



1 **§33-31-1. Definitions.**

2 As used in this ~~chapter~~ 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (C) Constitute all of the subscribers of an industrial insured

1 captive insurance company formed as a reciprocal insurer.

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

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

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

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

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

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

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

23 **§33-31-2. Licensing; authority.**

24 (a) Any captive insurance company, when permitted by its

1 articles of association, charter or other organizational document,  
2 may apply to the commissioner for a license to do any and all  
3 insurance comprised in section ten, article one of this chapter  
4 except as indicated in subdivision (4) ~~subsection (a)~~ of this  
5 ~~section~~ subsection: *Provided*, That all captive insurance  
6 companies, except pure captive insurance companies, shall maintain  
7 their principal office and principal place of business in this  
8 state: *Provided, however, That*:

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

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

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

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

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

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

24       (7) Any captive insurance company may provide excess workers'

1 compensation insurance to its parent and affiliated companies,  
2 unless prohibited by the federal law or laws of the state having  
3 jurisdiction over the transaction. Any captive insurance company,  
4 unless prohibited by federal law, may reinsure workers'  
5 compensation of a qualified self-insured plan of its parent and  
6 affiliated companies; and

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

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

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

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

18 (3) It appoints a registered agent to accept service of  
19 process and to otherwise act on its behalf in this state:

20 *Provided*, That whenever such registered agent cannot with  
21 reasonable diligence be found at the registered office of the  
22 captive insurance company, the Secretary of State shall be an agent  
23 of such captive insurance company upon whom any process, notice, or  
24 demand may be served.

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

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

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

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

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

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

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

24 (D) The adequacy of the loss prevention programs of its

1 insureds; and

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

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

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

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

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

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

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

24 (i) The public official shall agree in writing to maintain the

1 confidentiality of such information; and

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

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

15 (e) If the commissioner is satisfied that the documents and  
16 statements that such captive insurance company has filed comply  
17 with the provisions of this ~~chapter~~ article, the commissioner may  
18 grant a license authorizing it to do insurance business in this  
19 state until ~~April 1~~ May 31, thereafter, which license may be  
20 renewed.

21 **§33-31-6. Formation of captive insurance companies in this state.**

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

1 members.

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

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

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

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

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

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

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

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

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

1 and directors; and

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

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

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

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

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

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

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

24 (g) Other than captive insurance companies formed as nonprofit

1 corporations under chapter thirty-one-e of this code, captive  
2 insurance companies formed as corporations under the provisions of  
3 this article shall have the privileges and be subject to the  
4 provisions of the general corporation law as well as the applicable  
5 provisions contained in this ~~chapter~~ article. In the event of  
6 conflict between the provisions of said general corporation law and  
7 the provisions of this ~~chapter~~ article, the latter shall control.

8       (h) Captive insurance companies formed as nonprofit  
9 corporations under the provisions of this article shall have the  
10 privileges and be subject to the provisions of chapter thirty-one-e  
11 of this code as well as the applicable provisions contained in this  
12 ~~chapter~~ article. In the event of conflict between the provisions of  
13 chapter thirty-one-e of this code and the provisions of this  
14 ~~chapter~~ 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 a

1 notice of public hearing is required, but no one requests a  
2 hearing, then the commissioner may cancel the hearing; and

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

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

1 ~~chapter~~ article.

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

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

12 **§33-31-7. Reports and statements.**

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

15 (b) On or before March 1 of each year, each captive insurance  
16 company shall submit to the commissioner a report of its financial  
17 condition, verified by oath of two of its executive officers. Each  
18 captive insurance company shall report using generally accepted  
19 accounting principles, unless the commissioner approves the use of  
20 statutory accounting principles, with any appropriate or necessary  
21 modifications or adaptations thereof required or approved or  
22 accepted by the commissioner for the type of insurance and kinds of  
23 insurers to be reported upon, and as supplemented by additional  
24 information required by the commissioner. Except as otherwise

1 provided, each association captive insurance company and each risk  
2 retention group shall file its report in the form required by  
3 section fourteen, article ~~three~~ four of this chapter, and each risk  
4 retention group shall comply with the requirements set forth in  
5 article thirty-two of this chapter. The commissioner shall by rule  
6 propose the forms in which pure captive insurance companies and  
7 industrial insured captive insurance companies shall report.

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

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

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

21 **§33-31-8. Examinations and investigations.**

22 (a) At least once in five years, and whenever the commissioner  
23 determines it to be prudent, the commissioner shall personally, or  
24 by some competent person appointed by the commissioner, visit each

1 captive insurance company and thoroughly inspect and examine its  
2 affairs to ascertain its financial condition, its ability to  
3 fulfill its obligations and whether it has complied with the  
4 provisions of this ~~chapter~~ article. The captive insurance company  
5 shall be subject to the provisions of section nine, article two of  
6 this chapter in regard to the expense and conduct of the  
7 examination.

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

1 this section.

2 **§33-31-10. Legal investments.**

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

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

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

1 **§33-31-11. Reinsurance.**

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

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

17 (c) In addition to reinsurers authorized under the provisions  
18 of section fifteen, article four of this chapter, a captive  
19 insurance company may take credit for the reinsurance of risks or  
20 portions of risks ceded to a pool, exchange or association acting  
21 as a reinsurer which has been authorized by the commissioner. The  
22 commissioner may require any other documents, financial information  
23 or other evidence that such a pool, exchange or association will be  
24 able to provide adequate security for its financial obligations.

1 The commissioner may deny authorization or impose any limitations  
2 on the activities of a reinsurance pool, exchange or association  
3 that, in the commissioner's judgment, are necessary and proper to  
4 provide adequate security for the ceding captive insurance company  
5 and for the protection and consequent benefit of the public at  
6 large.

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

11 **§33-31-15. Rules.**

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

16 **§33-31-16. Laws applicable.**

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

21 **§33-31-16a. Same - Risk Retention Groups.**

22 In addition to the applicable provisions of this article, any  
23 captive insurance company organized as a risk retention group is  
24 subject to the provisions of section nine, article two (examination

1 of insurers, agents, brokers and solicitors; access to books,  
2 records, etc.); section fifteen-a, article four (credit for  
3 reinsurance; definitions; requirements; trust accounts; reductions  
4 from liability; security; effective date); article twenty-seven  
5 (insurance holding company systems); article thirty-three (annual  
6 audited financial report); article thirty-six (Business Transacted  
7 with Producer Controlled Property/Casualty Insurer Act); article  
8 thirty-seven (managing general agents); and article thirty-eight  
9 (Reinsurance Intermediary Act) of this chapter.

10 **§33-31-20. Branch captive insurance company formation.**

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

21 (b) No branch captive insurance company shall do any insurance  
22 business in this state unless it maintains the principal place of  
23 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.