



Introduced Version

Senate Bill No. 356

(By Senators Minard, Jenkins and Stollings)

[Introduced January 31, 2011; referred to the Committee on Banking and Insurance.]

A BILL to amend and reenact §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-31-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-31-16a, all relating to captive insurance; subjecting any captive insurance company organized as a risk retention group to certain insurance code provisions; and correcting technical errors.

Be it enacted by the Legislature of West Virginia:

That §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-31-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-31-16a, all to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

As used in this ~~chapter~~ article, unless the context requires otherwise:

- (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured or a member organization by virtue of common ownership, control, operation or management.
- (2) "Alien captive insurance company" means any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a country other than the United States which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in such jurisdiction.
- (3) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations or other entities that has been in continuous existence for at least one year, the member organizations of which, or which does itself, whether or not in conjunction with some or all of the member organizations:
 - (A) Own, control or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;
 - (B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; or
 - (C) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.
- (4) "Association captive insurance company" means any company that insures risks of the member organizations of the association, and their affiliated companies.
- (5) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.
- (6) "Branch captive insurance company" means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
- (7) "Branch operations" means any business operations of a branch captive insurance company in this state.

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company or risk retention group formed or licensed under the provisions of this ~~chapter article~~. For purposes of this ~~chapter article~~, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner.

(9) "Commissioner" means the Insurance Commissioner of West Virginia.

(10) "Controlled unaffiliated business" means any company:

(A) That is not in the corporate system of a parent and affiliated companies;

(B) That has an existing contractual relationship with a parent or affiliated company; and

(C) Whose risks are managed by a pure captive insurance company in accordance with section nineteen of this article.

(11) "Industrial insured" means an insured:

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

(B) Whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(C) Who has at least twenty-five full-time employees.

(12) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies. (13) "Industrial insured group" means any group of industrial insureds that collectively:

(A) Own, control or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer;

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

(C) Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer.

(14) "Member organization" means any individual, corporation, limited liability company, partnership, association or other entity that belongs to an association.

(15) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members. (16) "Parent" means a corporation, limited liability company, partnership, other entity, or individual that directly or indirectly owns, controls or holds with power to vote more than fifty percent of the outstanding voting:

(A) Securities of a pure captive insurance company organized as a stock corporation; or

(B) Membership interests of a pure captive insurance company organized as a nonprofit corporation.

(17) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

(18) "Risk retention group" means a captive insurance company organized under the laws of this state pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. §3901, et seq., as amended, as a stock or mutual corporation, a reciprocal or other limited liability entity.

§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association, charter or other organizational document, may apply to the commissioner for a license to do any and all insurance comprised in section ten, article one of this chapter except as indicated in subdivision (4) ~~subsection (a)~~ of this ~~section subsection~~. *Provided*, That all captive insurance companies, except pure captive insurance companies, shall maintain their principal office and principal place of business in this state: *Provided, however*, That:

(1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;

(3) No industrial insured captive insurance company may insure any risks other than those of the industrial insureds that comprise the industrial insured group, and their affiliated companies;

(4) No risk retention group may insure any risks other than those of its members and owners;

(5) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(6) No captive insurance company may accept or cede reinsurance except as provided in section eleven of this article;

(7) Any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the federal law or laws of the state having jurisdiction over the transaction. Any captive insurance company, unless prohibited by federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies; and

(8) Any captive insurance company which insures risks described in subsections (a) and (b) of section ten, article one of this chapter shall comply with all applicable state and federal laws.

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

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

(2) Its board of directors, or, in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one meeting each year in this state; and

(3) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state: *Provided*, That whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Secretary of State shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c)(1) Before receiving a license, a captive insurance company shall:

(A) File with the commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(B) Submit to the commissioner for approval a description of the coverages, deductibles, coverage limits and rates, together with such additional information as the commissioner may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the commissioner evidence of the following:

(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 its plan of operation;

(D) The adequacy of the loss prevention programs of its insureds; and

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

(3) Information submitted pursuant to this subsection shall be and remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(A) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:

(i) The information sought is relevant to and necessary for the furtherance of such action or case;

(ii) The information sought is unavailable from other nonconfidential sources; and

(iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner: *Provided*, That the provisions of subdivision (3) of this subsection shall not apply to any risk retention group; and

(B) The commissioner may, in the commissioner's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, if:

(i) The public official shall agree in writing to maintain the confidentiality of such information; and

(ii) The laws of the state in which such public official serves require such information to be and to remain confidential. (d)

Each captive insurance company shall pay to the commissioner a nonrefundable fee of two hundred dollars for examining, investigating and processing its application for license, and the commissioner is authorized to retain legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of subsection (r), section nine, article two of this chapter shall apply to examinations, investigations and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each year thereafter of \$300.

(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this ~~chapter~~ article, the commissioner may grant a license authorizing it to do insurance business in this state until ~~April 4~~ May 31, thereafter, which license may be renewed.

§33-31-6. Formation of captive insurance companies in this state.

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, or as a nonprofit corporation with one or more members.

(b) An association captive insurance company or an industrial insured captive insurance company may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by its insureds; or

(3) Organized as a reciprocal insurer in accordance with article twenty-one of this chapter.

(c) A captive insurance company incorporated or organized in this state shall have not less than three incorporators or three organizers of whom not less than one shall be a resident of this state.

(d) In the case of a captive insurance company:

(1)(A) Formed as a corporation the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such a finding the commissioner shall consider:

(i) The character, reputation, financial standing and purposes of the incorporators;

(ii) The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and

(iii) Such other aspects as the commissioner shall deem advisable.

(B) The articles of incorporation, such certificate, and the organization fee shall be transmitted to the Secretary of State, who shall thereupon record both the articles of incorporation and the certificate.

(2) Formed as a reciprocal insurer, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed association will promote the general good of the state. In arriving at such a finding the Commissioner shall consider the items set forth in subparagraphs (i), (ii) and (iii), paragraph (A), subdivision (1) of this subsection.

(e) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(f) In the case of a captive insurance company:

(1) Formed as a corporation, at least one of the members of the board of directors shall be a resident of this state; and

(2) Formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this state.

(g) Other than captive insurance companies formed as nonprofit corporations under chapter thirty-one-e of this code, captive insurance companies formed as corporations under the provisions of this article shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this ~~chapter article~~. In the event of conflict between the provisions of said general corporation law and the provisions of this ~~chapter article~~, the latter shall control. (h) Captive insurance companies formed as nonprofit corporations under the provisions of this article shall have the privileges and be subject to the provisions of chapter thirty-one-e of this code as well as the applicable provisions contained in this ~~chapter article~~. In the event of conflict between the provisions of chapter thirty-one-e of this code and the provisions of this ~~chapter article~~, the latter shall control.

(i) The provisions of sections twenty-five, twenty-seven and twenty-eight, article five of this chapter and section three, article twenty-seven of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, redomestications and mutual holding companies, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:

(1) The commissioner may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the commissioner may cancel the hearing; and

(2) An alien insurer may be a party to a merger authorized under this subsection: *Provided*, That the requirements for a merger between a captive insurance company and a foreign insurer under section twenty-five, article five of this chapter shall apply to a merger between a captive insurance company and an alien insurer under this subsection. Such alien insurer shall be treated as a foreign insurer under section twenty-five, article five of this chapter and such other jurisdictions shall be the equivalent of a state for purposes of section twenty-five, article five of this chapter.

(j) Captive insurance companies formed as reciprocal insurers under the provisions of this ~~chapter article~~ shall have the privileges and be subject to the provisions of article twenty-one of this chapter in addition to the applicable provisions of this ~~chapter article~~. In the event of a conflict between the provisions of article twenty-one of this chapter and the provisions of this ~~chapter article~~, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this ~~chapter article~~ pursuant to article twenty-one of this chapter, such provisions shall not be applicable to a reciprocal insurer formed under this ~~chapter article~~ unless such provisions are expressly made applicable to captive insurance companies under this ~~chapter article~~.

(k) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one third of the fixed or prescribed number of directors determined under section eight hundred twenty-four, article eight, chapter thirty-one-e of this code.

(l) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one third of the number of its members.

§33-31-7. Reports and statements.

(a) Captive insurance companies shall not be required to make any annual report except as provided in this ~~chapter article~~.

(b) On or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, with

any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each risk retention group shall file its report in the form required by section fourteen, article ~~three~~ four of this chapter, and each risk retention group shall comply with the requirements set forth in article thirty-two of this chapter. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report.

(c) Any pure captive insurance company or an industrial insured captive insurance company may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted:

(1) The annual report is due sixty days after the fiscal year- end; and

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file on or before March 1 of each year for each calendar year-end, pages one, two, three, and five of the "captive annual statement; pure or industrial insured", verified by oath of two of its executive officers.

§33-31-8. Examinations and investigations.

(a) At least once in five years, and whenever the commissioner determines it to be prudent, the commissioner shall personally, or by some competent person appointed by the commissioner, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this ~~chapter~~ article. The captive insurance company shall be subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of the examination.

(b) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. The commissioner may, in the commissioner's discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law-enforcement officers of this state or any other state or agency of the federal government at any time, so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.

§33-31-10. Legal investments.

(a) Association captive insurance companies and risk retention groups shall comply with the investment requirements contained in article eight of this chapter, as applicable. ~~Section Subsection (b), section ten and section~~ eleven, article seven of this chapter shall apply to association captive insurance companies and risk retention groups except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this ~~chapter~~ article, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments whatever, including those limitations contained in article eight of this chapter: *Provided*, That the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(c) No pure captive insurance company may make a loan to or an investment in its parent company or affiliates without prior written approval of the commissioner, and any such loan or investment must be evidenced by documentation approved by the commissioner. Loans of minimum capital and surplus funds required by section four of this article are prohibited.

§33-31-11. Reinsurance.

(a) Any captive insurance company may provide reinsurance, comprised in section fifteen-a, article four of this chapter, on risks ceded by any other insurer: *Provided*, That if the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of sections fifteen-a and fifteen-b, article four of this chapter. Prior approval of the commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with sections fifteen-a and fifteen-b, article four of this chapter, except for business written by an alien captive insurance company outside of the United States.

(c) In addition to reinsurers authorized under the provisions of section fifteen, article four of this chapter, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer which has been authorized by the commissioner. The commissioner may require any other documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(d) For all purposes of this ~~chapter~~ article, insurance by a captive insurance company of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

§33-31-15. Rules.

The commissioner may establish and from time to time amend such rules relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this ~~chapter~~ article.

§33-31-16. Laws applicable.

No provisions of this ~~code~~ chapter, other than those contained in this ~~chapter~~ article or contained in specific references ~~contained~~ in this ~~chapter~~ article, may apply to captive insurance companies.

§33-31-16a. Same - Risk Retention Groups.

In addition to the applicable provisions of this article, any captive insurance company organized as a risk retention group is subject to the provisions of section nine, article two (examination of insurers, agents, brokers and solicitors; access to books, records, etc.); section fifteen-a, article four (credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-six (Business Transacted with Producer Controlled Property/Casualty Insurer Act); article thirty-seven (managing general agents); and article thirty-eight (Reinsurance Intermediary Act) of this chapter.

§33-31-20. Branch captive insurance company formation.

(a) A branch captive may be established in this state in accordance with the provisions of this article to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the federal Employee Retirement Income Security Act of 1974 and set forth in 29 U. S. C. § 1001, et seq., as amended. In addition to the general provisions of this ~~chapter~~ article, the provisions of sections twenty-one through twenty-five, inclusive, of this article shall apply to branch captive insurance companies.

(b) No branch captive insurance company shall do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state.

NOTE: The purpose of this bill is to make a captive insurance company that is organized as a risk retention group subject to certain insurance code provisions and to generally correct technical errors found in article thirty-one of chapter thirty- three.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§33-31-16a is new; therefore, strike-throughs and underscoring have been omitted.