, of capital and surplus in excess of amounts
23 specified by, or determined in accordance with formulas approved
24 by, the superintendent.

25 **§6705. Minimum surplus**

26 1. Minimum surplus. A captive insurance company may not be
27 licensed unless the company has and maintains a free surplus of:

- 28 A. In the case of a pure captive insurance company, not
29 less than \$150,000;
- 30 B. In the case of an association captive insurance company
31 incorporated as a stock insurer, not less than \$350,000;
32
- 33 C. In the case of an industrial insured captive insurance
34 company incorporated as a stock insurer, not less than
35 \$300,000;
- 36 D. In the case of an association captive insurance company
37 incorporated as a mutual insurer, not less than \$750,000; and
38
- 39 E. In the case of an industrial insured captive insurance
40 company incorporated as a mutual insurer, not less than
41 \$500,000.

2 The superintendent may prescribe additional surplus based upon
3 the type, volume and nature of insurance business transacted.

4 2. Letter of credit. The surplus may be in the form of
5 cash, an irrevocable letter of credit issued by a bank chartered
6 in this State or a member bank of the Federal Reserve System or
7 any other security approved by the superintendent.

8 3. Dividends. A captive insurance company may not pay a
9 dividend out or make any other distribution with respect to
10 capital or surplus in excess of the limitations under section 222
11 without prior approval of the superintendent.

12 §6706. Formation of captive insurance companies in this State

13 1. Pure captive insurance company. A pure captive
14 insurance company must be incorporated:

15 A. As a stock insurer with capital divided into shares and
16 held by the stockholders; or

17 B. As a nonprofit corporation whose votes of membership
18 interest are held by a parent organization formed under a
19 nonprofit law or by such nonprofit parent and its affiliated
20 companies.

21 2. Association captive insurance company. An association
22 captive insurance company or an industrial insured captive
23 insurance company may be incorporated:

24 A. As a stock insurer with its capital divided into shares
25 and held by the stockholders; or

26 B. As a mutual insurer without capital stock, the governing
27 body of which must be elected by the member organizations of
28 its association.

29 3. Incorporators. A captive insurance company may not have
30 fewer than 3 incorporators, and at least 2 incorporators must be
31 residents of this State.

32 4. Applicability of chapter 47. To the extent not
33 inconsistent with this chapter, a captive insurance company is
34 subject to the procedures applicable to domestic insurers
35 pursuant to chapter 47. With respect to mergers, consolidations,
36 conversions and mutualizations, the superintendent, in the
37 superintendent's discretion, may waive any public hearing
38 requirement.

2 5. Issuance of stock. The capital stock of a captive
insurance company incorporated as a stock insurer may not be
4 issued at less than par value.

6 6. Board of directors. At least one of the members of the
board of directors of a captive insurance company incorporated in
8 this State must be a resident of this State.

10 7. Captive insurance company. A captive insurance company
formed under this chapter, except for a pure nonprofit captive
12 insurance company, has the privileges granted by and is subject
to Title 13-A and this chapter. In the event of conflict between
14 Title 13-A and this chapter, this chapter controls.

16 8. Pure nonprofit captive insurance company. A pure
nonprofit captive insurance company formed under this chapter has
18 the privileges granted by and is subject to Title 13-B and this
chapter. In the event of conflict between Title 13-B and this
20 chapter, this chapter controls.

22 §6707. Financial statements and other reports

24 1. Financial statement. A captive insurance company shall
submit an annual statement of financial condition written
26 according to generally accepted accounting principles and audited
by an independent certified public accountant to the
28 superintendent on or before the last day of the 6th month
following the end of the company's fiscal year.

30 2. Annual report. An association captive insurance company
or risk retention captive insurance company shall file an annual
32 statement in accordance with statutory accounting practices,
which must be a true statement of its financial condition,
34 transactions and affairs as of the immediately preceding December
31st, in general form and context as approved by the National
36 Association of Insurance Commissioners, verified by oaths of at
least 2 of the insurer's principal officers.

38 3. Reserves. The statements required under subsections 1
40 and 2 must include, but are not limited to, actuarially
appropriate reserves for:

42 A. Known claims and associated expenses;

44 B. Claims incurred but not reported and associated expenses;

46 C. Unearned premiums; and

48 D. Bad debts, reserves for which must be shown as
50 liabilities.

2 An actuarial opinion regarding reserves for known claims and
4 claims incurred but not reported, and expenses associated with
6 those claims, must be included in the audited statements. The
8 actuarial opinion must be given by a member of the American
Academy of Actuaries or other qualified loss reserve specialist
as defined in the annual statement adopted by the National
Association of Insurance Commissioners.

10 4. Other reports. The superintendent may prescribe the
12 format and frequency of other reports, which may include, but are
14 not limited to, summary loss reports and quarterly financial
statements.

16 §6708. Examinations and investigations

18 1. Powers, authorities and duties of superintendent. The
20 powers, authorities and duties relating to examinations and
22 investigations vested in and imposed upon the superintendent
24 pursuant to chapter 3 are extended to and imposed upon the
superintendent in respect to examinations of captive insurance
companies to the same extent they would otherwise be applicable
with respect to domestic insurers.

26 2. Confidentiality of examinations documents. All
28 examination reports, preliminary examination reports or results,
30 working papers, recorded information, documents and copies of any
32 of these produced by, obtained by or disclosed to the
34 superintendent or any other person in the course of an
36 examination made under this section are confidential and are not
38 subject to subpoena and may not be made public by the
40 superintendent or any other person, except to the extent provided
in this subsection. The superintendent may grant access to such
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, as long as the officers
receiving the information agree in writing to hold it in a manner
consistent with this subsection.

42 §6709. Grounds and procedures for suspension and revocation of license

44 1. Grounds for suspension or revocation. The
46 superintendent may suspend or revoke the license of a captive
insurance company for any of the following reasons:

48 A. Insolvency or impairment of capital or surplus;

50 B. Failure to meet the requirements of section 6704 or 6705;

- 2 C. Refusal or failure to submit an annual report required
4 by section 6707 or any other report or statement required by
 law or by lawful order of the superintendent;
- 6 D. Failure to comply with the provisions of the company's
 charter or bylaws;
- 8
- 10 E. Failure to submit to examination or any legal obligation
 as required by section 6708;
- 12 F. Refusal or failure to pay the cost of examination
14 required by sections 228 and 6708;
- 16 G. Use of methods that, although not otherwise specifically
18 prohibited by law, nevertheless render the company's
 operation detrimental or the company's condition unsound
 with respect to the public or to its policyholders;
- 20 H. Failure to maintain actuarially appropriate loss
22 reserves as determined by the superintendent, except that
24 the superintendent shall issue at least one warning to the
 captive insurance company requiring it to correct the
 problem prior to suspending or revoking the license; and
- 26 I. Failure otherwise to comply with the laws of this State.

28 2. Procedure. Notwithstanding any other law, if the
30 superintendent, upon examination, hearing or other evidence,
32 finds that a captive insurance company has committed any of the
34 acts specified in subsection 1, the superintendent may suspend or
 revoke the license if the superintendent determines that it is in
 the best interest of the public and the policyholders of the
 captive insurance company.

36 §6710. Legal investments

38 A captive insurance company is subject to the restrictions
40 on allowable investments provided under chapter 13, except that a
42 pure captive insurance company may petition the superintendent
 for approval of investments that are not specified in this Title.

44 §6711. Reinsurance

46 1. Reinsurance. A captive insurance company may provide
48 reinsurance on risks ceded by any other insurer; however, the
 ceding of insurance by a domestic insurer may be done only
 pursuant to section 731-B.

2 2. Credit for reserves. A captive insurance company may
3 take credit for reserves on risks ceded to a reinsurer, except
4 that a captive insurance company may not cede risks without the
5 approval of the superintendent.

6 3. Credit for reserves on risks; adequate security. In
7 addition to reinsurers complying with chapter 9, subchapter III,
8 a captive insurance company may take credit for reserves on risks
9 or portions of risks ceded to a pool, exchange or association
10 acting as a reinsurer that has been authorized by the
11 superintendent. The superintendent may require any other
12 documents, financial information or other evidence that such a
13 pool, exchange or association is able to provide adequate
14 security for its financial obligations. The superintendent may
15 deny authorization or impose any limitations on the activities of
16 a reinsurance pool, exchange or association that, in the
17 superintendent's judgment are necessary and proper to provide
18 adequate security for the ceding captive insurance company and
19 for the protection and benefit of the public.

20 4. Reinsurance of workers' compensation risks. A captive
21 insurance company may reinsure workers' compensation risks of a
22 qualified self-insured plan of its parent and affiliated
23 companies to the extent that these risks are insured by an
24 insurance company that meets the standards for acceptance of
25 reinsurance of workers' compensation self-insurance.

26 **§6712. Rating organizations**

27 A captive insurance company is not required to become a
28 member of a rating organization.

29 **§6713. Exemption from compulsory associations**

30 A captive insurance company may not join or contribute
31 financially to any plan, pool, association or guaranty or
32 insolvency fund in this State, and a captive insurance company
33 and its insureds, its parent or any affiliated company or member
34 organization of its association may not receive any benefit from
35 the plan, pool, association or guaranty or insolvency fund for
36 claims arising out of the operations of the captive insurance
37 company.

38 **§6714. Delinquent captive insurers**

39 The provisions of chapter 47 apply to captive insurers.

40 **§6715. Confidential information**

2 All information submitted to the superintendent pursuant to
3 section 6702, subsection 4 is confidential and is not a public
4 record within the meaning of Title 1, chapter 13, subchapter I.
5 Each report or statement filed with the superintendent pursuant
6 to section 6707, except those filed by or with respect to
7 industrial insured groups as defined in section 6701, subsection
8 8, is confidential and is not a public record within the meaning
9 of Title 1, chapter 13, subchapter I. The confidential nature of
10 this information does not limit the ability of the
11 superintendent, in the superintendent's discretion, to disclose
12 such information to a public official in another state, as long
13 as the public official agrees in writing to maintain the
14 confidentiality of such information and the laws of the state in
15 which the public official serves designate such information as
16 confidential.

17 **§6716. Redomestication; approval as a domestic captive insurer**

18 **1. Procedure.** A foreign or alien captive insurance company
19 may become a domestic captive insurance company by:

20 A. Complying with all of the requirements relating to the
21 organization and licensing of a domestic captive insurance
22 company of the same type and any requirements that the
23 superintendent may adopt by rule;

24 B. Amending the articles of incorporation or other
25 organizational document to comply with the laws of this
26 State. The document must be restated in its entirety before
27 its submission to the superintendent. Before the amended
28 and restated articles of incorporation or other
29 organizational document is transmitted to the Secretary of
30 State, the foreign or alien captive insurance company shall
31 petition the superintendent to issue a certificate setting
32 forth the superintendent's finding that the redomestication
33 and maintenance of the corporation satisfies paragraph A and
34 will promote the general good of the State. The company's
35 petition must be accompanied by a redomestication fee of
36 \$500. In arriving at the finding, the superintendent shall
37 consider:

38 (1) The character, reputation, financial standing and
39 purposes of the foreign or alien captive insurance
40 company;

41 (2) The character, reputation, financial
42 responsibility, insurance experience and business
43 qualifications of the officers and directors; and

2 (3) Any other aspects the superintendent determines
3 advisable;

4 C. Transmitting the following to the Secretary of State for
5 filing:

6 (1) The articles of redomestication;

7 (2) The certificate of general good issued by the
8 superintendent;

9 (3) The certificate of good standing duly
10 authenticated by the proper officer of the state or
11 country under the laws of which the foreign or alien
12 captive insurance company is incorporated. The
13 certificate may not be dated earlier than 30 days prior
14 to the filing of the articles of redomestication. If
15 the certificate of good standing is in a foreign
16 language, a translation under oath of the translator
17 must accompany the certificate;

18 (4) Amendments to the articles of incorporation or
19 other organizational document in compliance with the
20 laws of this State; and

21 (5) The restatement of the articles of incorporation
22 or other organizational document in its entirety; and

23 D. Stating in the articles of redomestication:

24 (1) The name of the corporation;

25 (2) The date of incorporation and state or country of
26 incorporation;

27 (3) The street address of the principal office in this
28 State;

29 (4) The names and titles of the officers and directors
30 of the corporation;

31 (5) A statement that the corporation is moving its
32 domicile from its present state or country to this
33 State;

34 (6) A statement that redomestication will occur upon
35 filing the articles of redomestication and that the
36 corporation is subject to the laws of this State; and

2 (7) A statement that copies of the articles of
4 incorporation or other organizational document and any
6 amendments certified by the proper officer of the state
8 or country under the laws of which the corporation is
 incorporated are attached. If any of these documents
 are in a foreign language, a translation under oath of
 the translator must accompany these documents.

10 2. Licensure. Upon payment to the superintendent of the
12 issuance fee set forth in section 601, subsection 1, the domestic
14 captive insurance company is entitled to the necessary or
16 appropriate certificates and licenses to do business in this
 State and is subject to the authority and jurisdiction of this
 State. A captive insurance company redomesticating into this
 State need not merge, consolidate, transfer assets or otherwise
 engage in any other reorganization other than as specified in
 this section.

18 3. Rights and privileges; liabilities. Upon
20 redomestication in accordance with this section, the foreign or
22 alien captive insurance company becomes a domestic captive
24 insurance company organized under the laws of this State and has
26 all the rights, privileges, immunities and powers and is subject
28 to all applicable laws, duties and liabilities of a domestic
 captive insurance company of the same type. The domestic captive
 insurance company possesses all rights that it had prior to the
 redomestication to the extent permitted by the laws of this State
 and is responsible and liable for all the liabilities and
 obligations that it was subject to prior to the redomestication.
 All outstanding policies of the captive insurance company remain
 in full force and effect.

32 §6717. Redomestication; conversion to foreign insurer

34 1. Transfer of domicile. A domestic captive insurance
36 company, upon approval by the superintendent, may transfer its
38 domicile to any other jurisdiction in accordance with the laws of
 that jurisdiction.

40 2. Notice of intent to transfer required. Before
42 transferring its domicile to any other jurisdiction and before
44 the notice of change in domicile is transmitted to the Secretary
46 of State, the domestic captive insurance company shall deliver to
 the superintendent a notice of intent to transfer, along with
 payment of a transfer fee of \$500, and shall petition the
 superintendent to issue a certificate of transfer.

48 3. Contents of notice. The notice of change in domicile,
50 the certificate of transfer issued by the superintendent, the
 proof of redomestication and the filing fee must be transmitted

2 to the Secretary of State. The notice of the change in domicile
3 must contain the following:

4 A. Name of the corporation;

6 B. Dates that notice of the corporation's intent to
7 transfer domicile from this State was published, once in
8 each of 4 successive weeks in 4 publications in a newspaper
9 of general circulation published in this State;

10 C. Date of the transfer of its domicile; and

12 D. State or country to which its domicile will be
14 transferred.

16 4. Effect of transfer. Upon any transfer authorized
17 pursuant to this section, the captive insurance company ceases to
18 be domiciled in this State, and its corporate or other legal
19 existence in this State ceases upon the issuance of a certificate
20 of discontinuance by the Secretary of State.

22 **§6718. Rules**

24 The superintendent may adopt rules to implement this
25 chapter. Rules adopted pursuant to this chapter are routine
26 technical rules as defined in Title 5, chapter 375, subchapter
27 II-A.

28 **§6719. Laws applicable**

30 An insurance law of this State, other than described or
31 referenced in this chapter, does not apply to a captive insurance
32 company.

34 **§6720. Fees, taxes and assessments**

36 Except as otherwise specified in this chapter, all fees,
37 taxes and assessments as set out in sections 237, 601 and 602
38 apply to captive insurers in the same manner as they apply to
39 other insurers.

42 **Sec. 2. 36 MRS §2513-B** is enacted to read:

44 **§2513-B. Tax on premiums collected by captive insurers; rate of**
45 **tax**

46 **1. Generally.** A captive insurance company shall pay to the
47 State Tax Assessor a tax at a rate of .375 of 1% on the first
48 \$20,000,000, .30 of 1% on the next \$20,000,000, .20 of 1% on the
49 next \$20,000,000 and .075 of 1% of each \$1 thereafter on the
50 next \$20,000,000 and .075 of 1% of each \$1 thereafter on the

2 direct premiums collected or contracted for on policies or
3 contracts of insurance written by the captive insurance company
4 during the year ending December 31st next preceding.

6 2. Reinsurance. A captive insurance company shall pay to
7 the State Tax Assessor a tax at the rate of .0225 of 1% on the
8 first \$20,000,000 of assumed reinsurance premium, .0150 of 1% on
9 the next \$20,000,000, .0050 of 1% on the next \$20,000,000 and
10 .0025 of 1% of each \$1 thereafter. However, no reinsurance tax
11 applies to premiums for risks or portions of risks that are
12 subject to taxation on a direct basis pursuant to subsection 1.
13 No reinsurance premium tax is payable in connection with the
14 receipt of assets in exchange for the assumption of loss reserves
15 and other liabilities of another insurer under common ownership
16 and control if that transaction is part of a plan to discontinue
17 the operations of another insurer and if part of the intent of
18 the parties to that transaction is to renew or maintain that
19 business with the captive insurance company.

20 3. Maine corporations. When a corporation whose corporate
21 domicile is located in this State forms a captive insurance
22 company, that captive insurance company shall pay a tax at the
23 rate of 2% on the direct premiums collected or contracted for on
24 policies or contracts of insurance written by the captive
25 insurance company during the year ending December 31st next
26 preceding.

28 4. Alternative minimum tax. If the aggregate taxes to be
29 paid by a captive insurance company calculated under subsections
30 1 and 2 amount to less than \$4,000 in any year, that captive
31 insurance company shall pay a tax of \$4,000 for that year.

32 5. Common ownership. Two or more captive insurance
33 companies under common ownership and control are taxed as though
34 they were a single captive insurance company. For purposes of
35 this subsection, "common ownership and control" means:

38 A. In the case of stock corporations, the direct or
39 indirect ownership of 80% or more of the outstanding voting
40 stock of 2 or more corporations by the same shareholder or
41 shareholders; and

42 B. In the case of mutual corporations, the direct or
43 indirect ownership of 80% or more of the surplus and the
44 voting power of 2 or more corporations by the same member or
45 members.

48 6. Premium tax in lieu of other taxes. Payment by a
49 captive insurance company of the tax imposed by this section is
50 in lieu of all taxes imposed by this Title upon the captive

2 insurance company or upon any subsidiary of that captive
3 insurance company, upon premiums or upon income and in lieu of
4 any franchise, privilege or other taxes measured by income of the
5 captive insurance company or subsidiary.

6 **Sec. 3. 36 MRSA §2515**, as amended by PL 1985, c. 783, §13, is
7 further amended to read:

8 **§2515. Amount of tax**

10 In determining the amount of tax due under section 2513 or
11 ~~2513-B, there shall be deducted by~~ each company shall deduct from
12 the full amount of gross direct premiums, the amount of all
13 direct return premiums ~~thereon,~~ on the gross direct premiums and
14 all dividends paid to policyholders on direct premiums, and the
15 tax shall must be computed by said those companies or their
16 agents.

18 **Sec. 4. 36 MRSA §2518**, as amended by PL 1979, c. 378, §19, is
19 further amended to read:

21 **§2518. Neglect to make return; assessment; failure to pay**

23 If any insurance company, captive insurance company or
24 association fails to pay on demand a tax assessed under section
25 141, subsection 2, paragraph C, the State Tax Assessor shall
26 certify that failure to the Superintendent of Insurance who shall
27 give notice to the company or association that it shall may not
28 do ~~no~~ any more business in the State. Whoever, after such notice,
29 does business for such company or association shall ~~be~~ is guilty
30 of a Class E crime.

32 **Sec. 5. 36 MRSA §2521-A**, as amended by PL 1993, c. 410, Pt.
33 00, §1, is further amended to read:

35 **§2521-A. Returns; payment of tax**

37 Every insurance company, captive insurance company,
38 association or attorney-in-fact of a reciprocal insurer subject
39 to tax as imposed by this chapter shall on or before the last day
40 of each April, the 25th day of each June and the last day of each
41 October file with the State Tax Assessor on forms prescribed by
42 the State Tax Assessor a return for the quarter ending the last
43 day of the preceding month, except for the month of June, which
44 is for the quarter ending June 30th. These returns may be on an
45 estimated basis, ~~provided that~~ as long as each April and June
46 installment equals at least 35% of the total tax paid for the
47 preceding calendar year or 35% of the total tax to be paid for
48 the current calendar year. The remaining installments must equal
49 15% of the total tax to be paid for the preceding calendar year
50 or 15% of the total tax to be paid for the current year. An

2 authorized company official shall affirm which elective is
3 selected. Such elective can not be changed during the current
4 calendar year. The final return must be filed on or before March
5 15th covering the prior calendar year.

6 At the time of filing such returns, each insurance company,
7 captive insurance company, association or attorney-in-fact of a
8 reciprocal insurer shall pay to the State Tax Assessor the amount
9 of tax shown due.

10 Insurance companies, captive insurance companies,
11 associations or attorneys-in-fact of a reciprocal insurer with
12 annual tax liability not exceeding \$500 may with approval of the
13 State Tax Assessor file an annual return with payment on the last
14 day of January each year covering the prior calendar year.

18 SUMMARY

20 This bill implements the recommendations of the September 3,
21 1996 Final Report and Recommendations of the Financial Services
22 Economic Development Subgroup.

24 The bill authorizes the formation of captive insurers that
25 would be able to provide insurance coverage with respect to the
26 exposures of their parent or affiliated companies. Captive
27 insurance companies could be owned and controlled by single
28 corporations, by groups of corporations or by associations.
29 Capital and surplus requirements for captive insurance companies
30 are significantly less than those otherwise applicable to
31 commercial insurers. Captive insurers are regulated by the
32 Department of Professional and Financial Regulation, Bureau of
33 Insurance to the extent provided for in the bill.

34 This bill provides for taxation of captive insurers on a
35 different basis than that applicable to other insurers. Captive
36 insurers domiciled in Maine are taxed on all premiums received
37 with respect to risks in other jurisdictions at rates comparable
38 to those imposed in other jurisdictions with captive insurance
39 laws. Taxation of direct premiums with respect to Maine risks is
40 at the same rate as is applicable to other insurers. Captive
41 insurers also are subject to an alternative minimum tax.
42