

House Bill 703

By: Representatives Shaw of the 176th, Cheokas of the 138th, Smith of the 134th, and Harbin of the 122nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for extensive changes to the captive insurance company provisions of this title; to
3 provide for definitions for types of captive insurance companies; to provide requirements and
4 restrictions of a protected cell captive insurance company; to provide for reporting to the
5 Commission; to provide for report confidentiality; to provide for taxation; to provide for
6 creation and regulation of different types of captive insurance companies; to provide for the
7 creation and regulation of special purpose financial captive insurance companies; to provide
8 definitions; to provide for regulation by the Commissioner; to provide for limitations and
9 requirements of special purpose financial captive insurance companies; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
14 revising Chapter 41, relating to captive insurance companies, as follows:

15 style="text-align:center">"CHAPTER 41

16 style="text-align:center">ARTICLE 1

17 33-41-1.

18 This chapter shall be known and may be cited as the 'Georgia Captive Insurance Company
19 Act.'

20 33-41-2.

21 Terms not otherwise defined in this chapter shall have the same meaning ascribed to them
22 in this title. As used in this chapter, unless the context otherwise requires, the term:

23 (1) 'Affiliate' means an individual, partnership, corporation, trust, or estate that directly,
 24 or indirectly through one or more intermediaries, controls, is controlled by, or is under
 25 common control with one or more of the shareholders or members of a captive insurance
 26 company. Affiliates shall also include employees of any shareholder or member, or any
 27 affiliate thereof, of a captive insurance company. For the purpose of the foregoing
 28 definition of affiliate, 'control' means:

29 (A) Ownership of shares of a corporation possessing 50 percent or more of the total
 30 voting power of all classes of shares entitled to vote or possessing 50 percent or more
 31 of the total value of the outstanding shares of the corporation; and

32 (B) Ownership of 50 percent or more by value of the beneficial interests in a
 33 partnership, trust, or estate.

34 (2) 'Agency captive insurance' company means:

35 (A) An insurance company that is owned or controlled by an insurance agency,
 36 brokerage, or reinsurance intermediary, or an affiliate thereof, or under common
 37 ownership or control with such agency, brokerage, or reinsurance intermediary, and that
 38 only insures the risk of insurance or annuity contracts placed by or through such
 39 agency, brokerage, or reinsurance intermediary; or

40 (B) An insurance company that is owned or controlled by a marketer or producer of
 41 service contracts or warranties and that only insures or reinsures the contractual liability
 42 arising out of such service contracts or warranties sold through such marketer or
 43 producer.

44 ~~(2)~~(3) 'Association' means any membership organization whose members consist of a
 45 group of individuals, corporations, partnerships, or other associations who engage in
 46 similar or related professional, trade, or business activities and who collectively own,
 47 control, or hold with power to vote all of the outstanding voting interests of an association
 48 captive insurance company or of a corporation that is the sole shareholder of an
 49 association captive insurance company.

50 ~~(3)~~(4) 'Association captive insurance company' means any domestic insurance company
 51 granted a certificate of authority under this chapter to insure or reinsure the similar or
 52 related risks of members and affiliates of members of its association.

53 ~~(4)~~(5) 'Captive insurance company' means any pure captive insurance company,
 54 association captive insurance company, agency captive insurance company, protected cell
 55 captive insurance company, incorporated cell captive insurance company, special purpose
 56 financial captive insurance company, industrial insured captive insurance company, or
 57 risk retention group captive insurance company.

58 (6) 'Controlled unaffiliated business' means:

59 (A) A person:

- 60 (i) That is not an affiliate;
 61 (ii) That has an existing contractual relationship with an affiliate under which the
 62 affiliate bears a potential financial loss; and
 63 (iii) Whose risks are managed by a captive insurance company under an arrangement
 64 approved by the Commissioner; or
 65 (B) A reinsurance pooling arrangement with other captive insurance companies that
 66 is approved by the Commissioner.
- 67 (7) 'Incorporated cell' means a protected cell of an incorporated cell captive insurance
 68 company that is organized as a corporation or other legal entity separate from the
 69 incorporated cell captive insurance company.
- 70 (8) 'Incorporated cell captive insurance company' means a protected cell captive
 71 insurance company that is established as a corporation or other legal entity separate from
 72 its incorporated cells that are also organized as separate legal entities.
- 73 ~~(5)~~(9) 'Industrial insured' means an insured:
 74 (A) Who procures the insurance of any risk or risks through the use of the services of
 75 a full-time employee who acts as an insurance manager, risk manager, or insurance
 76 buyer or through the services of a person licensed as a property and casualty agent,
 77 broker, or counselor in such person's state of domicile;
 78 (B) Whose aggregate annual premiums for insurance on all risks total at least
 79 \$25,000.00; and
 80 (C) Who either:
 81 (i) Has at least 25 full-time employees;
 82 (ii) Has gross assets in excess of \$3 million; or
 83 (iii) Has annual gross revenues in excess of \$5 million.
- 84 ~~(6)~~(10) 'Industrial insured captive insurance company' means any domestic insurance
 85 company granted a certificate of authority under this chapter to insure or reinsure the
 86 risks of industrial insureds and their affiliates and which has as its shareholders or
 87 members only industrial insureds that are insured or reinsured by the industrial insured
 88 captive insurance company or which has as its sole shareholder or sole member a
 89 corporation whose only shareholders are industrial insureds that are insured or reinsured
 90 by the industrial insured captive insurance company.
- 91 ~~(7)~~(11) 'Parent' means a corporation which directly owns shares representing more than
 92 50 percent of the total outstanding voting power and value of a pure captive insurance
 93 company.
- 94 (12) 'Protected cell' means a separate account established and maintained by a sponsored
 95 captive insurance company for one participant.

96 (13) 'Protected cell captive insurance company' means a captive insurance company that
 97 is licensed under this chapter and is subject to Article 2 of this chapter.

98 ~~(8)~~(14) 'Pure captive insurance company' means any domestic insurance company
 99 granted a certificate of authority under this chapter to insure or reinsure the risks of its
 100 parent, ~~and~~ affiliates of its parent, and controlled unaffiliated business.

101 ~~(9)~~(15) 'Risk retention group captive insurance company' is any ~~pure, association, or~~
 102 ~~industrial insured~~ captive insurance company which has been granted a certificate of
 103 authority under this chapter and determined by the Commissioner to be established and
 104 maintained as a 'risk retention group' as defined under the federal Liability Risk Retention
 105 Act of 1986, as amended. A risk retention group may be chartered and licensed either
 106 under this chapter or under Chapter 40 of this title.

107 (16) 'Special purpose financial captive insurance company' means a captive insurance
 108 company that is licensed under this chapter and is subject to Article 3 of this chapter.

109 (17) 'Sponsor' means any person or entity that is approved by the Commissioner to
 110 provide all or part of the capital and surplus required by applicable law and to organize
 111 and operate a protected cell captive insurance company.

112 ~~(10)~~(18) 'Transact,' as used in this chapter, shall not include the organizational activities
 113 associated with the preliminary formation, incorporation, petitioning for a certificate of
 114 authority, and initial capitalization of a captive insurance company.

115 33-41-3.

116 (a) Subject to the provisions of subsection (c) of this Code section and the other provisions
 117 of this chapter, a captive insurance company, where permitted by its charter, may engage
 118 in the business of any of the following kinds of insurance or reinsurance:

119 (1) Casualty, as described in Code Section 33-7-3 ~~but excluding accident and sickness~~
 120 ~~insurance as defined in Code Section 33-7-2;~~

121 (2) Marine and transportation, as described in Code Section 33-7-5;

122 (3) Property, as described in Code Section 33-7-6; and

123 (4) Surety, as described in Code Section 33-7-7.

124 (b) Insurance policies and bonds issued by a captive insurance company for workers'
 125 compensation insurance and motor vehicle accident insurance shall be in conformity with
 126 all minimum requirements for coverages and coverage amounts established by the state for
 127 such types of insurance. Such insurance policies and bonds issued by a captive insurance
 128 company shall constitute satisfactory proof that the motor vehicle owners or employers, as
 129 applicable, insured under such policies or bonds have satisfied the requirements for motor
 130 vehicle accident insurance prescribed by Code Section 33-34-4 and for workers'
 131 compensation insurance prescribed by Code Section 34-9-121.

132 (c) Except as otherwise provided in subsection (d) of this Code section:

133 (1) A captive insurance company ~~may~~ shall not insure or reinsure any risks resulting
134 from:

135 (A) Any personal, familial, or household responsibilities; or

136 (B) Activities other than risks resulting from responsibilities arising out of any
137 business, whether profit or nonprofit; trade; product; services, including professional
138 or fiduciary services; or commercial premises or commercial operations;

139 (2) A captive insurance company may only cede reinsurance as provided in Code Section
140 33-41-14 or, in the case of a protected cell captive insurance company or a special
141 purpose financial captive insurance company, as approved by the Commissioner as part
142 of the plan of operation;

143 (3) A pure captive insurance company may only insure or reinsure the risks of its parent,
144 ~~and~~ affiliates of its parent, and controlled unaffiliated business;

145 (4) An association captive insurance company may only insure or reinsure the risks of
146 the members of its association and their affiliates;

147 (5) An industrial insured captive insurance company may only insure or reinsure the
148 risks of the industrial insureds, and their affiliates, that are its shareholders, ~~or~~
149 shareholders of its sole shareholder, or controlled unaffiliated business; and

150 (6) A risk retention group captive insurance company may only insure or reinsure the
151 risks of its group members.

152 (d) A captive insurance company may reinsure the risks insured or reinsured either directly
153 or indirectly by:

154 (1) Any other captive insurance company; or

155 (2) Any foreign or alien insurance company which satisfies the ownership or
156 membership requirements of a captive insurance company under this chapter; provided,
157 however, that the risks insured or reinsured from the foreign or alien insurance company
158 are solely those of its owners or members or their affiliates.

159 (e) The Commissioner may adopt rules establishing standards to ensure that an affiliate is
160 able to exercise control of the risk management function of any controlled unaffiliated
161 business to be insured by the captive insurance company. Until rules under this Code
162 section are adopted, the Commissioner may approve the coverage of these risks by a
163 captive insurance company.

164 33-41-4.

165 No captive insurance company may transact any insurance in this state unless:

166 (1) It first obtains from the Commissioner a certificate of authority authorizing it to
167 transact insurance in this state;

- 168 (2) It maintains its principal place of business in this state; ~~and~~
 169 (3) Any organization providing the principal administrative or management services to
 170 such captive insurance company shall maintain its principal place of business in this state
 171 and shall be approved by the Commissioner; and
 172 (4) It holds at least one management meeting each year in this state.

173 33-41-5.

174 (a) A pure captive insurance company ~~must~~ shall be incorporated as a stock insurer with
 175 its capital divided into shares.

176 (b) An association captive insurance company, or an industrial insured captive insurance
 177 company, or a risk retention group captive insurance company ~~must~~ shall be incorporated:

178 (1) As a stock insurer with its capital divided into shares; or

179 (2) As a mutual insurer without capital stock, the governing body of which is elected by
 180 its members.

181 (c) One or more sponsors may form a protected cell captive insurance company. A
 182 protected cell captive insurance company shall be incorporated as a:

183 (1) Stock insurer with its capital divided into shares;

184 (2) Mutual insurer without capital stock, the governing body of which is elected by the
 185 members;

186 (3) Nonprofit corporation with one or more members; or

187 (4) Manager-managed limited liability company.

188 (d) A special purpose financial captive insurance company may be established as a stock
 189 corporation, limited liability company, mutual insurer, partnership, or other form of
 190 organization approved by the Commissioner, provided that at least:

191 (1) One of the incorporators or organizers is a resident of Georgia, and

192 (2) One of the members of the management is a resident of Georgia.

193 (e) The following entities may be participants in a protected cell captive insurance
 194 company:

195 (1) Associations, corporations, limited liability companies, partnerships, trusts, and other
 196 business entities may be participants in any protected cell captive insurance company
 197 formed or licensed under this chapter;

198 (2) A sponsor may be a participant in a protected cell captive insurance company;

199 (3) A participant need not be a shareholder of the protected cell captive insurance
 200 company or any affiliate thereof; and

201 (4) A participant shall insure only its own risks through a protected cell captive insurance
 202 company.

203 ~~(e)~~(f) The applicable ~~statutes of this state~~ provisions of Title 14 relating to the powers and
 204 procedures of domestic corporations formed for profit shall apply to captive insurance
 205 companies, except where in conflict with the express provisions of this chapter or
 206 regulations promulgated hereunder.

207 ~~(d)~~(g) The incorporation procedures of Code Sections 33-14-4 through 33-14-6, inclusive,
 208 and the amendment procedures of Code Section 33-14-8 shall apply to captive insurance
 209 companies.

210 33-41-6.

211 (a) A captive insurance company shall not use any name which is either similar,
 212 misleading, or confusing with respect to any other name already in use by any other captive
 213 insurance company, domestic mutual or stock insurance company, corporation, or
 214 association organized or doing business in this state. The Secretary of State shall not issue
 215 a charter to an applicant attempting to use such a name nor shall the Commissioner approve
 216 an application for a certificate of authority from such applicant.

217 (b)(1) With the exception of risk retention group captive insurance companies, the name
 218 of a captive insurance company shall include the words 'captive insurance company' and
 219 have such word or words, abbreviation, suffix, or prefix included in the name or attached
 220 to it in such a manner as to clearly indicate that it is a corporation.

221 (2) The name of a risk retention group captive insurance company shall include the
 222 words 'risk retention group captive insurance company' and have such word or words,
 223 abbreviation, suffix, or prefix included in the name or attached to it in such a manner as
 224 to clearly indicate that it is a corporation.

225 (c) If the captive insurance company is a mutual insurer, the word 'mutual' shall also be
 226 a part of the name.

227 33-41-7.

228 (a) The affairs of every captive insurance company shall be managed by not less than three
 229 directors.

230 (b) At least ~~one-third~~ one of the directors of every captive insurance company ~~must shall~~
 231 be a resident of this state, ~~except that no more than three directors shall be required to be~~
 232 ~~residents of this state. A~~ and a majority of the directors ~~must shall~~ be citizens of the United
 233 States.

234 (c) Every captive insurance company ~~must shall~~ report to the Commissioner within 30
 235 days after any change in its directors including in its report a statement of the business and
 236 professional background and affiliations of any new director.

237 33-41-8.

238 (a) The amount of minimum capital or surplus required for each captive insurance
239 company shall be determined on an individual basis, however:

240 (1) ~~No A pure captive insurance company incorporated as a stock insurer shall be issued~~
241 ~~a certificate of authority unless it shall possess and thereafter maintain a minimum of~~
242 ~~\$500,000.00 in capital at least \$250,000.00 in surplus; or~~

243 (2) ~~No An association captive insurance company incorporated as a mutual insurer shall~~
244 ~~be issued a certificate of authority unless it shall possess and thereafter maintain a~~
245 ~~minimum of at least \$500,000.00 in surplus;~~

246 (3) An agency captive insurance company shall maintain at least \$250,000.00 in surplus;

247 (4) An industrial insured captive insurance company shall maintain at least \$500,000.00
248 in surplus;

249 (5) A special purpose financial captive insurance company shall maintain at least
250 \$250,000.00 in surplus;

251 (6) A risk retention group captive insurance company shall maintain at least \$500,000.00
252 in surplus; and

253 (7) A protected cell captive insurance company shall maintain at least \$250,000.00 in
254 surplus.

255 The Commissioner may require additional capital or surplus of any captive insurance
256 company in an amount he or she deems appropriate under the circumstances based on the
257 captive insurance company's business plan as described in paragraph (2) of subsection (a)
258 of Code Section 33-41-10. Additional capital or surplus may be required if the captive
259 insurance company's business plan indicates that an increase is required in order for the
260 captive insurance company to meet its contractual obligations to its policyholders or to
261 maintain its solvency.

262 (b) Minimum capital or surplus of up to \$500,000.00 shall be maintained in any of the
263 following:

264 (1) Cash;

265 (2) Certificates of deposit or similar certificates or evidences of deposits in banks or trust
266 companies but only to the extent that the certificates or deposits are insured by the
267 Federal Deposit Insurance Corporation; or

268 (3) Savings accounts, certificates of deposit, or similar certificates or evidences of
269 deposit in savings and loan associations and building and loan associations but only to
270 the extent that the same are insured by the Federal Savings and Loan Insurance
271 Corporation.

272 (c) ~~One hundred thousand dollars of the minimum capital or surplus must be deposited~~
273 ~~with the state prior to the issuance of a certificate of authority~~ In addition to any capital

274 required under this Code section, the Commissioner may require captive insurance
 275 companies that issue workers' compensation insurance contracts to meet the risk-based
 276 capital requirements set forth in Chapter 56 of this title.

277 ~~(d) Any additional capital or surplus in excess of \$500,000.00 required by the~~
 278 ~~Commissioner pursuant to subsection (a) of this Code section may be provided and~~
 279 ~~maintained in any of the following:~~

280 ~~(1) Any eligible investments of minimum capital or surplus authorized under Code~~
 281 ~~Section 33-11-5;~~

282 ~~(2) Promissory notes or other obligations of shareholders secured by one or more letters~~
 283 ~~of credit, as described in Code Section 33-41-9; or~~

284 ~~(3) Any other investments approved by the Commissioner that do not impair the~~
 285 ~~financial solvency of the captive insurance company Risk retention group captive~~
 286 ~~insurance companies shall be subject to the risk-based capital requirements set forth in~~
 287 ~~Chapter 56 of this title.~~

288 33-41-9.

289 (a) Any letter of credit used to meet the requirements set forth in Code Sections 33-41-8,
 290 33-41-12, and 33-41-14 shall be:

291 (1) ~~Must be clean~~ Clean, irrevocable, and unconditional;

292 (2) ~~Must be issued~~ Issued by a bank approved by the Commissioner, which is either a
 293 bank chartered by the State of Georgia or a national bank which is a member of the
 294 Federal Reserve System;

295 (3) ~~Must provide that it is presentable~~ Presentable and payable within the State of
 296 Georgia; and

297 (4) ~~Must be provided~~ Provided in conformity with any other requirements established
 298 by the Commissioner.

299 (b) The Commissioner may require any captive insurance company to draw upon its letters
 300 of credit at any time, in amounts determined by the Commissioner, if the Commissioner
 301 determines that such action is necessary for the protection of the interests of the captive
 302 insurance company's policyholders.

303 33-41-10.

304 (a) The application for an original certificate of authority for a captive insurance company
 305 ~~must~~ shall be filed with the Commissioner and shall contain the following:

306 (1) A certified copy of the captive insurance company's articles of incorporation and
 307 bylaws;

308 (2) A business plan which shall contain the following:

- 309 (A) A plan of operation or a feasibility study describing the anticipated activities and
 310 results of the captive insurance company which shall include:
- 311 (i) A description of the coverages, coverage limits and deductibles, and premium
 312 rating systems for the lines of insurance or reinsurance that the captive insurance
 313 company intends to offer;
 - 314 (ii) Historical and expected loss experience of the risks to be insured or reinsured by
 315 the captive insurance company;
 - 316 (iii) Pro forma financial statements and projections of the proposed business
 317 operations of the captive insurance company;
 - 318 (iv) An analysis of the adequacy of the captive insurance company's proposed
 319 premiums and capital and surplus levels relative to the risks to be insured or reinsured
 320 by the captive insurance company;
 - 321 (v) A statement of the captive insurance company's net retained limit of liability on
 322 any contract of insurance or reinsurance it intends to issue and the nature of any
 323 reinsurance it intends to cede;
 - 324 (vi) A statement certifying that ~~the a~~ captive insurance company's company that
 325 issues workers' compensation insurance contracts has an investment policy which is
 326 in compliance with this title and specifying the type of investments to be made
 327 pursuant to Code Section 33-41-18;
 - 328 (vii) A statement identifying the geographic areas in which the captive insurance
 329 company intends to operate; and
 - 330 (viii) A statement identifying the persons or organizations who will perform the
 331 captive insurance company's major operational functions, including management,
 332 underwriting, accounting, investment of assets, claims adjusting and loss control, and
 333 the adequacy of the expertise, experience, and character of such persons or
 334 organizations; and
 - 335 ~~(ix) Whenever required by the Commissioner, an appropriate opinion by a qualified~~
 336 ~~independent casualty actuary regarding the adequacy of the captive insurance~~
 337 ~~company's proposed capital, surplus, and premium levels; and~~
- 338 (B) Such other items deemed relevant by the Commissioner in ascertaining whether
 339 the proposed captive insurance company will be able to meet its contractual obligations.
- 340 (b) In determining whether to approve an application for an original or renewal certificate
 341 of authority to a captive insurance company, the Commissioner shall examine the items
 342 submitted to him pursuant to ~~subsections (a), (e), and (f) of this Code section. The~~
 343 ~~Commissioner may rely upon and accept the reports of independent agents who may~~
 344 ~~include licensed insurance counselors, brokers, agents, or adjusters discussed under~~
 345 ~~Chapter 23 of this title, certified actuarial consultants, certified public accountants, risk~~

346 ~~managers, and examiners of insurance companies in order to facilitate his examination of~~
 347 ~~the application for a certificate of authority by a captive insurance company. The expenses~~
 348 ~~and charges of such independent agents shall be paid directly by the captive insurance~~
 349 ~~company.~~

350 ~~(c) Each captive insurance company shall pay to the Commissioner an amount equal to all~~
 351 ~~costs of examining, investigating, and processing its application for an original or renewal~~
 352 ~~certificate of authority. In addition, it shall pay a fee for the initial year of registration and~~
 353 ~~a renewal fee for each year thereafter in the amount periodically imposed under this title~~
 354 ~~upon other domestic insurance companies.~~

355 ~~(d)~~ Pursuant to Code Section 33-3-15, if the Commissioner is satisfied that the documents
 356 and statements filed by the captive insurance company comply with the provisions of this
 357 chapter, he or she shall notify the captive insurance company of his or her intention to issue
 358 a certificate of authority.

359 ~~(e)~~(d) After the captive insurance company has been notified pursuant to subsection ~~(d)~~
 360 (c) of this Code section, the captive insurance company shall provide the Commissioner
 361 with:

362 (1) Evidence satisfactory to the Commissioner that the minimum capital or surplus
 363 required for the particular captive insurance company under Code Section 33-41-8 has
 364 been paid in and that the appropriate amount thereof has been deposited with the state;
 365 and

366 (2) A financial statement showing the assets and liabilities of the captive insurance
 367 company which is certified by its president and calculated in accordance with the
 368 accounting standards set out in Chapter 10 of this title, except as modified by this chapter.
 369 Thereafter, the Commissioner shall promptly issue a certificate of authority authorizing the
 370 captive insurance company to transact insurance in this state until the thirtieth day of June
 371 thereafter.

372 ~~(f)~~(e) Any material change in the items required under subsection (a) of this Code section
 373 shall require the prior approval of the Commissioner. Any material change which is not
 374 disapproved by the Commissioner within 30 days after its submission shall be deemed
 375 approved.

376 33-41-11.

377 (a) The certificate of authority of a captive insurance company to transact insurance in this
 378 state may be refused, suspended, or not be renewed pursuant to Code Sections 33-3-17
 379 through 33-3-19, inclusive.

380 (b) A certificate of authority shall expire, be renewed, and be amended by the
 381 Commissioner pursuant to Code Section 33-3-16.

382 33-41-12.

383 For the purposes of determining the financial condition of a captive insurance company,
 384 including, but not limited to, the maintenance of adequate reserves pursuant to Code
 385 Section 33-41-13, the reporting of business affairs pursuant to Code Section 33-41-15, and
 386 the examinations and investigations pursuant to Code Section 33-41-16, there shall be
 387 allowed as assets of a captive insurance company:

- 388 (1) Those assets described in Code Section 33-10-1;
 389 (2) Those assets otherwise authorized by Code Sections 33-41-8 and 33-41-14; ~~and~~
 390 (3) Obligations for premium payments, provided such obligations are secured by letters
 391 of credit, as described in Code Section 33-41-9; and
 392 (4) Assets that are approved by the Commissioner as admitted assets under rules adopted
 393 pursuant to this article.

394 33-41-13.

395 (a) Every captive insurance company shall maintain reserves in an amount estimated in the
 396 aggregate to provide for the payment of all unpaid losses and claims incurred, whether
 397 reported or unreported, for which such captive insurance company may be liable, together
 398 with the expenses of adjustment or settlement of such losses and claims. Every captive
 399 insurance company shall keep a complete and itemized record, in a form satisfactory to the
 400 Commissioner, showing all losses and claims on which it has received notice.

401 (b) If the loss experience of a captive insurance company shows that its loss reserves,
 402 however estimated, are inadequate, the Commissioner shall require the captive insurance
 403 company to maintain increased amounts of loss reserves as are needed to make its loss
 404 reserves adequate.

405 (c) Every captive insurance company shall maintain an unearned premium reserve on all
 406 policies in force which shall never be less in the aggregate than the captive insurance
 407 company's actual liability to all its insureds for the return of gross unearned premiums
 408 computed pursuant to the method commonly referred to as the monthly pro rata method.

409 33-41-14.

410 (a) A captive insurance company may cede any part of its risks to a reinsurer pursuant to
 411 a written reinsurance agreement and may take credit as an asset or a deduction from its
 412 liabilities for the amount of reinsurance premiums recoverable under such reinsurance
 413 agreement:

- 414 (1) If the reinsurer is in compliance with Code Section 33-7-14;
 415 (2) To the extent that assets are deposited or withheld from the reinsurer under a written
 416 trust or escrow agreement approved by the Commissioner pursuant to an express

417 provision in the reinsurance agreement as security for the payment of the reinsurer's
418 obligations thereunder, provided that:

419 (A) The assets deposited or withheld are held subject to withdrawal by, and under the
420 control of, the ceding captive insurance company; or

421 (B) The assets deposited or withheld are placed in a trust or escrow account for such
422 purposes in a bank which is either chartered by the State of Georgia or a national bank
423 which is a member of the Federal Reserve System and withdrawals cannot be made
424 without the express written consent of the ceding captive insurance company;

425 (3) To the extent of the amount of a letter of credit, as described in Code Section
426 33-41-9, given pursuant to an express provision in the reinsurance agreement as security
427 for the payment of the reinsurer's obligations thereunder; or

428 (4) When the Commissioner shall otherwise authorize such credits or deductions.

429 (b) Any assets deposited or withheld under paragraph (2) of subsection (a) of this Code
430 section ~~must~~ shall be in the form of cash, as defined in Code Section 33-11-6, or securities
431 which ~~must~~ shall have a market value equal to or greater than the credit taken and are
432 qualified as allowed assets for a domestic insurer under Chapter 11 of this title.

433 (c) No credit shall be allowed for reinsurance in any unauthorized assuming reinsurer
434 unless such reinsurer designates the Commissioner as agent for service of process in any
435 action arising out of, or in connection with, such reinsurance.

436 33-41-15.

437 ~~Each captive insurance company shall be required to file annual and other reports of its
438 business affairs and operations as prescribed by Code Section 33-3-21.~~

439 (a) Prior to March 1 of each year, each captive insurance company shall submit to the
440 Commissioner a report of its financial condition, verified by oath of two of its executive
441 officers. Each captive insurance company shall report using generally accepted accounting
442 principles, unless the Commissioner requires, approves, or accepts the use of the National
443 Association of Insurance Commissioners' Accounting Practices and Procedures Manual or
444 other comprehensive basis of accounting. The Commissioner may require, approve, or
445 accept any appropriate or necessary modifications of the statutory accounting principles
446 or other comprehensive basis of accounting for the type of insurance and kinds of insurers
447 to be reported upon. The Commissioner may require additional information or reports
448 which are reasonably necessary to understand the financial condition of the captive
449 insurance company. Code Section 33-41-25 shall apply to each report and other
450 information provided pursuant to this subsection. This subsection shall not apply to a risk
451 retention group captive insurance company.

452 (b) A captive insurance company shall make written application to the Commissioner for
 453 filing the required report on a fiscal year end. If an alternative reporting date is granted by
 454 the Commissioner, then the annual report is due 180 days after the fiscal year end and shall
 455 provide information, satisfactory to the Commissioner, which provides sufficient detail to
 456 support the premium tax return.

457 (c) No later than six months after the fiscal year end of the captive insurance company, the
 458 captive insurance company shall file with the Commissioner an audit by a certified public
 459 accounting firm of the financial statements of the captive insurance company and the
 460 protected cell accounts, if applicable.

461 (d) In lieu of subsection (a) of this Code section, a risk retention group captive insurance
 462 company shall comply with the reporting requirements set forth in Code Sections 33-3-21,
 463 33-3-21.1, and 33-3-21.3 and report using the National Association of Insurance
 464 Commissioners' Accounting Practices and Procedures Manual. Notwithstanding these
 465 reporting requirements, the Commissioner may approve or accept the use of accounting
 466 principles other than the National Association of Insurance Commissioners' Accounting
 467 Practices and Procedures Manual.

468 33-41-16.

469 (a) The Commissioner or his or her designated agent may visit each captive insurance
 470 company at any time and examine its affairs in order to ascertain its financial condition, its
 471 ability to fulfill its contractual obligations, and its compliance with this chapter. For these
 472 purposes, the Commissioner or his or her designated agent shall have free access to all of
 473 the books and records relating to the business of the captive insurance company. The
 474 expenses and charges of any examination conducted pursuant to this Code section shall be
 475 paid directly by the captive insurance company examined.

476 (b) When necessary or desirable to assist in any examination under this Code section, the
 477 Commissioner may retain such independent agents ~~as described in subsection (b) of Code~~
 478 ~~Section 33-41-10~~, as the Commissioner deems appropriate; in order to facilitate his or her
 479 examination under this Code section. The expenses and charges of such persons so retained
 480 or designated shall be paid directly by the captive insurance company.

481 (c) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, relating to the
 482 inspection of public records, all work papers, analysis, information, documents,
 483 information received from another state, and any other materials created, produced, or
 484 obtained by or disclosed to the Commissioner or any other person in the course of an
 485 examination made under this chapter or in the course of analysis by the Commissioner of
 486 the financial condition or market conduct of a company shall be given confidential
 487 treatment and shall not be subject to subpoena and shall not be made public by the

488 Commissioner or any other person. Access may be granted to public officers having
 489 jurisdiction over the regulation of insurance in any other state or country or to law
 490 enforcement officers of this state or any other state or agency of the federal government.
 491 Prior to approving such access, the officer shall agree in writing prior to receiving the
 492 information to treat such information confidentially as required by this Code section, unless
 493 the prior written consent of the company to which it pertains has been obtained.

494 33-41-17.

495 The Commissioner may impose fines as prescribed by Code Section 33-3-20.

496 33-41-18.

497 Except as provided in Code Section 33-41-8:

498 (1) ~~An association~~ A captive insurance company that issues workers' compensation
 499 insurance contracts or a risk retention group captive insurance company shall comply
 500 with the investment requirements contained in Chapter 11 of this title; and

501 (2) No ~~pure~~ captive insurance company ~~or industrial insured captive insurance company~~
 502 shall be subject to any restrictions on eligible investments whatever, including those
 503 limitations contained in Chapter 11 of this title; provided, however, that the
 504 Commissioner may prohibit or limit any investment that threatens the solvency or
 505 liquidity of any such captive insurance company.

506 33-41-19.

507 (a) No captive insurance company shall be required to join or use the rates, rating systems,
 508 underwriting rules, or policy or bond forms of a rating or advisory organization as defined
 509 in Code Section 33-9-2.

510 (b) No captive insurance company shall be required to file its premium rates or policy
 511 forms with, or seek approval of such rates or forms from, the Commissioner or any other
 512 authority of this state.

513 (c) Each captive insurance company shall provide the following notice in ten-point type
 514 on the front page and declaration page on all policies and on the front page of all
 515 applications for policies:

516 'This captive insurance company is not subject to all of the insurance laws and regulations
 517 of the State of Georgia. State insurers insolvency guaranty funds are not available to the
 518 policyholders of this captive insurance company.'

519 33-41-20.

520 (a)(1) No captive insurance company other than ~~an association or industrial insured~~ a
521 captive insurance company issuing workers' compensation insurance contracts shall be
522 permitted to join or contribute financially to the Georgia Insurers Insolvency Pool under
523 Chapter 36 of this title or any other plan, pool, or association guaranty or insolvency fund
524 in this state. Other than ~~an association or industrial insured~~ a captive insurance company
525 issuing workers' compensation insurance contracts, no captive insurance company, or its
526 insureds or claimants against its insureds, nor its parent or any affiliated company shall
527 receive any benefit from the Georgia Insurers Insolvency Pool or any other plan, pool,
528 or association guaranty or insolvency fund for claims arising out of the operations of such
529 captive insurance company.

530 (2) No captive insurance company shall be required to participate in any FAIR Plan
531 established and maintained in this state under Chapter 33 of this title.

532 (3) No captive insurance company shall be required to participate in any joint
533 underwriting association established and maintained in this state under Chapter 9 of this
534 title.

535 (b) Captive insurance companies shall be assessed on the same basis as self-insurers for
536 the purpose of payments to the Subsequent Injury Trust Fund as described in Chapter 9 of
537 Title 34.

538 33-41-20.1.

539 (a) On and after January 1, 2008, every ~~association and industrial insured~~ captive
540 insurance company issuing workers' compensation insurance contracts shall become a
541 member of the Georgia Insurers Insolvency Pool under Chapter 36 of this title as to
542 workers' compensation only. Such captive insurance companies shall be liable for
543 assessments pursuant to Code Section 33-36-7 and for all other obligations imposed
544 pursuant to Chapter 36 of this title as to workers' compensation only.

545 (b) Except as provided for in Code Section 33-36-20, the Georgia Insurers Insolvency Pool
546 shall not be liable for any claims incurred by any captive insurance company before
547 January 1, 2008.

548 33-41-21.

549 (a) The provisions of Chapter 37 of this title shall apply to and govern the rehabilitation,
550 reorganization, conservation, and liquidation of captive insurance companies.

551 (b) No assets of a protected cell or incorporated cell may be used to pay any expenses or
552 claims other than those attributable to such protected cell.

553 (c) A protected cell or incorporated cell company's capital and surplus shall at all times be
554 available to pay any expenses or claims against the protected cell captive insurance
555 company.

556 33-41-22.

557 ~~All captive insurance companies chartered and licensed under this chapter shall be taxed~~
558 ~~under the provisions of Chapter 8 of this title and any other provisions of law in the same~~
559 ~~manner as other domestic insurance companies.~~

560 In lieu of any other taxes imposed by this title, captive insurance companies licensed under
561 this chapter shall pay the following taxes:

562 (a) Each captive insurance company shall pay to the Commissioner, on or before March 1
563 of each year, a tax at the rate of four-tenths of 1 percent on the first \$20 million, and
564 three-tenths of 1 percent on each dollar thereafter, on the direct premiums collected or
565 contracted for on policies or contracts of insurance written by the captive insurance
566 company during the year ending December 31 next preceding, after deducting from the
567 direct premiums subject to the tax the amounts paid to policyholders as return premiums.

568 Return premiums shall include dividends on unabsorbed premiums or premium deposits
569 returned or credited to policyholders. No tax shall be due or payable under this title as to
570 considerations received for annuity contracts.

571 (b) Each captive insurance company shall pay to the Commissioner, on or before March 1
572 of each year, a tax at the rate of 225-thousandths of 1 percent on the first \$20 million of
573 assumed reinsurance premium, 150-thousandths of 1 percent on the next \$20 million,
574 50-thousandths of 1 percent on the next \$20 million, and 25-thousandths of 1 percent of
575 each dollar thereafter. However, no reinsurance tax applies to premiums for risks or
576 portions of risks that are subject to taxation on a direct basis pursuant to subsection (a) of
577 this Code section. A premium tax is not payable in connection with the receipt of assets
578 in exchange for the assumption of loss reserves and other liabilities of another insurer or
579 other funding mechanism under common ownership and control if the transaction is part
580 of a plan to discontinue the operations related to the loss reserves and other liabilities being
581 assumed of the other insurer or funding mechanism and if the intent of the parties to the
582 transaction is to renew or maintain business with the captive insurance company.

583 (c)(1) Except with regard to a protected cell captive insurance company with more than
584 ten cells, the annual minimum aggregate tax to be paid by a captive insurance company
585 calculated under subsections (a) and (b) of this Code section shall be \$5,000.00, and the
586 annual maximum aggregate tax shall be \$100,000.00.

587 (2) For a protected cell captive insurance company with more than ten cells, the annual
 588 minimum aggregate tax to be paid under subsections (a) and (b) of this Code section shall
 589 be \$10,000.00, and the annual maximum aggregate tax shall be the lesser of:

590 (A) \$100,000.00 plus \$5,000.00 multiplied by the number of cells over ten; or

591 (B) \$200,000.00.

592 (3) If a captive insurance company is a special purpose financial captive organized and
 593 licensed under Article 3 of this chapter and if such captive insurance company is subject
 594 to subsection (e) of this Code section as a captive insurance company under common
 595 ownership and control with one or more other captive insurance companies (collectively,
 596 the 'consolidated group'), the premium tax calculated with respect to the consolidated
 597 group under subsections (a) and (b) of this Code section shall be allocated to each
 598 member of the consolidated group in the same proportion that the premium allocable to
 599 such member bears to the total premium of all members. The consolidated group shall
 600 pay an aggregate premium tax equal to the greater of the sum of the premium tax
 601 allocated to the members and \$5,000.00; provided, that:

602 (A) If the total of premium tax allocated to all members of a consolidated group that
 603 are special purpose financial captives, as defined in Code Section 33-14-201, exceeds
 604 \$100,000.00, then the total premium tax allocated to such members shall be
 605 \$100,000.00; and

606 (B) If the total of premium tax allocated to all members of a consolidated group that
 607 are not special purpose financial captive insurance companies exceeds \$100,000.00,
 608 then the total of premium tax allocated to such members shall be \$100,000.00.

609 (d) Subject to subsection (c) of this Code section, two or more captive insurance
 610 companies under common ownership and control shall be taxed as though they were a
 611 single captive insurance company.

612 (e) The tax provided for in this Code section shall be calculated on an annual basis,
 613 notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a
 614 multiyear basis. In the case of multiyear policies or contracts, the premium shall be
 615 prorated for purposes of determining the tax under this Code section.

616 (f) The provisions of Chapter 8 of this title not in conflict with the above provisions shall
 617 apply to captive insurance companies.

618 (g) Risk retention group captive insurance companies shall be taxed in accordance with
 619 Code Section 33-40-5.

620 33-41-23.

621 ~~The Commissioner may establish such rules and regulations and issue such interpretive~~
 622 ~~rulings as may be necessary to carry out the provisions of this chapter.~~

623 (a) The Commissioner may by rule or regulation permit the creation and regulation of
 624 different types of captive insurance companies not specifically mentioned in this chapter.

625 (b) The Commissioner may adopt rules, within the standards of this chapter, necessary to
 626 effect the purposes of this chapter. Specific provisions in this chapter relating to any subject
 627 shall not preclude the department from adopting rules concerning such subject if such rules
 628 are within the standards and purposes of this chapter.

629 33-41-24.

630 ~~Any provisions of this title which are inconsistent with the provisions of this chapter shall~~
 631 ~~not apply to captive insurance companies.~~

632 (a) No provisions of this title, other than those contained in this chapter or expressly
 633 provided in this chapter, shall apply to captive insurance companies.

634 (b) Notwithstanding subsection (a) of this Code section, risk retention group captive
 635 insurance companies shall comply with the provisions of this title unless those provisions
 636 conflict with the provisions of this chapter.

637 33-41-25.

638 All portions of license applications reasonably designated confidential by or on behalf of
 639 an applicant captive insurance company, all information and documents, and any copies
 640 of the foregoing, produced or obtained by or submitted or disclosed to the Commissioner
 641 pursuant to this title that are reasonably designated confidential by or on behalf of a special
 642 purpose financial captive insurance company, and all examination reports, preliminary
 643 examination reports, working papers, recorded information, other documents, and any
 644 copies of any of the foregoing, produced or obtained by or submitted or disclosed to the
 645 Commissioner that are related to an examination pursuant to this chapter shall, unless the
 646 prior written consent, which may be given on a case-by-case basis, of the captive insurance
 647 company to which it pertains has been obtained, be given confidential treatment, shall not
 648 be subject to subpoena, shall not be made public by the Commissioner, and shall not be
 649 provided or disclosed to any other person at any time except to:

650 (1) Insurance commissioners of any state or of any country or jurisdiction other than the
 651 United States of America, provided that:

652 (A) Such receiving party shall agree in writing to maintain the confidentiality of such
 653 information; and

654 (B) The laws of the receiving party require such information to be and to remain
 655 confidential; or

656 (2) A law enforcement official or agency of this state, any other state, or the United
 657 States of America so long as such official or agency agrees in writing to hold it
 658 confidential and in a manner consistent with this Code section.

659 ARTICLE 2

660 33-41-100.

661 As used in this article, unless the context requires otherwise, the term:

662 (1) 'General account' means all assets and liabilities of a protected cell captive insurance
 663 company not attributable to a protected cell.

664 (2) 'Participant' means a person or an entity authorized to be a participant, and any
 665 affiliate of a participant, that is insured by a protected cell captive insurance company
 666 pursuant to a participant contract.

667 (3) 'Participant contract' means a contract by which a protected cell captive insurance
 668 company insures the risks of a participant and limits the losses of each such participant
 669 to its pro rata share of the assets of one or more protected cells identified in such
 670 participant contract.

671 (4) 'Protected cell' means a separate account established by a protected cell captive
 672 insurance company formed or licensed under this chapter, in which an identified pool of
 673 assets and liabilities are segregated and insulated by means of this chapter from the
 674 remainder of the protected cell captive insurance company's assets and liabilities in
 675 accordance with the terms of one or more participant contracts to fund the liability of the
 676 protected cell captive insurance company with respect to the participants as set forth in
 677 the participant contracts.

678 (5) 'Protected cell assets' means all assets, contract rights, and general intangibles
 679 identified with and attributable to a specific protected cell of a protected cell captive
 680 insurance company.

681 (6) 'Protected cell captive insurance company' means any captive insurance company:

682 (A) In which the minimum capital and surplus required by this chapter are provided
 683 by one or more sponsors;

684 (B) That is formed or licensed under this chapter;

685 (C) That insures the risks of separate participants through participant contracts; and

686 (D) That funds its liability to each participant through one or more protected cells and
 687 segregates the assets of each protected cell from the assets of other protected cells and
 688 from the assets of the protected cell captive insurance company's general account.

689 (7) 'Protected cell liabilities' means all liabilities and other obligations identified with and
 690 attributed to a specific protected cell of a protected cell captive insurance company.

691 (8) 'Sponsor' means any person or entity that is approved by the Commissioner to
692 provide all or part of the capital and surplus required by this chapter and to organize and
693 operate a protected cell captive insurance company.

694 33-41-101.

695 A protected cell captive insurance company formed or licensed under this chapter may
696 establish and maintain one or more incorporated or unincorporated protected cells, to insure
697 risks of one or more participants, subject to the following conditions:

698 (1)(A) A protected cell captive insurance company may establish one or more
699 protected cells if the Commissioner has approved in writing a plan of operation or
700 amendments to a plan of operation submitted by the protected cell captive insurance
701 company with respect to each protected cell. A plan of operation shall include, but is
702 not limited to, the specific business objectives and investment guidelines of the
703 protected cell; provided, however, that the Commissioner may require additional
704 information in the plan of operation.

705 (B) Upon the Commissioner's written approval of the plan of operation, the protected
706 cell captive insurance company, in accordance with the approved plan of operation,
707 may attribute insurance obligations with respect to its insurance business to the
708 protected cell.

709 (C) A protected cell shall have its own distinct name or designation that shall include
710 the words 'protected cell' or 'incorporated cell.'

711 (D) The protected cell captive insurance company shall transfer all assets attributable
712 to a protected cell to one or more separately established and identified protected cell
713 accounts bearing the name or designation of such protected cell. Protected cell assets
714 shall be held in the protected cell accounts for the purpose of satisfying the obligations
715 of such protected cell.

716 (E) An incorporated protected cell may be organized and operated in any form of
717 business organization authorized by the Commissioner. Each incorporated protected
718 cell of a protected cell captive insurance company shall be treated as a captive insurer
719 for purposes of this chapter. Unless otherwise permitted by the organizational
720 documents of a protected cell captive insurance company, each incorporated protected
721 cell of the protected cell captive insurance company shall have the same directors,
722 secretary, and registered office as the protected cell captive insurance company.

723 (F) All attributions of assets and liabilities between a protected cell and the general
724 account shall be in accordance with the plan of operation and participant contracts
725 approved by the Commissioner. No other attribution of assets or liabilities shall be
726 made by a protected cell captive insurance company between the protected cell captive

727 insurance company's general account and its protected cells. Any attribution of assets
 728 and liabilities between the general account and a protected cell shall be in cash or in
 729 readily marketable securities with established market values.

730 (2) The creation of a protected cell does not create, with respect to such protected cell,
 731 a legal person separate from the protected cell captive insurance company unless the
 732 protected cell is an incorporated cell. Amounts attributed to a protected cell under this
 733 article, including assets transferred to a protected cell account, are owned by the protected
 734 cell. No protected cell captive insurance company shall be, or hold itself out to be, a
 735 trustee with respect to those protected cell assets of such protected cell account.
 736 Notwithstanding this paragraph, the protected cell captive insurance company may allow
 737 for a security interest to attach to protected cell assets or a protected cell account when
 738 in favor of a creditor of the protected cell and otherwise allowed under applicable law.

739 (3) This chapter shall not be construed to prohibit the protected cell captive insurance
 740 company from contracting with or arranging for an investment advisor, commodity
 741 trading advisor, or other third party to manage the protected cell assets of a protected cell,
 742 if all remuneration, expenses, and other compensation of the third party adviser or
 743 manager are payable from the protected cell assets of such protected cell and not from the
 744 protected cell assets of other protected cells or the assets of the protected cell captive
 745 insurance company's general account.

746 (4)(A) A protected cell captive insurance company shall establish administrative and
 747 accounting procedures necessary to properly identify the one or more protected cells
 748 of the protected cell captive insurance company and the protected cell assets and
 749 protected cell liabilities attributable to the protected cells. The directors of a protected
 750 cell captive insurance company shall keep protected cell assets and protected cell
 751 liabilities:

752 (i) Separate and separately identifiable from the assets and liabilities of the protected
 753 cell captive insurance company's general account; and

754 (ii) Attributable to one protected cell separate and separately identifiable from
 755 protected cell assets and protected cell liabilities attributable to other protected cells.

756 (B) If subparagraph (A) of this paragraph is violated, then the remedy of tracing is
 757 applicable to protected cell assets when commingled with protected cell assets of other
 758 protected cells or the assets of the protected cell captive insurance company's general
 759 account. The remedy of tracing shall not be construed as an exclusive remedy.

760 (5) When establishing a protected cell, the protected cell captive insurance company
 761 shall attribute to the protected cell assets a value at least equal to the reserves and other
 762 insurance liabilities attributed to such protected cell.

763 (6) Each protected cell shall be accounted for separately on the books and records of the
764 protected cell captive insurance company to reflect the financial condition and results of
765 operations of such protected cell, net income or loss, dividends or other distributions to
766 participants, and such other factors as may be provided in the participant contract or
767 required by the Commissioner.

768 (7) No asset of a protected cell shall be chargeable with liabilities arising out of any other
769 insurance business the protected cell captive insurance company may conduct.

770 (8) No sale, exchange, or other transfer of assets shall be made by such protected cell
771 captive insurance company between or among any of its protected cells without the
772 consent of such protected cells.

773 (9) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a
774 protected cell to a protected cell captive insurance company or participant without the
775 Commissioner's approval. In no event shall the Commissioner's approval be given if the
776 sale, exchange, transfer, dividend, or distribution would result in the insolvency or
777 impairment of a protected cell.

778 (10) All attributions of assets and liabilities to the protected cells and the general account
779 shall be in accordance with the plan of operation approved by the Commissioner. No
780 other attribution of assets or liabilities shall be made by a protected cell captive insurance
781 company between its general account and any protected cell or between any protected
782 cells. The protected cell captive insurance company shall attribute all insurance
783 obligations, assets, and liabilities relating to a reinsurance contract entered into with
784 respect to a protected cell to such protected cell. The performance under such
785 reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant
786 to a tax allocation agreement to which the protected cell captive insurance company is a
787 party, including any payments made by or due to be made to the protected cell captive
788 insurance company pursuant to the terms of such agreement, shall reflect the insurance
789 obligations, assets, and liabilities relating to the reinsurance contract that are attributed
790 to such protected cell.

791 (11) In connection with the conservation, rehabilitation, or liquidation of a protected cell
792 captive insurance company, the assets and liabilities of a protected cell shall, to the extent
793 the Commissioner determines they are separable, at all times be kept separate from, and
794 shall not be commingled with, those of other protected cells and the protected cell captive
795 insurance company.

796 (12) Each protected cell captive insurance company shall annually file with the
797 Commissioner such financial reports as required by the Commissioner. Any such
798 financial report shall include, without limitation, accounting statements detailing the
799 financial experience of each protected cell.

800 (13) Each protected cell captive insurance company shall notify the Commissioner in
801 writing within ten business days of any protected cell that is insolvent or otherwise unable
802 to meet its claim or expense obligations.

803 (14) No participant contract shall take effect without the Commissioner's prior written
804 approval. The addition of each new protected cell, the withdrawal of any participant, or
805 the termination of any existing protected cell shall constitute a change in the plan of
806 operation requiring the Commissioner's prior written approval.

807 (15) The business plan written by a protected cell captive insurance company, with
808 respect to each protected cell, shall be:

809 (A) Fronted by an insurance company licensed under the laws of any state;

810 (B) Reinsured by a reinsurer authorized or approved by this state; or

811 (C) Secured by a trust fund in the United States for the benefit of policyholders and
812 claimants or funded by an irrevocable letter of credit or other arrangement that is
813 acceptable to the Commissioner. The amount of security provided shall be no less than
814 the reserves associated with those liabilities which are neither fronted nor reinsured,
815 including reserves for losses, allocated loss adjustment expenses, incurred but not
816 reported losses, and unearned premiums for business written through the participant's
817 protected cell. The Commissioner may require the protected cell captive insurance
818 company to increase the funding of any security arrangement established under this
819 paragraph. If the form of security is a letter of credit, the letter of credit shall be issued
820 or confirmed by a bank approved by the Commissioner. A trust maintained pursuant
821 to this paragraph shall be established in a form and upon such terms as approved by the
822 Commissioner.

823 (16) Notwithstanding this title or other laws of this state, and in addition to Code Section
824 33-41-21, in the event of an insolvency of a protected cell captive insurance company
825 where the Commissioner determines that one or more protected cells remain solvent, the
826 Commissioner may separate such cells from the protected cell captive insurance company
827 and may allow, on application of the protected cell captive insurance company, for the
828 conversion of such protected cells into one or more new or existing protected cell captive
829 insurance companies or one or more other captive insurance companies, pursuant to such
830 plan of operation as the Commissioner deems acceptable.

831 33-41-102.

832 Notwithstanding Code Section 33-41-5, the assets of two or more protected cells may be
833 combined for purposes of investment, and such combination shall not be construed as
834 defeating the segregation of such assets for accounting or other purposes. Notwithstanding

835 any other provision of this title, the Commissioner may approve the use of alternative
 836 reliable methods of valuation and rating.

837 ARTICLE 3

838 33-41-200.

839 This article provides for the creation of special purpose financial captive insurance
 840 companies (SPFCs) exclusively to facilitate the securitization of one or more risks as a
 841 means of accessing alternative sources of capital and achieving the benefits of
 842 securitization. SPFCs are created for the limited purpose of entering into SPFC contracts
 843 and insurance securitization transactions and into related agreements to facilitate the
 844 accomplishment and execution of such transactions. The creation of SPFCs is intended to
 845 achieve greater efficiencies in structuring and executing insurance securitizations, to
 846 diversify and broaden sources of capital for insurers, to facilitate access for many insurers
 847 to insurance securitization and capital markets financing technology, and to further the
 848 economic development and expand the interest of this state through its captive insurance
 849 program.

850 33-41-201.

851 For purposes of this article, the term:

852 (1) "Affiliated company" means a company in the same corporate system as a parent by
 853 virtue of common ownership, control, operation, or management.

854 (2) 'Control' or 'controlling' or 'controlled by' or 'under common control with' means the
 855 possession, direct or indirect, of the power to direct or cause the direction of the
 856 management and policies of a person, whether through the ownership of voting securities,
 857 by contract other than a commercial contract for goods or nonmanagement services, or
 858 otherwise; provided that such power is not the result of an official position with or
 859 corporate office held by the person. Control shall be presumed to exist if a person,
 860 directly or indirectly, owns, controls, holds with the power to vote, or holds proxies
 861 representing 10 percent or more of the voting securities of another person. This
 862 presumption may be rebutted by a showing that control does not exist. Notwithstanding
 863 this paragraph, for purposes of this article, the fact that an SPFC exclusively provides
 864 reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds
 865 for a finding that the SPFC and ceding insurer are under common control.

866 (3) 'Counterparty' means an SPFC's parent or affiliated company, a ceding insurer to the
 867 SPFC contract, or, subject to the prior approval of the Commissioner, a nonaffiliated
 868 company.

- 869 (4) 'Fair value' means:
870 (A) As to cash, the amount of the cash; and
871 (B) As to an asset other than cash:
872 (i) The quoted mid-market price for the asset in active markets if available; or
873 (ii) If the quoted mid-market price is not available:
874 (I) A value determined using the best information available considering values of
875 similar assets and other valuation methods, such as present value of future cash
876 flows, historical value of the same or similar assets, or comparison to values of
877 other asset classes, the value of which have been historically related to the subject
878 asset; or
879 (II) The amount at which such asset could be bought or sold in a current transaction
880 between arm's-length, willing parties.
- 881 (5) 'Insolvency' or 'insolvent' means that the SPFC or one or more of its protected cells
882 is unable to pay its obligations when they are due, unless such obligations are the subject
883 of a bona fide dispute, or the Commissioner previously has established by order other
884 criteria for determining the solvency of the SPFC or one or more of its protected cells,
885 in which case the SPFC is insolvent if it fails to meet such criteria.
- 886 (6) 'Insurance securitization' or 'securitization' means a transaction or a group of related
887 transactions, which:
888 (A) Include capital market offerings that are effected through related risk transfer
889 instruments and facilitating administrative agreements where all or part of the result of
890 such transactions is used to fund the SPFC's obligations under a reinsurance contract
891 with a ceding insurer and by which:
892 (i) Proceeds are obtained by an SPFC, directly or indirectly, through the issuance of
893 securities by the SPFC or any other person; or
894 (ii) A person provides one or more letters of credit or other assets for the benefit of
895 the SPFC; the Commissioner authorizes the SPFC to treat such letters of credit or
896 other assets as admitted assets for purposes of the SPFC's annual report, and all or any
897 part of such proceeds, letters of credit, or assets, as applicable, are used to fund the
898 SPFC's obligations under a reinsurance contract with a ceding insurer; and
899 (B) Do not include the issuance of a letter of credit for the benefit of the Commissioner
900 to satisfy all or part of the SPFC's capital and surplus requirements under Code Section
901 33-41-8.
- 902 (7) 'Management' means the board of directors, managing board, or other individual or
903 individuals vested with overall responsibility for the management of the affairs of the
904 SPFC, including the election and appointment of officers or other agents to act on behalf
905 of the SPFC.

906 (8) 'Organizational document' means the SPFC's articles of incorporation, articles of
 907 charter, articles of organization, bylaws, operating agreement, or other formation
 908 documents as required by the Secretary of State that establish the SPFC as a legal entity
 909 or prescribes its existence.

910 (9) 'Parent' means any corporation, limited liability company, partnership, or individual
 911 that directly or indirectly owns, controls, or holds with power to vote more than 50
 912 percent of the outstanding voting securities of an SPFC.

913 (10) 'Protected cell' means a separate account established and maintained by an SPFC
 914 for one SPFC contract and the accompanying insurance securitization with a
 915 counterparty.

916 (11) 'Securities' means those different types of debt obligations, equity, surplus
 917 certificates, surplus notes, funding agreements, derivatives, and other legal forms of
 918 financial instruments.

919 (12) 'SPFC' or 'special purpose financial captive insurance company' means a captive
 920 insurance company that has received a certificate of authority from the Commissioner for
 921 the limited purposes provided for in this article.

922 (13) 'SPFC contract' means a contract between the SPFC and the counterparty pursuant
 923 to which the SPFC agrees to provide insurance or reinsurance protection to the
 924 counterparty for risks associated with the counterparty's insurance or reinsurance
 925 business.

926 (14) 'SPFC securities' means the securities issued by an SPFC.

927 (15) 'Surplus note' means an unsecured subordinated debt obligation deemed to be a
 928 surplus certificate under this title and otherwise possessing characteristics consistent with
 929 paragraph 3 of the Statement of Statutory Accounting Principles No. 41, as amended,
 930 National Association of Insurance Commissioners.

931 33-41-202.

932 (a) No provisions of this title, other than those expressly provided in this chapter, shall
 933 apply to an SPFC, and those provisions apply only as modified by this article. If a conflict
 934 occurs between this title or chapter and this article, this article shall control.

935 (b) The Commissioner, by rule, regulation, or order, may exempt an SPFC or its protected
 936 cells, on a case-by-case basis, from any provision of this chapter if the Commissioner
 937 determines regulation under this chapter to be inappropriate given the nature of the risks
 938 to be insured.

939 33-41-203.

940 (a) This Code section and Code Section 33-41-201 provide a basis for the creation and use
941 of protected cells by an SPFC as a means of accessing alternative sources of capital,
942 lowering formation and administrative expenses, and generally making insurance
943 securitizations more efficient. If a conflict exists between this chapter and either this Code
944 section or Code Section 33-41-201, then either this Code section or Code Section
945 33-41-201 shall control, as applicable.

946 (b) An SPFC may establish and maintain one or more protected cells with prior written
947 approval of the Commissioner and subject to compliance with the applicable provisions of
948 this article and the following conditions:

949 (1) A protected cell shall be established only for the purpose of insuring or reinsuring
950 risks of one or more SPFC contracts with a counterparty with the intent of facilitating an
951 insurance securitization;

952 (2) Each protected cell shall be accounted for separately on the books and records of the
953 SPFC to reflect the financial condition and results of operations of the protected cell, net
954 income or loss, dividends, or other distributions to the counterparty for the SPFC contract
955 with each cell, and other factors as may be provided in the SPFC contract, insurance
956 securitization transaction documents, plan of operation, or business plan, or as required
957 by the Commissioner;

958 (3) Amounts attributed to a protected cell under this article, including assets transferred
959 to a protected cell account, are owned by the SPFC, and no SPFC shall be, or hold itself
960 out to be, a trustee with respect to those protected cell assets of such protected cell
961 account;

962 (4) All attributions of assets and liabilities between a protected cell and the general
963 account shall be in accordance with the plan of operation approved by the Commissioner.
964 No other attribution of assets or liabilities shall be made by an SPFC between the SPFC's
965 general account and its protected cell or cells. The SPFC shall attribute all insurance
966 obligations, assets, and liabilities relating to an SPFC contract and the related insurance
967 securitization transaction, including any securities issued by the SPFC as part of the
968 insurance securitization, to a particular protected cell. The rights, benefits, obligations,
969 and liabilities of any securities attributable to such protected cell and the performance
970 under an SPFC contract and the related securitization transaction and any tax benefits,
971 losses, refunds, or credits allocated, or any of them, at any point in time pursuant to a tax
972 allocation agreement between the SPFC and its counterparty, parent, or company or
973 group company, or any of them, in common control with them, as the case may be,
974 including any payments made by or due to be made to the SPFC pursuant to the terms of
975 the agreement, shall reflect the insurance obligations, assets, and liabilities relating to the

976 SPFC contract and the insurance securitization transaction that are attributed to a
977 particular protected cell;

978 (5) No assets of a protected cell shall be chargeable with liabilities arising out of an
979 SPFC contract related to or associated with another protected cell. However, one or more
980 SPFC contracts may be attributed to a protected cell only if the SPFC contracts are
981 intended to be, and ultimately are, part of a single securitization transaction;

982 (6) No sale, exchange, or other transfer of assets shall be made by an SPFC between or
983 among any of its protected cells without the consent of the Commissioner, counterparty,
984 and each protected cell;

985 (7) Except as otherwise contemplated in the SPFC contract or related insurance
986 securitization transaction documents, or both, no sale, exchange, transfer of assets,
987 dividend, or distribution shall be made from a protected cell to a counterparty or parent
988 without the Commissioner's approval and the sale, exchange, transfer, dividend, or
989 distribution shall not be approved if the sale, exchange, transfer, dividend, or distribution
990 would result in a protected cell's insolvency or impairment; and

991 (8) An SPFC may pay interest or repay principal, or both, and make distributions or
992 repayments with respect to any securities attributed to a particular protected cell from
993 assets or cash flows relating to, or emerging from, the SPFC contract and the insurance
994 securitization transactions that are attributable to that particular protected cell in
995 accordance with this article or as otherwise approved by the Commissioner.

996 (c) No SPFC contract with, or attributable to, a protected cell shall take effect without the
997 Commissioner's prior written approval, and the addition of each new protected cell
998 constitutes a change in the business plan requiring the Commissioner's prior written
999 approval. The Commissioner may retain legal, financial, and examination services from
1000 outside the department to examine and investigate the application for a protected cell, the
1001 reasonable cost of which may be charged against the applicant, or the Commissioner may
1002 use internal resources to examine and investigate the application, the reasonable cost of
1003 which may be charged against the applicant, or both.

1004 (d) An SPFC utilizing protected cells shall possess and maintain minimum capitalization
1005 separate and apart from the capitalization of its protected cell or cells in an amount
1006 determined by the Commissioner after giving due consideration of the SPFC's business
1007 plan, feasibility study, and pro formas, including the nature of the risks to be insured or
1008 reinsured. For purposes of determining the capitalization of each protected cell, an SPFC
1009 shall initially capitalize and maintain capitalization in each protected cell in the amount and
1010 manner required for an SPFC in Code Section 33-41-8.

1011 (e) The establishment of one or more protected cells alone shall not constitute, and shall
1012 not be deemed to be, a fraudulent conveyance, an intent by the SPFC to defraud creditors,
1013 or the carrying out of business by the SPFC for any other fraudulent purpose.

1014 33-41-204.

1015 (a) An SPFC shall only insure the risks of a counterparty.

1016 (b) No SPFC shall issue a contract for assumption of risk or indemnification of loss other
1017 than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC
1018 contract to third party reinsurers through the purchase of reinsurance or retrocession
1019 protection on terms approved by the Commissioner.

1020 (c) An SPFC may enter into contracts and conduct other commercial activities related or
1021 incidental to and necessary to fulfill the purposes of the SPFC contract, insurance
1022 securitization, and this article. Such activities may include, but are not limited to:

1023 (1) Entering into SPFC contracts;

1024 (2) Issuing SPFC securities in accordance with applicable securities law;

1025 (3) Complying with the terms of such contracts or securities;

1026 (4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax,
1027 administration, reimbursement, or fiscal agent transactions; and

1028 (5) Complying with trust indenture, reinsurance, or retrocession and agreements
1029 necessary or incidental to effectuate an insurance securitization in compliance with this
1030 article or the plan of operation approved by the Commissioner.

1031 (d)(1) An SPFC shall discount its reserves at discount rates as approved by the
1032 Commissioner.

1033 (2) An SPFC shall maintain reserves that are actuarially sufficient to support the
1034 liabilities incurred by the SPFC in reinsuring life insurance policies.

1035 (3) An SPFC shall file annually with the Commissioner an actuarial opinion on reserves
1036 provided by an approved independent actuary.

1037 33-41-205.

1038 (a)(1) The creation of a protected cell shall not create, with respect to such protected cell,
1039 a legal person separate from the SPFC.

1040 (2) Notwithstanding paragraph (1), a protected cell shall have its own distinct name or
1041 designation that includes the words 'protected cell.' The SPFC shall transfer all assets
1042 attributable to the protected cell to one or more separately established and identified
1043 protected cell accounts bearing the name or designation of such protected cell.

1044 (3) Although a protected cell is not a separate legal person, the property of an SPFC in
1045 a protected cell is subject to orders of a court by name as the property would have been
1046 if the protected cell were a separate legal person.

1047 (4) The property of an SPFC in a protected cell shall be served in its own name with
1048 process in all civil actions or proceedings involving or relating to the activities of such
1049 protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty
1050 to a transaction linked or attributed to it by serving the SPFC.

1051 (5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business
1052 of a protected cell in accordance with the plan approved by the Commissioner, the SPFC
1053 shall close out the protected cell account.

1054 (b) Nothing in this Code section shall be construed to prohibit an SPFC from contracting
1055 with, or arranging for, an investment advisor, commodity trading advisor, or other third
1056 party to manage the assets of a protected cell if all remuneration, expenses, and other
1057 compensation of the third party adviser or manager are payable from the assets of such
1058 protected cell and not from the assets of other protected cells or the assets of the SPFC's
1059 general account, unless approved by the Commissioner.

1060 (c) Creditors with respect to a protected cell shall not be entitled to have recourse against
1061 the protected cell assets of other protected cells or the assets of the SPFC's general account.
1062 If an obligation of an SPFC relates only to the general account, the obligation of the SPFC
1063 extends only to such creditor, with respect to that specific obligation, and the creditor is
1064 entitled to have recourse only to the assets of the SPFC's general account.

1065 (d) The assets of the protected cell shall not be used to pay expenses or claims other than
1066 those attributable to the protected cell. Protected cell assets are available only to the SPFC
1067 contract counterparty and other creditors of the SPFC that are creditors only with respect
1068 to such protected cell and, accordingly, are entitled, in conformity with this article, to have
1069 recourse to the protected cell assets attributable to such protected cell. The assets of the
1070 protected cell are protected from the creditors of the SPFC that are not creditors with
1071 respect to such protected cell and that, accordingly, are not entitled to have recourse to the
1072 protected cell assets attributable to such protected cell. If an obligation of an SPFC to a
1073 person or counterparty arises from an SPFC contract or related insurance securitization
1074 transaction, or is otherwise incurred, with respect to a protected cell, then the obligation
1075 shall:

1076 (1) Extend only to the protected cell assets attributable to such protected cell, and the
1077 person or counterparty, with respect to such obligation, is entitled to have recourse only
1078 to the protected cell assets attributable to such protected cell; and

1079 (2) Not extend to the protected cell assets of another protected cell or the assets of the
1080 SPFC's general account, and the person or counterparty, with respect to such obligation,

1081 is not entitled to have recourse to the protected cell assets of another protected cell or the
1082 assets of the SPFC's general account. The SPFC's capitalization held separate and apart
1083 from the capitalization of its protected cell or cells shall be available at all times to pay
1084 expenses of or claims against the SPFC and shall not be used to pay expenses or claims
1085 attributable to any protected cell.

1086 (e) Notwithstanding any other provision of law, an SPFC may allow for a security interest
1087 in accordance with applicable law to attach to protected cell assets or a protected cell
1088 account when in favor of a creditor of the protected cell or to facilitate an insurance
1089 securitization, including, without limitation, the issuance of the SPFC contract, to the
1090 extent such protected cell assets are not required at all times to support the risk but without
1091 otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise
1092 approved by the Commissioner.

1093 (f) An SPFC shall establish administrative and accounting procedures necessary to
1094 properly identify the one or more protected cells of the SPFC and the protected cell assets
1095 and protected cell liabilities to each protected cell. An SPFC shall keep protected cell
1096 assets and protected cell liabilities:

1097 (1) Separate and separately identifiable from the assets and liabilities of the SPFC's
1098 general account; and

1099 (2) Attributable to one protected cell separate and separately identifiable from protected
1100 cell assets and protected cell liabilities attributable to other protected cells.

1101 (g) All contracts or other documentation reflecting protected cell liabilities shall clearly
1102 indicate that only the protected cell assets are available for the satisfaction of such
1103 protected cell liabilities. In all SPFC insurance securitizations involving a protected cell,
1104 the contracts or other documentation effecting the transaction shall contain provisions
1105 identifying the protected cell to which the transaction is attributed. In addition, the
1106 contracts or other documentation shall clearly disclose that the assets of such protected cell,
1107 and only those assets, are available to pay the obligations of such protected cell.
1108 Notwithstanding this subsection, and subject to this article and other applicable law or
1109 regulations, the failure to include this language in the contracts or other documentation
1110 shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or
1111 reinsurers, or other claimants to circumvent the provisions of this Code section.

1112 (h) An SPFC with protected cells shall annually file with the Commissioner accounting
1113 statements and financial reports required by this article, which, at least, shall:

1114 (1) Detail the financial experience of each protected cell and the SPFC separately; and

1115 (2) Provide the combined financial experience of the SPFC and all protected cells.

1116 (i) An SPFC with protected cells shall notify the Commissioner in writing within ten
1117 business days of a protected cell becoming insolvent.

1118 33-41-206.

1119 (a) An SPFC may issue securities, including surplus notes and other forms of financial
1120 instruments, subject to and in accordance with applicable law, its approved plan of
1121 operation, and its organizational documents.

1122 (b) An SPFC, in connection with the issuance of securities, may enter into and perform all
1123 of its obligations under any required contracts to facilitate the issuance of these securities.

1124 (c) Subject to the approval of the Commissioner, an SPFC may lawfully:

1125 (1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of
1126 statutory accounting; and

1127 (2) Submit for prior approval of the Commissioner periodic written requests for
1128 payments of interest on and repayments of principal of surplus notes. In lieu of approval
1129 of periodic written requests for authorization to make payments of interest on and
1130 repayments of principal of surplus notes and other debt obligations issued by the SPFC,
1131 the Commissioner may approve a formula or plan, which shall be included in the SPFC's
1132 plan of operation as amended from time to time, for payment of interest, principal, or
1133 both with respect to such surplus notes and debt obligations.

1134 (d) The Commissioner, without otherwise prejudicing the Commissioner's authority, may
1135 approve formulas for an ongoing plan of interest payments or principal repayments, or
1136 both, to provide guidance in connection with the Commissioner's ongoing reviews of
1137 requests to approve the payments on and principal repayments of the surplus notes.

1138 (e) The obligation to repay principal or interest, or both, on the securities issued by the
1139 SPFC shall reflect the risk associated with the obligations of the SPFC to the counterparty
1140 under the SPFC contract.

1141 33-41-207.

1142 An SPFC may enter into swap agreements or other forms of asset management agreements,
1143 including guaranteed investment contracts, or other transactions that have the objective of
1144 leveling timing differences in funding of upfront or ongoing transaction expenses or
1145 managing asset, credit, or interest rate risk of the investments to ensure that the investments
1146 are sufficient to assure payment or repayment of the securities, and related interest or
1147 principal payments, issued pursuant to an SPFC insurance securitization transaction or the
1148 obligations of the SPFC under the SPFC contract.

1149 33-41-208.

1150 (a) An SPFC may reinsure only the risks of a ceding insurer, pursuant to a reinsurance
1151 contract. No SPFC shall issue a contract of insurance or a contract for assumption of risk
1152 or indemnification of loss other than such reinsurance contract.

- 1153 (b) Unless otherwise approved in advance by the Commissioner, no SPFC shall assume
1154 or retain exposure to insurance or reinsurance losses for its own account that are not funded
1155 by:
- 1156 (1) Proceeds from an insurance securitization or letters of credit or other assets described
1157 in Code Section 33-41-12 or otherwise authorized by the Commissioner through
1158 regulation;
- 1159 (2) Premium and other amounts payable by the ceding insurer to the SPFC pursuant to
1160 the reinsurance contract; and
- 1161 (3) Any return on investment of the items described in paragraphs (1) and (2).
- 1162 (c) The reinsurance contract shall contain all provisions reasonably required or approved
1163 by the Commissioner, which requirements shall take into account the laws applicable to the
1164 ceding insurer regarding the ceding insurer taking credit for the reinsurance provided under
1165 such reinsurance contract.
- 1166 (d) An SPFC may cede risks assumed through a reinsurance contract to one or more
1167 reinsurers through the purchase of reinsurance, subject to the prior approval of the
1168 Commissioner.
- 1169 (e) An SPFC may enter into contracts and conduct other commercial activities related or
1170 incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance
1171 securitization, and this article, provided such contracts and activities are included in the
1172 SPFC's plan of operation or are otherwise approved in advance by the Commissioner. Such
1173 contracts and activities may include but are not limited to:
- 1174 (1) Entering into SPFC contracts;
- 1175 (2) Issuing SPFC securities in accordance with applicable securities law;
- 1176 (3) Complying with the terms of such contracts or securities;
- 1177 (4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax,
1178 administration, reimbursement, or fiscal agent transactions; and
- 1179 (5) Complying with trust indenture, reinsurance, or retrocession and other agreements
1180 necessary or incidental to effectuate an insurance securitization in compliance with this
1181 article or the plan of operation approved by the Commissioner.
- 1182 (f) Unless otherwise approved in advance by the Commissioner, a reinsurance contract
1183 shall not contain any provision for payment by the SPFC in discharge of its obligations
1184 under the reinsurance contract to any person other than the ceding insurer or any receiver
1185 of the ceding insurer.
- 1186 (g) An SPFC shall notify the Commissioner immediately of any action by a ceding insurer
1187 or any other person to foreclose on or otherwise take possession of collateral provided by
1188 the SPFC to secure any obligation of the SPFC.

1189 (h) In the SPFC insurance securitization, the contracts or other relating documentation
1190 shall contain provisions identifying the SPFC.

1191 (i) Unless otherwise approved by the Commissioner, no SPFC shall enter into an SPFC
1192 contract with a person that is not licensed or otherwise authorized to transact the business
1193 of insurance or reinsurance in at least its state or country of domicile.

1194 (j) No SPFC shall:

1195 (1) Have any direct obligation to the policyholders or reinsureds of the counterparty; or

1196 (2) Lend or otherwise invest, or place in custody, trust, or under management any of its
1197 assets with, or to borrow money or receive a loan from, other than by issuance of the
1198 securities pursuant to an insurance securitization, or advance from, anyone convicted of
1199 a felony, anyone who is untrustworthy or of known bad character, or anyone convicted
1200 of a criminal offense involving the conversion or misappropriation of fiduciary funds or
1201 insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

1202 33-41-209.

1203 (a) No securities issued by an SPFC pursuant to an insurance securitization shall be
1204 considered to be insurance or reinsurance contracts. No investor in these securities or a
1205 holder of these securities, by sole means of such investment or holding, shall be considered
1206 to be transacting the business of insurance in this state. The underwriter's placement or
1207 selling agents and their partners, directors, officers, members, managers, employees,
1208 agents, representatives, and advisers involved in an insurance securitization pursuant to this
1209 article shall not be considered to be insurance producers or brokers or conducting business
1210 as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or
1211 consulting business only by virtue of their activities in connection with an insurance
1212 securitization.

1213 (b) Capital contributions to a protected cell are considered the business of insurance and
1214 no person contributing capital to a protected cell shall be deemed to be an investor and no
1215 SPFC contract shall be deemed a security.

1216 33-41-210.

1217 (a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC
1218 to satisfy the liabilities and obligations of the SPFC incident to the reinsurance contract,
1219 the insurance securitization, and other related agreements.

1220 (b) In the insurance securitization, the security offering memorandum or other document
1221 issued to prospective investors regarding the offer and sale of a surplus note or other
1222 security shall include a disclosure that all or part of the proceeds of such insurance
1223 securitization will be used to fund the SPFC's obligations to the ceding insurer.

1224 (c) No SPFC shall be subject to any restriction on investments other than the following:
1225 (1) The Commissioner may limit investments by an SPFC to those categories and
1226 amounts of authorized investments by regulation;
1227 (2) No SPFC shall make a loan to any person other than as permitted under its plan of
1228 operation or as otherwise approved in advance by the Commissioner; and
1229 (3) The Commissioner may prohibit or limit any investment that threatens the solvency
1230 or liquidity of the SPFC unless the investment is otherwise approved in its plan of
1231 operation or in an order issued to the SPFC pursuant to Code Section 33-41-203, as either
1232 is amended from time to time.

1233 33-41-211.

1234 (a) No SPFC shall declare or pay dividends in any form to its owners other than in
1235 accordance with the insurance securitization transaction agreements, and in no extent shall
1236 the dividends decrease the capital of the SPFC below \$250,000.00. After giving effect to
1237 the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms
1238 of the insurance securitization, shall be sufficient to satisfy the Commissioner that the
1239 SPFC can meet its obligations. Approval by the Commissioner of an ongoing plan for the
1240 payment of dividends or other distribution by an SPFC shall be conditioned upon the
1241 retention, at the time of each payment, of capital or surplus equal to or in excess of amounts
1242 specified by or determined in accordance with formulas approved for the SPFC by the
1243 Commissioner.

1244 (b) The dividends may be declared by the management of the SPFC if the dividends do not
1245 violate this article or jeopardize the fulfillment of the obligations of the SPFC or the trustee
1246 pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any
1247 related transaction and other provisions of this article.

1248 33-41-212.

1249 (a) Any material change of the SPFC's plan of operation, whether or not through an SPFC
1250 protected cell, shall require prior approval of the Commissioner. The following
1251 transactions shall not constitute material change for purposes of this Code section:

1252 (1) If initially approved in the plan of operation, securities subsequently issued to
1253 continue the securitization activities of the SPFC either during or after expiration,
1254 redemption, or satisfaction, of all of these, of part or all of the securities issued pursuant
1255 to initial insurance securitization transactions; and
1256 (2) A change and substitution in a counterparty to a swap transaction for an existing
1257 insurance securitization as allowed pursuant to this article if the replacement swap

1258 counterparty carries a similar or higher rating to its predecessor with two or more
1259 nationally recognized rating agencies.

1260 (b) No later than six months after the fiscal year end of the SPFC, the SPFC shall file with
1261 the Commissioner an audit by a certified public accounting firm of the financial statements
1262 of the SPFC and the trust accounts.

1263 (c) An SPFC shall maintain the SPFC's records in this state unless otherwise approved by
1264 the Commissioner and shall make its records available for examination by the
1265 Commissioner at any time. The SPFC shall keep its books and records in such manner that
1266 its financial condition, affairs, and operations can be ascertained and so that the
1267 Commissioner may readily verify its financial statements and determine its compliance
1268 with this article.

1269 (d) All original books, records, documents, accounts, and vouchers shall be preserved and
1270 kept available in this state for the purpose of examination and until authority to destroy or
1271 otherwise dispose of the records is secured from the Commissioner. The original records,
1272 however, may be kept and maintained outside this state if, according to a plan adopted by
1273 the management of the SPFC and approved by the Commissioner, it maintains suitable
1274 copies instead of the originals. The books or records may be photographed, reproduced on
1275 film, or stored and reproduced electronically.

1276 33-41-213.

1277 At the cessation of business of an SPFC following termination or cancellation of an SPFC
1278 contract and the redemption of any related securities issued in connection with the SPFC
1279 contract, the authority granted by the Commissioner expires or, in the case of retiring and
1280 surviving protected cells, is modified, and the SPFC is no longer authorized to conduct
1281 activities unless and until a new or modified certificate of authority is issued pursuant to
1282 a new filing under this part or as agreed by the Commissioner."

1283 **SECTION 2.**

1284 All laws and parts of laws in conflict with this Act are repealed.