

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 356

(By Senators Minard, Jenkins and Stollings)

[Originating in the Committee on Banking and Insurance;
reported February 23, 2011.]

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; to amend said code by adding thereto a new section, designated §33-31-16a; and to amend and reenact §33-36-2 of said code, 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; that said code be amended by adding thereto a new section, designed §33-31-16a; and that §33-36-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

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

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

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

14 (3) “Association” means any legal association of individu-
15 als, 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
18 which, or which does itself, whether or not in conjunction
19 with some or 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
22 insurance company incorporated as a stock insurer;

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

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

28 (4) “Association captive insurance company” means any
29 company that insures risks of the member organizations of
30 the association, and their affiliated companies.

31 (5) “Branch business” means any insurance business
32 transacted by a branch captive insurance company in this
33 state.

34 (6) “Branch captive insurance company” means any alien
35 captive insurance company licensed by the commissioner to
36 transact the business of insurance in this state through a

37 business unit with a principal place of business in this state.

38 (7) “Branch operations” means any business operations of
39 a branch captive insurance company in this state.

40 (8) “Captive insurance company” means any pure captive
41 insurance company, association captive insurance company,
42 sponsored captive insurance company, industrial insured
43 captive insurance company or risk retention group formed or
44 licensed under the provisions of this ~~chapter~~ article. For
45 purposes of this ~~chapter~~ article, a branch captive insurance
46 company shall be a pure captive insurance company with
47 respect to operations in this state, unless otherwise permitted
48 by the commissioner.

49 (9) “Commissioner” means the Insurance Commissioner of
50 West Virginia.

51 (10) “Controlled unaffiliated business” means any com-
52 pany:

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

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

57 (C) Whose risks are managed by a pure captive insurance

58 company in accordance with section nineteen of this article.

59 (11) “Industrial insured” means an insured:

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

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

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

66 (12) “Industrial insured captive insurance company” means
67 any company that insures risks of the industrial insureds
68 that comprise the industrial insured group and their affili-
69 ated companies.

70 (13) “Industrial insured group” means any group of
71 industrial insureds that collectively:

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

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

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

80 insurer.

81 (14) “Member organization” means any individual, corpo-
82 ration, limited liability company, partnership, association or
83 other entity that belongs to an association.

84 (15) “Mutual corporation” means a corporation organized
85 without stockholders and includes a nonprofit corporation
86 with members.

87 (16) “Parent” means a corporation, limited liability
88 company, partnership, other entity, or individual that
89 directly or indirectly owns, controls or holds with power to
90 vote more than fifty percent of the outstanding voting:

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

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

95 (17) “Pure captive insurance company” means any com-
96 pany that insures risks of its parent and affiliated companies
97 or controlled unaffiliated business.

98 (18) “Risk retention group” means a captive insurance
99 company organized under the laws of this state pursuant to
100 the Liability Risk Retention Act of 1986, 15 U.S.C. §3901, et
101 seq., as amended, as a stock or mutual corporation, a recipro-

102 cal or other limited liability entity.

§33-31-2. Licensing; authority.

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

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

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

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

20 (4) No risk retention group may insure any risks other than

21 those of its members and owners;

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

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

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

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

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

41 (1) It first obtains from the commissioner a license autho-

42 rizing it to do insurance business in this state;

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

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

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

55 (A) File with the commissioner a certified copy of its
56 organizational documents, a statement under oath of its
57 president and secretary showing its financial condition, and
58 any other statements or documents required by the commis-
59 sioner; and

60 (B) Submit to the commissioner for approval a description
61 of the coverages, deductibles, coverage limits and rates,
62 together with such additional information as the commis-
63 sioner may reasonably require. In the event of any subse-

64 quent material change in any item in such description, the
65 captive insurance company shall submit to the commissioner
66 for approval an appropriate revision and shall not offer any
67 additional kinds of insurance until a revision of such de-
68 scription is approved by the commissioner. The captive
69 insurance company shall inform the commissioner of any
70 material change in rates within thirty days of the adoption
71 of such change.

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

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

76 (B) The adequacy of the expertise, experience and charac-
77 ter of the person or persons who will manage it;

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

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

81 (E) Such other factors deemed relevant by the commis-
82 sioner in ascertaining whether the proposed captive insur-
83 ance company will be able to meet its policy obligations.

84 (3) Information submitted pursuant to this subsection shall
85 be and remain confidential and may not be made public by

86 the commissioner or an employee or agent of the commis-
87 sioner without the written consent of the company, except
88 that:

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

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

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

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

103 (B) The commissioner may, in the commissioner's discre-
104 tion, disclose such information to a public officer having
105 jurisdiction over the regulation of insurance in another state,

106 if:

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

109 (ii) The laws of the state in which such public official
110 serves require such information to be and to remain confi-
111 dential.

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

124 (e) If the commissioner is satisfied that the documents and
125 statements that such captive insurance company has filed
126 comply with the provisions of this ~~chapter~~ article, the
127 commissioner may grant a license authorizing it to do
128 insurance business in this state until ~~April 1~~ May 31, thereaf-

129 ter, which license may be renewed.

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

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

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

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

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

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

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

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

18 (1)(A) Formed as a corporation the incorporators shall
19 petition the commissioner to issue a certificate setting forth

20 the commissioner's finding that the establishment and
21 maintenance of the proposed corporation will promote the
22 general good of the state. In arriving at such a finding the
23 commissioner shall consider:

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

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

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

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

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

42 subsection.

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

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

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

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

52 (g) Other than captive insurance companies formed as
53 nonprofit corporations under chapter thirty-one-e of this
54 code, captive insurance companies formed as corporations
55 under the provisions of this article shall have the privileges
56 and be subject to the provisions of the general corporation
57 law as well as the applicable provisions contained in this
58 ~~chapter~~ article. In the event of conflict between the provi-
59 sions of said general corporation law and the provisions of
60 this ~~chapter~~ article, the latter shall control.

61 (h) Captive insurance companies formed as nonprofit
62 corporations under the provisions of this article shall have
63 the privileges and be subject to the provisions of chapter

64 thirty-one-e of this code as well as the applicable provisions
65 contained in this ~~chapter~~ article. In the event of conflict
66 between the provisions of chapter thirty-one-e of this code
67 and the provisions of this ~~chapter~~ article, the latter shall
68 control.

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

77 (1) The commissioner may waive or modify the require-
78 ments for public notice and hearing in accordance with rules
79 which the commissioner may adopt addressing categories of
80 transactions. If a notice of public hearing is required, but no
81 one requests a hearing, then the commissioner may cancel
82 the hearing; and

83 (2) An alien insurer may be a party to a merger authorized
84 under this subsection: *Provided*, That the requirements for
85 a merger between a captive insurance company and a foreign

86 insurer under section twenty-five, article five of this chapter
87 shall apply to a merger between a captive insurance com-
88 pany and an alien insurer under this subsection. Such alien
89 insurer shall be treated as a foreign insurer under section
90 twenty-five, article five of this chapter and such other
91 jurisdictions shall be the equivalent of a state for purposes of
92 section twenty-five, article five of this chapter.

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

106 (k) The articles of incorporation or bylaws of a captive

107 insurance company formed as a corporation may authorize
108 a quorum of its board of directors to consist of no fewer than
109 one third of the fixed or prescribed number of directors
110 determined under section eight hundred twenty-four, article
111 eight, chapter thirty-one-e of this code.

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

§33-31-7. Reports and statements.

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

4 (b) On or before March 1 of each year, each captive
5 insurance company shall submit to the commissioner a
6 report of its financial condition, verified by oath of two of its
7 executive officers. Each captive insurance company shall
8 report using generally accepted accounting principles, unless
9 the commissioner approves the use of statutory accounting
10 principles, with any appropriate or necessary modifications

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

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

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

29 (2) In order to provide sufficient detail to support the
30 premium tax return, the pure captive insurance company or
31 industrial insured captive insurance company shall file on or
32 before March 1 of each year for each calendar year-end,

33 pages one, two, three, and five of the “captive annual
34 statement; pure or industrial insured”, verified by oath of
35 two of its executive officers.

§33-31-8. Examinations and investigations.

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

11 (b) All examination reports, preliminary examination
12 reports or results, working papers, recorded information,
13 documents and copies thereof produced by, obtained by or
14 disclosed to the commissioner or any other person in the
15 course of an examination made under this section are
16 confidential and are not subject to subpoena and may not be
17 made public by the commissioner or an employee or agent of
18 the commissioner without the written consent of the com-

19 pany, except to the extent provided in this subsection.
20 Nothing in this subsection shall prevent the commissioner
21 from using such information in furtherance of the commis-
22 sioner's regulatory authority under this title. The commis-
23 sioner may, in the commissioner's discretion, grant access to
24 such information to public officers having jurisdiction over
25 the regulation of insurance in any other state or country, or
26 to law-enforcement officers of this state or any other state or
27 agency of the federal government at any time, so long as such
28 officers receiving the information agree in writing to hold it
29 in a manner consistent with this section.

§33-31-10. Legal investments.

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

11 and rating.

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

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

§33-31-11. Reinsurance.

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

6 membership with the reinsurer.

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

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

28 association that, in the commissioner's judgment, are
29 necessary and proper to provide adequate security for the
30 ceding captive insurance company and for the protection and
31 consequent benefit of the public at large.

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

§33-31-15. Rules.

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

§33-31-16. Laws applicable.

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

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

1 In addition to the applicable provisions of this article, any
2 captive insurance company organized as a risk retention
3 group is subject to the provisions of section nine, article two

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

§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
5 subject to the provisions of the federal Employee Retirement
6 Income Security Act of 1974 and set forth in 29 U. S. C. §
7 1001, et seq., as amended. In addition to the general provi-
8 sions of this ~~chapter~~ article, the provisions of sections
9 twenty-one through twenty-five, inclusive, of this article
10 shall apply to branch captive insurance companies.

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

**ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CON-
TROLLED PROPERTY/CASUALTY INSURER ACT.**

§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
5 established from time to time by the national association of
6 insurance commissioners.

7 (b) “Control” or “controlled” means the possession, direct
8 or indirect, of the power to direct or cause the direction of
9 the management and policies of a person, whether through
10 the ownership of voting securities, by contract other than a
11 commercial contract for goods or nonmanagement services,
12 or otherwise, unless the power is the result of an official
13 position with or corporate office held by the person. Control
14 shall be presumed to exist if any person, directly or indi-
15 rectly, owns, controls, holds with the power to vote, or holds
16 proxies representing ten percent or more of the voting
17 securities of any other person or controls or appoints a
18 majority of the board of directors, voting members or similar
19 governing body of any other person. This presumption may
20 be rebutted by a showing made in the manner provided by
21 subsection (l), section four, article twenty-seven of this
22 chapter that control does not exist in fact. The commissioner
23 may determine, after furnishing all persons in interest notice
24 and opportunity to be heard and making specific findings of

25 fact to support the determination, that control exists in fact,
26 notwithstanding the absence of a presumption to that effect.

27 (c) “Controlled insurer” means a licensed insurer which is
28 controlled, directly or indirectly, by a producer.

29 (d) “Controlling producer” means a producer who, directly
30 or indirectly, controls an insurer.

31 (e) “Licensed insurer” or “insurer” means any person, firm,
32 association or corporation duly licensed to transact a
33 property or casualty insurance business, or both property
34 and casualty insurance, in this state: *Provided*, That the
35 following are not licensed insurers for the purposes of this
36 article:

37 ~~(1) All risk retention groups as defined in article thirty-two~~
38 ~~of this chapter;~~

39 ~~(2)~~(1) All residual market pools and joint underwriting
40 authorities or associations; and

41 ~~(3)~~(2) All captive insurance companies as defined in article
42 thirty-one of this chapter: *Provided, That a captive insur-*
43 *ance company organized as a risk retention group shall be*
44 *considered a licensed insurer for the purposes of this article.*

45 (f) “Producer” means an insurance broker or brokers or
46 any other person, firm, association or corporation, when, for

47 any compensation, commission or other thing of value, the
48 person, firm, association or corporation acts or aids in any
49 manner in soliciting, negotiating or procuring the making of
50 any insurance contract on behalf of an insured other than the
51 person, firm, association or corporation: *Provided*, That the
52 designation of any individual or entity as a producer does not
53 expand upon or provide for activities beyond those permitted
54 by article twelve of this chapter.

(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.)