

1
2 **ENROLLED**

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 356**

6 (SENATORS MINARD, JENKINS AND STOLLINGS, *original sponsors*)

7 _____
8 [Passed March 10, 2011; to take effect July 1, 2011.]
9 _____

10 AN ACT to amend and reenact §33-31-1, §33-31-2, §33-31-6, §33-31-7,
11 §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-
12 31-20 of the Code of West Virginia, 1931, as amended; to amend
13 said code by adding thereto a new section, designated §33-31-
14 16a; and to amend and reenact §33-36-2 of said code, all
15 relating to captive insurance; subjecting any captive
16 insurance company organized as a risk retention group to
17 certain insurance code provisions; and correcting technical
18 errors.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-
21 10, §33-31-11, §33-31-15, §33-31-16, §33-31-20 and §33-36-2 of the
22 Code of West Virginia, 1931, as amended, be amended and reenacted;
23 and that said code be amended by adding thereto a new section,
24 designed §33-31-16a, all to read as follows:

25 **ARTICLE 31. CAPTIVE INSURANCE.**

1 **§33-31-1. Definitions.**

2 As used in this article, unless the context requires
3 otherwise:

4 (1) "Affiliated company" means any company in the same
5 corporate system as a parent, an industrial insured or a member
6 organization by virtue of common ownership, control, operation or
7 management.

8 (2) "Alien captive insurance company" means any insurance
9 company formed to write insurance business for its parents and
10 affiliates and licensed pursuant to the laws of a country other
11 than the United States which imposes statutory or regulatory
12 standards in a form acceptable to the commissioner on companies
13 transacting the business of insurance in such jurisdiction.

14 (3) "Association" means any legal association of individuals,
15 corporations, limited liability companies, partnerships,
16 associations or other entities that has been in continuous
17 existence for at least one year, the member organizations of which,
18 or which does itself, whether or not in conjunction with some or
19 all of the member organizations:

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

23 (B) Have complete voting control over an association captive
24 insurance company incorporated as a mutual insurer; or

25 (C) Constitute all of the subscribers of an association
26 captive insurance company formed as a reciprocal insurer.

1 (4) "Association captive insurance company" means any company
2 that insures risks of the member organizations of the association,
3 and their affiliated companies.

4 (5) "Branch business" means any insurance business transacted
5 by a branch captive insurance company in this state.

6 (6) "Branch captive insurance company" means any alien captive
7 insurance company licensed by the commissioner to transact the
8 business of insurance in this state through a business unit with a
9 principal place of business in this state.

10 (7) "Branch operations" means any business operations of a
11 branch captive insurance company in this state.

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

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

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

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

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

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

3 (11) "Industrial insured" means an insured:

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

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

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

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

13 (13) "Industrial insured group" means any group of industrial
14 insureds that collectively:

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

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

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

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

25 (15) "Mutual corporation" means a corporation organized
26 without stockholders and includes a nonprofit corporation with members.

1 (16) "Parent" means a corporation, limited liability company,
2 partnership, other entity, or individual that directly or
3 indirectly owns, controls or holds with power to vote more than
4 fifty percent of the outstanding voting:

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

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

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

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

17 **§33-31-2. Licensing; authority.**

18 (a) Any captive insurance company, when permitted by its
19 articles of association, charter or other organizational document,
20 may apply to the commissioner for a license to do any and all
21 insurance comprised in section ten, article one of this chapter :
22 *Provided*, That all captive insurance companies, except pure captive
23 insurance companies, shall maintain their principal office and
24 principal place of business in this state: *Provided, however*, That:

25 (1) No pure captive insurance company may insure any risks
26 other than those of its parent and affiliated companies or

1 controlled unaffiliated business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 insurance company shall inform the commissioner of any material
2 change in rates within thirty days of the adoption of such change.

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

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

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

9 (C) The overall soundness of its plan of operation;

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

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

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

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

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

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

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

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

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

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

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

23 (e) If the commissioner is satisfied that the documents and
24 statements that such captive insurance company has filed comply
25 with the provisions of this article, the commissioner may grant a
26 license authorizing it to do insurance business in this state until

1 May 31, thereafter, which license may be renewed.

2 **§33-31-6. Formation of captive insurance companies in this state.**

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

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

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

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

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

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

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

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

26 (i) The character, reputation, financial standing and purposes

1 of the incorporators;

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

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

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

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

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

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

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

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

1 (g) Other than captive insurance companies formed as nonprofit
2 corporations under chapter thirty-one-e of this code, captive
3 insurance companies formed as corporations under the provisions of
4 this article shall have the privileges and be subject to the
5 provisions of the general corporation law as well as the applicable
6 provisions contained in this article. In the event of conflict
7 between the provisions of said general corporation law and the
8 provisions of this article, the latter shall control. (h) Captive
9 insurance companies formed as nonprofit corporations under the
10 provisions of this article shall have the privileges and be subject
11 to the provisions of chapter thirty-one-e of this code as well as
12 the applicable provisions contained in this article. In the event
13 of conflict between the provisions of chapter thirty-one-e of this
14 code and the provisions of this article, the latter shall control.

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

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

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

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

23 (k) The articles of incorporation or bylaws of a captive
24 insurance company formed as a corporation may authorize a quorum of
25 its board of directors to consist of no fewer than one third of the
26 fixed or prescribed number of directors determined under section

1 eight hundred twenty-four, article eight, chapter thirty-one-e of
2 this code.

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

7 **§33-31-7. Reports and statements.**

8 (a) Captive insurance companies shall not be required to make
9 any annual report except as provided in this article. (b) On or
10 before March 1 of each year, each captive insurance company shall
11 submit to the commissioner a report of its financial condition,
12 verified by oath of two of its executive officers. Each captive
13 insurance company shall report using generally accepted accounting
14 principles, unless the commissioner approves the use of statutory
15 accounting principles, with any appropriate or necessary
16 modifications or adaptations thereof required or approved or
17 accepted by the commissioner for the type of insurance and kinds of
18 insurers to be reported upon, and as supplemented by additional
19 information required by the commissioner. Except as otherwise
20 provided, each association captive insurance company and each risk
21 retention group shall file its report in the form required by
22 section fourteen, article four of this chapter, and each risk
23 retention group shall comply with the requirements set forth in
24 article thirty-two of this chapter. The commissioner shall by rule
25 propose the forms in which pure captive insurance companies and
26 industrial insured captive insurance companies shall report.

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

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

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

14 **§33-31-8. Examinations and investigations.**

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

24 (b) All examination reports, preliminary examination reports
25 or results, working papers, recorded information, documents and
26 copies thereof produced by, obtained by or disclosed to the

1 commissioner or any other person in the course of an examination
2 made under this section are confidential and are not subject to
3 subpoena and may not be made public by the commissioner or an
4 employee or agent of the commissioner without the written consent
5 of the company, except to the extent provided in this subsection.
6 Nothing in this subsection shall prevent the commissioner from
7 using such information in furtherance of the commissioner's
8 regulatory authority under this title. The commissioner may, in
9 the commissioner's discretion, grant access to such information to
10 public officers having jurisdiction over the regulation of
11 insurance in any other state or country, or to law-enforcement
12 officers of this state or any other state or agency of the federal
13 government at any time, so long as such officers receiving the
14 information agree in writing to hold it in a manner consistent with
15 this section.

16 **§33-31-10. Legal investments.**

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

26 (b) No pure captive insurance company or industrial insured

1 captive insurance company shall be subject to any restrictions on
2 allowable investments whatever, including those limitations
3 contained in article eight of this chapter: *Provided*, That the
4 commissioner may prohibit or limit any investment that threatens
5 the solvency or liquidity of any such company.

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

12 **§33-31-11. Reinsurance.**

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

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

1 company outside of the United States.

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

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

20 **§33-31-15. Rules.**

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

25 **§33-31-16. Laws applicable.**

26 No provisions of this chapter, other than those contained in

1 this article or contained in specific references in this article,
2 may apply to captive insurance companies.

3 **§33-31-16a. Same - Risk Retention Groups.**

4 In addition to the applicable provisions of this article, any
5 captive insurance company organized as a risk retention group is
6 subject to the provisions of section nine, article two (examination
7 of insurers, agents, brokers and solicitors; access to books,
8 records, etc.); section fourteen, article four (financial statement
9 filings; annual and quarterly statements; required format; foreign
10 insurers; agents of the commissioner); section fifteen-a, article
11 four (credit for reinsurance; definitions; requirements; trust
12 accounts; reductions from liability; security; effective date);
13 article seven (assets and liabilities); article ten (rehabilitation
14 and liquidation); article twenty-seven (insurance holding company
15 systems); article thirty-three (annual audited financial report);
16 article thirty-four (administrative supervision); article
17 thirty-four-a (standards and commissioner's authority for companies
18 deemed to be in hazardous financial condition); article thirty-five
19 (criminal sanctions for failure to report impairment); article
20 thirty-six (Business Transacted with Producer Controlled
21 Property/Casualty Insurer Act); article thirty-seven (managing
22 general agents); article thirty-eight (Reinsurance Intermediary
23 Act); and article forty-one (Insurance Fraud Prevention Act) of
24 this chapter and any rules promulgated thereunder in accordance
25 with article three, chapter twenty-nine-a of this code.

26 **§33-31-20. Branch captive insurance company formation.**

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

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

14 **ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED**
15 **PROPERTY/CASUALTY INSURER ACT.**

25 **§33-36-2. Definitions.**

1 As used in this article:

2 (a) "Accredited state" means a state in which the insurance
3 department or regulatory agency has qualified as meeting the
4 minimum financial regulatory standards promulgated and established
5 from time to time by the national association of insurance
6 commissioners.

7 (b) "Control" or "controlled" means the possession, direct or
8 indirect, of the power to direct or cause the direction of the
9 management and policies of a person, whether through the ownership

1 of voting securities, by contract other than a commercial contract
2 for goods or nonmanagement services, or otherwise, unless the power
3 is the result of an official position with or corporate office held
4 by the person. Control shall be presumed to exist if any person,
5 directly or indirectly, owns, controls, holds with the power to
6 vote, or holds proxies representing ten percent or more of the
7 voting securities of any other person or controls or appoints a
8 majority of the board of directors, voting members or similar
9 governing body of any other person. This presumption may be
10 rebutted by a showing made in the manner provided by subsection
11 (1), section four, article twenty-seven of this chapter that
12 control does not exist in fact. The commissioner may determine,
13 after furnishing all persons in interest notice and opportunity to
14 be heard and making specific findings of fact to support the
15 determination, that control exists in fact, notwithstanding the
16 absence of a presumption to that effect.

17 (c) "Controlled insurer" means a licensed insurer which is
18 controlled, directly or indirectly, by a producer.

19 (d) "Controlling producer" means a producer who, directly or
20 indirectly, controls an insurer.

21 (e) "Licensed insurer" or "insurer" means any person, firm,
22 association or corporation duly licensed to transact a property or
23 casualty insurance business, or both property and casualty
24 insurance, in this state: *Provided*, That the following are not
25 licensed insurers for the purposes of this article:

26 (1) All residual market pools and joint underwriting

1 authorities or associations; and

2 (2) All captive insurance companies as defined in article
3 thirty-one of this chapter: *Provided*, That a captive insurance
4 company organized as a risk retention group shall be considered a
5 licensed insurer for the purposes of this article.

6 (f) "Producer" means an insurance broker or brokers or any
7 other person, firm, association or corporation, when, for any
8 compensation, commission or other thing of value, the person, firm,
9 association or corporation acts or aids in any manner in
10 soliciting, negotiating or procuring the making of any insurance
11 contract on behalf of an insured other than the person, firm,
12 association or corporation: *Provided*, That the designation of any
13 individual or entity as a producer does not expand upon or provide
14 for activities beyond those permitted by article twelve of this
15 chapter.