

# MAINE STATE LEGISLATURE

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STATE LEGISLATURE  
#12436

# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1436

S.P. 520

In Senate, April 7, 2009

### An Act To Create Economic Development in the State by Modernizing the State's Captive Insurance Laws

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Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Handwritten signature of Joy J. O'Brien in cursive.

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator ALFOND of Cumberland.  
Cosponsored by Representative PRIEST of Brunswick and  
Senators: BOWMAN of York, DAMON of Hancock, GERZOFISKY of Cumberland,  
McCORMICK of Kennebec, Representatives: MORRISON of South Portland, PRESCOTT of  
Topsham, RICHARDSON of Warren, WATSON of Bath.

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

2 **Sec. 1. 24-A MRSA §6701, sub-§2;** as enacted by PL 1997, c. 435, §1, is  
3 amended to read:

4 **2. Association.** "Association" means any legal association of individuals,  
5 corporations, limited liability companies, partnerships or associations that have been in  
6 continuous existence for at least one year, except labor organizations, the member  
7 organizations of which collectively:

8 A. Own, control or hold with power to vote all of the outstanding voting securities of  
9 an association captive insurance company incorporated as a stock insurer; ~~or~~

10 B. Have complete voting control over an association captive insurance company  
11 incorporated as a mutual or reciprocal insurer; ~~or~~

12 C. Constitute all of the subscribers of an association captive insurance company  
13 formed as a reciprocal insurer.

14 **Sec. 2. 24-A MRSA §6701, sub-§4,** as enacted by PL 1997, c. 435, §1, is  
15 amended to read:

16 **4. Captive insurance company.** "Captive insurance company" means any pure  
17 captive insurance company, sponsored captive insurance company, association captive  
18 insurance company ~~or,~~ industrial insured captive insurance company formed or licensed  
19 under this chapter.

20 **Sec. 3. 24-A MRSA §6701, sub-§5, ¶C,** as enacted by PL 1997, c. 435, §1, is  
21 repealed.

22 **Sec. 4. 24-A MRSA §6701, sub-§5, ¶D** is enacted to read:

23 D. Has all its risks managed by a pure captive insurance company in accordance with  
24 this chapter.

25 **Sec. 5. 24-A MRSA §6701, sub-§8, ¶A,** as enacted by PL 1997, c. 435, §1, is  
26 amended to read:

27 A. A group of industrial insureds that collectively:

28 (1) Owns, controls or holds with power to vote all of the outstanding voting  
29 securities of an industrial insured captive insurance company incorporated as a  
30 stock insurer; ~~or~~

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

33 (3) Constitutes all of the subscribers of an industrial insured captive insurance  
34 company formed as a reciprocal insurer; or

35 **Sec. 6. 24-A MRSA §6701, sub-§9,** as enacted by PL 1997, c. 435, §1, is  
36 amended to read:

1           **9. Member organization.** "Member organization" means any individual,  
2 corporation, limited liability company, partnership or association that belongs to an  
3 association.

4           **Sec. 7. 24-A MRSA §6701, sub-§10**, as enacted by PL 1997, c. 435, §1, is  
5 amended to read:

6           **10. Parent.** "Parent" means a corporation, limited liability company, partnership or  
7 individual that directly or indirectly owns, controls or holds with power to vote more than  
8 50% ~~of~~ of the outstanding voting securities of a pure captive insurance company  
9 organized as a stock corporation or 50% of the membership interests of a pure captive  
10 insurance company organized as a nonprofit corporation.

11           **Sec. 8. 24-A MRSA §6701, sub-§11**, as enacted by PL 1997, c. 435, §1, is  
12 amended to read:

13           **11. Pure captive insurance company.** "Pure captive insurance company" means  
14 any company that insures risks of its parent, and affiliated companies or controlled  
15 unaffiliated businesses, ~~but does not include those insurers that otherwise qualify for a~~  
16 ~~certificate of authority as an insurer.~~ "Pure captive insurance company" includes, with  
17 respect to operations in this State unless otherwise restricted by the superintendent, a  
18 branch captive insurance company.

19           **Sec. 9. 24-A MRSA §6702**, as amended by PL 1997, c. 583, §§1 to 3, is further  
20 amended to read:

21           **§6702. Licensing; authority**

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

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

26           B. Holds at least one meeting of its board of directors, or other governing body, each  
27 year in this State. For pure captive insurance companies and pure nonprofit captive  
28 insurance companies, the annual in-state meeting requirement may be satisfied by a  
29 teleconferenced or videoconferenced meeting if at least one Maine resident member  
30 of the board of directors, or other governing body, participates in the meeting from  
31 this State;

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

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

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

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

- 4           A. The amount and liquidity of its assets relative to the risks to be assumed;
- 5           B. The adequacy of the expertise, experience and character of the person or persons  
6 who will manage it;
- 7           C. The overall soundness of its plan of operation;
- 8           D. The adequacy of the loss prevention programs of its parent or member  
9 organizations, as applicable;
- 10          E. The character, reputation, financial standing and purposes of the incorporators;
- 11          F. The character, reputation, financial responsibility, insurance experience and  
12 business qualifications of the officers and directors; and
- 13          G. Any other factors determined relevant by the superintendent in ascertaining  
14 whether the proposed captive insurance company will be able to meet its policy  
15 obligations.

16           **4. License.** If the superintendent is satisfied that the documents and statements filed  
17 by the captive insurance company under subsections 2 and 3 comply with this chapter,  
18 the superintendent may grant a license authorizing it to do insurance business. A captive  
19 insurance company shall comply with all applicable federal and state laws relating to the  
20 risks insured pursuant to the license granted by the superintendent.

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

24           ~~**6. Activities.** A captive insurance company may engage in the business of the  
25 following types of insurance:~~

- 26           ~~A. Casualty insurance as defined by section 707, excluding the direct writing of  
27 workers' compensation insurance. Workers' compensation risks may be reinsured by  
28 a captive insurer only as provided in section 6711;~~
- 29           ~~B. Marine and transportation insurance as defined by section 708, subsection 1;~~
- 30           ~~C. Marine protection and indemnity insurance, as defined by section 708, subsection  
31 1;~~
- 32           ~~D. Wet marine and transportation insurance as defined by section 708, subsection 2;~~
- 33           ~~E. Property insurance as defined by section 705;~~
- 34           ~~F. Surety insurance as described in section 706;~~
- 35           ~~G. Title insurance as defined by section 709;~~
- 36           ~~H. Reinsurance of credit life insurance and credit health insurance, as defined by  
37 section 2853, to the extent provided in section 6711;~~

1 ~~I. Reinsurance of life insurance as defined by section 702, annuities as defined by~~  
2 ~~section 703 and health insurance as defined by section 704 written in connection with~~  
3 ~~the employee benefit plan or plans of the single or association parent of a captive~~  
4 ~~insurer to the extent provided in section 6711; and~~

5 ~~J. Financial guaranty insurance as defined in section 709-A.~~

6 **7. Permitted activities.** A captive insurance company, when permitted by its  
7 articles of association or charter, may apply to the superintendent for a license to provide  
8 any insurance described in ~~subsection 6~~ this Title, including annuities, except that:

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

11 B. An association captive insurance company may not insure or reinsure any risks  
12 other than those of the member organizations of its association and their affiliated  
13 companies;

14 C. An industrial insured captive insurance company may not insure or reinsure any  
15 risks other than those of the industrial insureds that comprise the industrial insured  
16 group and their affiliated companies;

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

19 E. A captive insurance company may not accept or cede reinsurance except as  
20 provided in section 6711-; and

21 F. A captive insurance company may not provide workers' compensation insurance  
22 except for reinsurance of workers' compensation risk as permitted in section 6711.

23 **8. Certificate of good standing.** Prior to its organization or incorporation with the  
24 Secretary of State, the organizers or incorporators of a captive insurance company shall  
25 petition the superintendent to issue a certificate stating the superintendent's finding that  
26 the establishment and continued existence of the proposed captive insurance company,  
27 however organized, will promote the general good of the State. In making such a finding,  
28 the superintendent shall consider:

29 A. The character, reputation, financial standing and purpose of the organizers or  
30 incorporators;

31 B. The character, reputation, financial responsibility, insurance experience and  
32 business qualifications of the officers and directors of the proposed captive insurance  
33 company; and

34 C. Any other relevant information determined by the superintendent.

35 Any certificate issued by the superintendent pursuant to this subsection must be filed with  
36 the Secretary of State to be recorded with the articles of incorporation of the captive  
37 insurance company.

38 **Sec. 10. 24-A MRSA §6704**, as enacted by PL 1997, c. 435, §1, is amended to  
39 read:

1           **§6704. Minimum capital and surplus**

2           **1. Minimum capital and surplus.** A pure captive insurance company, an  
3 association captive insurance company incorporated as a stock insurer or an industrial  
4 insured captive insurance company incorporated as a stock insurer may not be issued a  
5 license unless the company has and maintains unimpaired paid-in capital and surplus of:

6           A. In the case of a pure captive insurance company, not less than \$100,000  
7           \$250,000;

8           B. In the case of an association captive insurance company incorporated as a stock  
9 insurer, not less than ~~\$400,000~~ \$750,000; and

10          C. In the case of an industrial insured captive insurance company incorporated as a  
11 stock insurer, not less than ~~\$200,000;~~ \$500,000;

12          D. In the case of a sponsored captive insurance company, not less than \$500,000;  
13          and

14          E. In the case of a risk retention group, not less than \$1,000,000.

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

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

20          **3. Dividends.** A captive insurance company may not pay a dividend out of or make  
21 any other distribution with respect to capital and surplus in excess of the limitations under  
22 section 222 without the prior approval of the superintendent. Approval of an ongoing  
23 plan for the payment of dividends or other distributions must be conditioned upon the  
24 retention, at the time of each payment, of capital and surplus in excess of amounts  
25 specified by, or determined in accordance with formulas approved by, the superintendent.  
26 Notwithstanding the provisions of Title 13-B or 13-C, a captive insurance company  
27 organized under the provisions of either Title may make such distributions as are in  
28 conformity with its purposes with the prior approval of the superintendent.

29          **Sec. 11. 24-A MRSA §6705,** as enacted by PL 1997, c. 435, §1, is repealed.

30          **Sec. 12. 24-A MRSA §6706,** as corrected by RR 2001, c. 2, Pt. B, §45 and  
31 affected by §58, is amended to read:

32           **§6706. Formation of captive insurance companies in this State**

33           **1. Pure captive insurance company.** A pure captive insurance company must be  
34 incorporated:

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

- 1 B. As a nonprofit corporation whose votes of membership interest are held by a  
2 parent organization formed under a nonprofit law or by such nonprofit ~~parent and its~~  
3 ~~affiliated companies.~~ corporation with one or more members; or  
4 C. As a manager-managed limited liability company.
- 5 **2. Association captive insurance company.** An association captive insurance  
6 company or an industrial insured captive insurance company may be ~~incorporated:~~
- 7 A. As Incorporated as a stock insurer with its capital divided into shares and held by  
8 the stockholders; or
- 9 B. As a mutual insurer without capital stock, the governing body of which must be  
10 elected by the member organizations of its association;
- 11 C. Organized as a reciprocal insurer in accordance with this Title; or  
12 D. Organized as a manager-managed limited liability company.
- 13 **3. Incorporators.** A captive insurance company may not have fewer than 3  
14 incorporators, ~~and at least 2 incorporators~~ or 3 organizers of whom at least one must be  
15 residents a resident of this State. If the captive insurance company is a limited liability  
16 company, at least one manager must be a resident of this State.
- 17 **4. Applicability of chapter 47.** To the extent not inconsistent with this chapter, a  
18 captive insurance company is subject to the procedures applicable to domestic insurers  
19 pursuant to chapter 47 except that, if the surviving entity after a merger, consolidation,  
20 conversion or mutualization is a captive insurance company, a captive insurance company  
21 is subject to this chapter. With respect to mergers, consolidations, conversions and  
22 mutualizations, the superintendent, in the superintendent's discretion, may ~~waive any~~  
23 ~~public hearing requirement.:~~
- 24 A. Waive any public hearing requirement;
- 25 B. Permit an alien insurer as a party to a merger as long as the requirements for a  
26 merger between a captive insurance company and a foreign insurer apply. For the  
27 purposes of this paragraph, an alien insurer must be treated as a foreign insurer and  
28 the jurisdiction of the alien insurer is considered a state; or
- 29 C. Approve the conversion of a captive insurance company organized as a stock  
30 insurer to a nonprofit corporation with one or more members.
- 31 **5. Issuance of stock.** ~~The~~ If the capital stock of a captive insurance company  
32 incorporated as a stock insurer ~~may not be~~ is issued at ~~less than~~ par value, stock may not  
33 be issued at less than par value.
- 34 **6. Board of directors.** ~~At~~ If formed as a corporation, at least one of the members of  
35 the board of directors of a captive insurance company incorporated in this State must be a  
36 resident of this State. If formed as a reciprocal insurer, at least one of the members of the  
37 subscriber's advisory committee must be a resident of this State. If organized as a limited  
38 liability company, at least one manager must be a resident of this State.



1           **7. Captive insurance company.** A captive insurance company formed under this  
2 chapter, except for a pure nonprofit captive insurance company, has the privileges granted  
3 by and is subject to Title 13-C and this chapter. In the event of conflict between Title  
4 13-C and this chapter, this chapter controls.

5           **8. Pure nonprofit captive insurance company.** A pure nonprofit captive insurance  
6 company formed under this chapter has the privileges granted by and is subject to Title  
7 13-B and this chapter. In the event of conflict between Title 13-B and this chapter, this  
8 chapter controls.

9           **9. Quorum.** If formed as a corporation, the articles of incorporation or bylaws of a  
10 captive insurance company may authorize a quorum of its board of directors to consist of  
11 no fewer than 1/3 of the fixed or prescribed number of directors determined under Title  
12 13-B or 13-C. If formed as a reciprocal insurer, the subscribers' agreement or other  
13 organizing document may authorize a quorum of its subscribers' advisory committee to  
14 consist of no fewer than 1/3 of the number of its members.

15           **Sec. 13. 24-A MRSA §6708, sub-§3** is enacted to read:

16           **3. Examinations.** At least once in 3 years, and whenever the superintendent  
17 determines it to be prudent, the superintendent shall personally, or by some competent  
18 person appointed by the superintendent, visit each captive insurance company and  
19 thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to  
20 fulfill its obligations and whether it has complied with the provisions of this chapter. The  
21 superintendent may enlarge the 3-year period to 5 years, as long as the captive insurance  
22 company is subject to a comprehensive annual audit during the period of a scope  
23 satisfactory to the superintendent by independent auditors approved by the  
24 superintendent. The expenses and charges of the examination must be paid to the State by  
25 the company or companies examined.

26           **Sec. 14. 24-A MRSA §6709, sub-§1, ¶B,** as enacted by PL 1997, c. 435, §1, is  
27 amended to read:

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

29           **Sec. 15. 24-A MRSA §6709, sub-§1, ¶D,** as enacted by PL 1997, c. 435, §1, is  
30 amended to read:

31           D. Failure to comply with the provisions of the company's charter or bylaws or other  
32 organizational document;

33           **Sec. 16. 24-A MRSA §6710,** as enacted by PL 1997, c. 435, §1, is amended to  
34 read:

35           **§6710. Legal investments**

36           A pure captive insurance company is not subject to ~~the~~ any restrictions on allowable  
37 investments including those provided under chapter 13, except that a pure captive  
38 insurance company may petition the superintendent for approval of investments that are  
39 not specified in this Title may prohibit or limit any investment that threatens the solvency

1 or liquidity of such insurance company. A pure captive insurance company may not  
2 make a loan to or investments in its parent or affiliated companies without the prior  
3 written approval of the superintendent. A loan of any minimum capital and surplus funds  
4 required by section 6704 is prohibited. Except as otherwise authorized by the  
5 superintendent, association captive insurance companies and industrial insured captive  
6 insurance companies are subject to the restrictions on allowable investments provided  
7 under chapter 13. With respect to investments of association captive insurance  
8 companies, the superintendent may approve the use of alternative methods of valuation  
9 and rating.

10 **Sec. 17. 24-A MRSA §6711, sub-§1**, as enacted by PL 1997, c. 435, §1, is  
11 amended to read:

12 **1. Reinsurance.** A captive insurance company may provide reinsurance on risks  
13 ceded by any other insurer; ~~however, the ceding of insurance by a domestic insurer may~~  
14 ~~be done only pursuant to section 731 B~~ to the extent permitted by section 6702.

15 **Sec. 18. 24-A MRSA §6711, sub-§2**, as enacted by PL 1997, c. 435, §1, is  
16 amended to read:

17 **2. Credit for reserves.** A captive insurance company may take credit for reserves  
18 ~~on risks~~ the reinsurance of risks or portions of risks ceded to a reinsurer, ~~except that a in~~  
19 accordance with this Title. A captive insurance company may not cede risks or take  
20 credit for the reinsurance of risks or portions of risk without the approval of the  
21 superintendent, ~~except for business written outside the United States by an alien captive~~  
22 insurance company.

23 **Sec. 19. 24-A MRSA §6711, sub-§4**, as enacted by PL 1997, c. 435, §1, is  
24 amended to read:

25 **4. Reinsurance of workers' compensation risks.** A captive insurance company  
26 may, with the approval of the superintendent, reinsure workers' compensation risks of a  
27 ~~qualified self-insured plan of its parent and affiliated companies to the extent that these~~  
28 ~~risks are insured by under a statutory workers' compensation policy issued by a licensed~~  
29 insurer or under a qualified self-insured plan. The superintendent may require that all or  
30 part of any assumed self-insured risk be retroceded to an insurance company that meets  
31 the standards for acceptance of reinsurance of workers' compensation self-insurance.

32 **Sec. 20. 24-A MRSA §6721** is enacted to read:

33 **§6721. Rules for controlled unaffiliated business**

34 The superintendent may adopt rules establishing standards to ensure that a parent or  
35 affiliated company is able to exercise control of the risk management function of any  
36 controlled unaffiliated business to be insured by a pure captive insurance company. In the  
37 absence of any rules, the superintendent may approve the coverage of such risks by a pure  
38 captive insurance company upon request. Any rules adopted by the superintendent  
39 pursuant to this section are routine technical rules as described in Title 5, chapter 375,  
40 subchapter 2-A.

1           **Sec. 21. 24-A MRSA §6722** is enacted to read:

2           **§6722. Conversion to or merger with reciprocal insurer**

3           **1. Authority for conversion or merger.** A captive insurance company, association  
4 captive insurance company or industrial insured captive insurance company formed as a  
5 stock or mutual insurer may convert to or merge with a reciprocal insurer with the  
6 approval of the superintendent in accordance with a plan of operation and with the  
7 requirements of this section. Any plan for conversion or merger must provide a fair and  
8 equitable mechanism for purchasing, retiring or otherwise extinguishing the interests of  
9 stockholders and policyholders of a stock insurer and the interests of members and  
10 policyholders of a mutual insurer, including a fair and equitable provision for the rights  
11 and remedies of dissenting stockholders, members or policyholders.

12           **2. Conversion.** The superintendent may not approve a plan of conversion unless the  
13 plan:

14           A. Provides notice of the opportunity to request a hearing to directors, officers,  
15 stockholders, members and policyholders of the captive insurance company. If no  
16 request for a hearing is received, the superintendent is not required to hold a hearing  
17 in the superintendent's discretion;

18           B. Provides a fair and equitable plan for the conversion of stockholder, member or  
19 policyholder interests into subscriber interests in the resulting reciprocal insurer in a  
20 substantially proportionate manner to the corresponding interest in the stock or  
21 mutual insurer except that the resulting reciprocal insurer is not precluded from  
22 applying underwriting criteria that may affect ongoing ownership interests;

23           C. In the case of a stock insurer, has been approved by a majority of voting shares  
24 represented in person or by proxy at a duly called regular or special meeting at which  
25 a quorum is present; and

26           D. In the case of a mutual insurer, has been approved by a majority of the voting  
27 interests of policyholders represented in person or by proxy at a duly called regular or  
28 special meeting at which a quorum is present.

29           The superintendent shall approve a plan of conversion if the superintendent finds that the  
30 conversion will promote the general good of the State in conformity with this chapter. If  
31 the superintendent approves the plan, the superintendent shall amend the converting  
32 insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the  
33 amended certificate of authority to the converting insurer's designated attorney. The  
34 conversion is effective upon the issuance of the amended certificate of authority by the  
35 superintendent. Upon the conversion, the corporate existence of the converting insurer  
36 ceases and the resulting reciprocal insurer shall notify the Secretary of State of the  
37 conversion.

38           **3. Merger.** A plan of merger may not be approved by the superintendent unless the  
39 plan of merger satisfies the same requirements in subsection 2, paragraphs A to D. The  
40 superintendent may permit the formation, without surplus, of a captive insurance  
41 company organized as a reciprocal insurer into which an existing captive insurance  
42 company may be merged for the purpose of facilitation of a transaction under this section

1 except that no more than one authorized insurance company may survive the merger. An  
2 alien insurer may be a party to a merger authorized under this section if the requirements  
3 of this Title for a merger between a domestic and foreign insurer are met. For the  
4 purposes of this section, the alien insurer is treated as a foreign insurer and the  
5 jurisdiction of the alien insurer is considered a state.

6 4. Effect. A conversion or merger pursuant to this section has all of the effects of a  
7 conversion or merger approved pursuant to this Title to the extent that such effects are not  
8 inconsistent with the provisions of this chapter.

9 **Sec. 22. 24-A MRSA §6723** is enacted to read:

10 **§6723. Tax on ordinary income**

11 Notwithstanding any other provision of law, a captive insurance company formed  
12 under this chapter or pursuant to the laws of another state is subject to income taxation  
13 and is not subject to any tax on premium.

14 **Sec. 23. 24-A MRSA §6724** is enacted to read:

15 **§6724. Sponsored captive insurance companies**

16 1. Definitions. As used in this section, unless the context otherwise indicates, the  
17 following terms have the following meanings.

18 A. "Participant" means an entity as described in subsection 6, and any affiliates  
19 thereof, that are insured by a sponsored captive insurance company.

20 B. "Participant contract" means a contract by which a sponsored captive insurance  
21 company insures the risks of a participant.

22 C. "Protected cell" means a separate account established by a sponsored captive  
23 insurance company formed or licensed under the provisions of this chapter in which  
24 assets are maintained for one or more participants in accordance with the terms of  
25 one or more participant contracts to fund the liability of the sponsored captive  
26 insurance company assumed on behalf of the participants as set forth in the  
27 participant contracts.

28 D. "Sponsor" means an entity that meets the requirements of subsection 5 and is  
29 approved by the superintendent to provide all or part of the capital and surplus  
30 required by applicable law and to organize and operate a sponsored captive insurance  
31 company.

32 E. "Sponsored captive insurance company" means a captive insurance company:

33 (1) In which the minimum capital and surplus required by applicable law is  
34 provided by one or more sponsors;

35 (2) That is formed or licensed under the provisions of this chapter;

36 (3) That insures the risks only of its participants through separate participant  
37 contracts; and

1           (4) That funds its liability to each participant through one or more protected cells  
2           and segregates the assets of each protected cell from the assets of other protected  
3           cells and from the assets of the sponsored captive insurance company's general  
4           account.

5           **2. Formation.** One or more sponsors may form a sponsored captive insurance  
6           company under this chapter. In addition to the general provisions of this chapter, the  
7           provisions of this section apply to sponsored captive insurance companies. A sponsored  
8           captive insurance company must be incorporated as a stock insurer with its capital  
9           divided into shares and held by the stockholder, as a nonprofit corporation with one or  
10           more members or as a manager-managed limited liability company.

11           **3. Supplemental application materials.** In addition to the information required by  
12           section 6702, each applicant sponsored captive insurance company shall file with the  
13           superintendent the following:

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

17           B. A statement acknowledging that all financial records of the sponsored captive  
18           insurance company, including records pertaining to any protected cells, will be made  
19           available for inspection or examination by the superintendent or the superintendent's  
20           designated agent;

21           C. All contracts or sample contracts between the sponsored captive insurance  
22           company and any participants; and

23           D. Evidence that expenses will be allocated to each protected cell in a fair and  
24           equitable manner.

25           **4. Protected cells.** A sponsored captive insurance company formed or licensed  
26           under the provisions of this chapter may establish and maintain one or more protected  
27           cells to insure risks of one or more participants, subject to the following conditions:

28           A. The shareholders of a sponsored captive insurance company must be limited to its  
29           participants and sponsors, except that a sponsored captive insurance company may  
30           issue nonvoting securities to other persons on terms approved by the superintendent;

31           B. Each participant contract must specify one or more protected cells as the sole  
32           source of the participant's coverage and limit the losses of the participant to its pro  
33           rata share of the assets of the protected cell identified in the contract. If the sponsored  
34           captive insurance company enters into a contract involving more than one protected  
35           cell, the rights and obligations relating to each protected cell must be several rather  
36           than joint and the contract must make clear provisions for apportionment of the rights  
37           and obligations between protected cells;

38           C. Each protected cell must be accounted for separately on the books and records of  
39           the sponsored captive insurance company to reflect the financial condition and results  
40           of operations of each protected cell, net income or loss, dividends or other  
41           distributions to participants and such other factors as may be provided in the  
42           participant contract or required by the superintendent;

1 D. The assets of a protected cell may not be chargeable with liabilities arising out of  
2 any other insurance business the sponsored captive insurance company may conduct;

3 E. A sale, exchange or other transfer of assets may not be made by a sponsored  
4 captive insurance company between or among any of its protected cells without the  
5 consent of the protected cells;

6 F. A sale, exchange, transfer of assets, dividend or distribution may not be made  
7 from a protected cell to a sponsor or participant without the superintendent's approval  
8 and in no event may approval be given if the sale, exchange, transfer, dividend or  
9 distribution would result in insolvency or impairment with respect to a protected cell;

10 G. Each sponsored captive insurance company must annually file with the  
11 superintendent such financial reports as the superintendent requires, which must  
12 include, without limitation, accounting statements detailing the financial experience  
13 of each protected cells;

14 H. Each sponsored captive insurance company must notify the superintendent in  
15 writing within 10 business days of any protected cell that is insolvent or otherwise  
16 unable to meet its claim or expense obligations;

17 I. A participant contract may not take effect without the superintendent's prior  
18 written approval, and the addition of each new protected cell and withdrawal of any  
19 participant or termination of any existing protected cell constitutes a change in the  
20 business plan requiring the superintendent's prior written approval;

21 J. The business written by a sponsored captive insurance company, with respect to  
22 each protected cell, must be:

23 (1) Fronted by a properly licensed insurance company;

24 (2) Reinsured by a reinsurer authorized or approved by the superintendent; or

25 (3) Secured by a trust fund in the United States for the benefit of policyholders  
26 and claimants or funded by an irrevocable letter of credit or other arrangement  
27 that is acceptable to the superintendent. The amount of security provided must be  
28 no less than the reserves associated with those liabilities that are neither fronted  
29 nor reinsured, including reserves for losses, allocated loss adjustment expenses,  
30 incurred but not reported losses and unearned premiums for business written  
31 through the participant's protected cell. The superintendent may require the  
32 sponsored captive insurance company to increase the funding of any security  
33 arrangement established under this subparagraph. If the form of security is a  
34 letter of credit, the letter of credit must be established, issued or confirmed by a  
35 bank chartered in this State or a member of the Federal Reserve System and  
36 established in a form and upon such terms approved by the superintendent;

37 K. In any action or proceeding involving the potential for monetary recovery by or  
38 against a sponsored captive insurance company or for nonmonetary relief relating to a  
39 particular protected cell or cells, any process, pleading or order must name the  
40 specific protected cell or cells affected, including if applicable the general account;  
41 and

1           L. A sponsored captive insurance company shall notify the superintendent in writing  
2           within 10 business days after the special purpose reinsurance vehicle or any protected  
3           cell becomes impaired or insolvent.

4           **5. Qualification of sponsors.** A sponsor of a sponsored captive insurance company  
5           must be an insurer licensed under the laws of any state, a reinsurer authorized or  
6           approved under the laws of any state, a captive insurance company formed or licensed  
7           under this chapter, a broker-dealer licensed pursuant to the Maine Uniform Securities  
8           Act, a financial institution or financial institution holding company authorized under Title  
9           9-B, including any affiliate or subsidiary of such financial institution holding company, or  
10          any other person approved by the superintendent in the exercise of the superintendent's  
11          discretion after finding that the approval of a person as a sponsor is not inconsistent with  
12          the purposes of this chapter. A risk retention group authorized pursuant to chapter 72-A  
13          may not be either a sponsor or a participant of a sponsored captive insurance company.

14          **6. Participants in sponsored captive insurance companies.** The following may be  
15          participants in a sponsored captive insurance company:

16           A. Associations, corporations, limited liability companies, partnerships, trusts and  
17           other business entities may be participants in any sponsored captive insurance  
18           company formed or licensed under this chapter;

19           B. A sponsor may be a participant in a sponsored captive insurance company;

20           C. A participant need not be a shareholder of the sponsored captive insurance  
21           company or any affiliate thereof; and

22           D. A participant may insure only its own risks through a sponsored captive insurance  
23           company.

24          **7. Investments by sponsored captive insurance companies.** Notwithstanding the  
25          provisions of subsection 5, the assets of 2 or more protected cells may be combined for  
26          purposes of investment, and such a combination may not be construed as defeating the  
27          segregation of assets for accounting or other purposes. Sponsored captive insurance  
28          companies shall comply with the investment requirements contained in this Title, as  
29          applicable, except that compliance with such investment requirements must be waived for  
30          sponsored captive insurance companies to the extent that credit for reinsurance ceded to  
31          reinsurers is allowed pursuant to section 6711 or to the extent otherwise considered  
32          reasonable and appropriate by the superintendent. Section 6707 applies to sponsored  
33          captive insurance companies except to the extent it is inconsistent with approved  
34          accounting standards in use by the company. Notwithstanding any other provision of this  
35          Title, the superintendent may approve the use of alternative reliable methods of valuation  
36          and rating.

37          **8. Delinquency of sponsored captive insurance companies or protected cells.** In  
38          the case of a sponsored captive insurance company, the provisions of section 6714 apply,  
39          except as otherwise provided in this subsection.

40           A. The insolvency of one protected cell does not constitute the insolvency of any  
41           other protected cell or of the sponsored captive insurance company itself. The  
42           insolvency of a sponsored captive insurance company does not constitute the

1 insolvency of any of its solvent protected cells and is not a basis for the receivership  
2 of any solvent protected cell capable of independent operation.

3 B. Notwithstanding the insolvency of the sponsored captive insurance company or of  
4 any other protected cell, the obligations attributed to any solvent protected cell must  
5 continue to be paid as they become due.

6 C. The assets attributed to a protected cell may not be applied to the liabilities  
7 attributed to another protected cell or to the sponsored captive insurance company  
8 generally, except that:

9 (1) If the insolvency of the sponsored captive insurance company renders a  
10 protected cell incapable of being managed independently, a receiver may, after  
11 consultation with the creditors of a protected cell, contract for the management of  
12 the protected cell and charge to the protected cell a reasonable amount for those  
13 services;

14 (2) A general liability of an insolvent sponsored captive insurance company may  
15 be apportioned equitably in whole or in part to one or more of its protected cells  
16 if the Superior Court determines that the liability arises out of the operations of  
17 the protected cell or cells and that the interests of innocent creditors of the  
18 protected cell or cells are not unreasonably impaired; and

19 (3) If assets or liabilities have been commingled, or have been wrongfully  
20 transferred between protected cells or between a protected cell and the general  
21 account, the Superior Court shall trace the assets and attribute them to the proper  
22 accounts, giving due consideration to the terms of any relevant governing  
23 instrument or contract.

24 D. The plan of rehabilitation or liquidation of any sponsored captive insurance  
25 company must make reasonable provision for the continued operation of all solvent  
26 protected cells, which may involve the formation of one or more new sponsored  
27 captive insurance companies or the transfer of one or more protected cells.

28 **Sec. 24. 24-A MRS §6725** is enacted to read:

29 **§6725. Branch captive insurance companies**

30 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
31 following terms have the following meanings.

32 A. "Alien captive insurance company" means an insurance company formed to write  
33 insurance business for its parents and affiliates and licensed pursuant to the laws of  
34 an alien jurisdiction that imposes statutory or regulatory standards in a form  
35 acceptable to the superintendent on companies transacting the business of insurance  
36 in the alien jurisdiction.

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

39 C. "Branch captive insurance company" means any alien captive insurance company  
40 licensed by the superintendent to transact the business of insurance in this State  
41 through a business unit with a principal place of business in this State.



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

3           **2. Establishment of a branch captive insurance company.** A branch captive  
4           insurance company may be established in this State in accordance with the provisions of  
5           this chapter to write in this State only insurance or reinsurance of the employee benefit  
6           business of its parent and affiliated companies that is subject to the provisions of the  
7           federal Employee Retirement Income Security Act of 1974, as amended. In addition to  
8           the general provisions of this chapter, the provisions of this section apply to branch  
9           captive insurance companies. A branch captive insurance company may not do any  
10           insurance business in this State unless it maintains the principal place of business for its  
11           branch operations in this State.

12           **3. Security required.** In the case of a branch captive insurance company, as  
13           security for the payment of liabilities attributable to the branch operations, the  
14           superintendent shall require that either a trust fund funded by assets acceptable to the  
15           superintendent or an irrevocable letter of credit be established and maintained in the  
16           United States for the benefit of United States policyholders and United States ceding  
17           insurers under insurance policies issued or reinsurance contracts issued or assumed by the  
18           branch captive insurance company through its branch operations. The amount of the  
19           security may be no less than the amount set forth in section 6704, subsection 1, paragraph  
20           A and the reserves on the insurance policies or reinsurance contracts, including reserves  
21           for losses, allocated loss adjustment expenses, incurred but not reported losses and  
22           unearned premiums with regard to business written through the branch operation, except  
23           that the superintendent may permit a branch captive insurance company that is required to  
24           post security for loss reserves on branch business by its reinsurer to reduce the funds in  
25           the trust account or the amount payable under the irrevocable letter of credit required by  
26           this subsection by the same amount as long as the security remains posted with the  
27           reinsurer. If the form of security selected is a letter of credit, the letter of credit must be  
28           established by, or issued or confirmed by, a bank chartered in this State or a member bank  
29           of the Federal Reserve System.

30           **4. Certificate of general good.** In the case of a captive insurance company licensed  
31           as a branch captive insurance company, the alien captive insurance company shall  
32           petition the superintendent to issue a certificate setting forth the superintendent's finding  
33           that, after considering the character, reputation, financial responsibility, insurance  
34           experience and business qualifications of the officers and directors of the alien captive  
35           insurance company, the licensing and maintenance of the branch operations will promote  
36           the general good of the State. The alien captive insurance company may register to do  
37           business in this State after the superintendent's certificate is issued.

38           **5. Reports.** Prior to March 1st of each year, or with the approval of the  
39           superintendent within 60 days after its fiscal year-end, a branch captive insurance  
40           company shall file with the superintendent a copy of all reports and statements required to  
41           be filed under the laws of the jurisdiction in which the alien captive insurance company is  
42           formed, verified by oath of 2 of its executive officers. If the superintendent is satisfied  
43           that the annual report filed by the alien captive insurance company in its domiciliary  
44           jurisdiction provides adequate information concerning the financial condition of the alien

1 captive insurance company, the superintendent may waive the requirement for  
2 completion of the captive annual statement for business written in the alien jurisdiction.

3 **6. Examination of branch captive insurance companies.** The examination of a  
4 branch captive insurance company pursuant to section 6708 must be of the branch  
5 business and branch operations only, as long as the branch captive insurance company  
6 provides annually to the superintendent a certificate of compliance, or its equivalent,  
7 issued by or filed with the licensing authority of the jurisdiction in which the branch  
8 captive insurance company is formed and demonstrates to the superintendent's  
9 satisfaction that it is operating in sound financial condition in accordance with all  
10 applicable laws and regulations of that jurisdiction. As a condition of licensure, the alien  
11 captive insurance company must grant authority to the superintendent for examination of  
12 the affairs of the alien captive insurance company in the jurisdiction in which the alien  
13 captive insurance company is formed.

14 **7. Taxation of branch captive insurance companies.** In the case of a branch  
15 captive insurance company, the tax provided for in section 6723 applies only to the  
16 branch business of the company.

#### 17 SUMMARY

18 The bill makes changes to the State's laws regulating captive insurance companies to  
19 encourage the formation of new captive insurance companies in the State. The changes  
20 in the bill are modeled after laws relating to captive insurance companies in Vermont,  
21 which has the highest number of captive insurance companies in the United States.