§ 7003. License; power; filing; fees. (a) Any captive insurance company, when permitted by its articles of association or charter, shall apply to the superintendent for a license to do a captive insurance business under this article. A captive insurance business consists of the kinds of insurance set forth in section one thousand one hundred thirteen and section one thousand one hundred fourteen of this chapter, provided that:

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

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

(3) a pure captive insurance company or a group captive insurance company shall not be authorized to provide, on a primary basis or as reinsurance, the kinds of insurance specified in paragraphs one, two, three, eighteen, twenty-three and twenty-five of subsection (a) of section one thousand one hundred thirteen of this chapter;

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

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

(B) any other kind of insurance, including motor vehicle liability insurance, that is required, under the laws of this state or any political subdivision of this state, as a demonstration of financial responsibility for obtaining a license or permit to undertake specific activities when such requirement must be satisfied by obtaining insurance coverage from an insurer authorized in this state, up to the minimum amount of insurance so required under such laws; and

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

(5) a pure captive insurance company or a group captive insurance company shall reinsure only risks as set forth in section seven thousand ten of this article.

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

(b) No captive insurance company shall do any captive insurance business in this state unless:

(1) it first obtains from the superintendent a license authorizing it to do captive insurance business in this state;

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

(3) it maintains its principal office and its records in this state;

(4) it utilizes a captive manager resident in this state who is:

(A) licensed as an agent or a broker under the provisions of article twenty-one of this chapter; or

(B) any other person approved by the superintendent provided that the approval may be withdrawn by the superintendent, upon notice and hearing, if the person has:

(i) been guilty of fraudulent or dishonest practices; or

(ii) demonstrated incompetency or untrustworthiness to act in such a capacity; and

(5) it submits a power of attorney, in accordance with the provisions of section one thousand two hundred twelve of this chapter, designating the superintendent as its agent for the purpose of receiving service of process in any proceeding against it.

(c)(1) Before receiving a license to do a captive insurance business, a captive insurance company shall file an application for license with the superintendent for review and approval. Such application shall include a certified copy of its charter and bylaws, a financial statement certified by two principal officers, a plan of operation, which shall include an actuarial report prepared by a qualified independent actuary, and any other statements or documents required by the superintendent.

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

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

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

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

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

(E) such other factors deemed relevant by the superintendent in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

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

(4) In order to provide for the review of the application submitted pursuant to this subsection in a timely manner, the superintendent may engage such other qualified persons and services as may be necessary. Prior to retaining any such persons and services, the superintendent shall notify the applicant and provide an estimate of the cost of such services. The superintendent shall recover such costs in the manner prescribed in subsection (f) of section two hundred six of the financial services law.

(5) In the case of a pure captive insurance company formed by a city with a population of one million or more to insure such city and its affiliated companies for liability related to or arising out of activities in or near the World Trade Center site in response to the attacks of September eleventh, two thousand one, the superintendent, in

addition to the provisions set forth in paragraph two of this subsection, shall consider such factors as the unique risk insured by such captive and the source and limits of the premium payments along with any limitations on the acceptance of claims and the payment of accepted claims so long as such limitations provide an equitable basis for the allocation of the assets of such company to pay claims.

(d) Any proposed amendments or revisions to the charter and bylaws of a captive insurance company shall be filed with the superintendent for review and approval.

(e) If the superintendent is satisfied that the documents and statements filed by the captive insurance company comply with the provisions of this article, a license authorizing it to do a captive insurance business in this state shall be issued for a term expiring on June thirtieth. Thereafter, the superintendent may issue a renewal license for successive one year terms expiring on June thirtieth.