

No: 2970

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

Com. Sub. for
HOUSE BILL No. 2970

(By Delegates *Southern and Phillips*)



Passed *March 14,* 1987

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2970
(By DELEGATES SOUTHERN and PHILLIPS)

[Passed March 14, 1987; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to captive insurance; definitions; licensing; authority; names of companies; minimum capital; letter of credit; minimum surplus; letter of credit; formation of captive insurance companies in this state; reports and statements; examinations and investigations; grounds and procedures for suspension or revocation of license; legal investments; reinsurance; rating organizations; memberships; exemption from compulsory associations; tax on premiums collected; rules and regulations; and laws applicable; and by adding a new article designated article thirty-two, relating to the formation and operation of risk retention groups; definitions; risk retention groups chartered in this state; risk retention groups not chartered in this state; taxation; compliance with unfair claims settlement practices law; prohibitive, deceptive, false or fraudulent practices; examination regarding financial condition; notice to purchasers; prohibited acts regarding solicitation or sale; prohibited coverage; delinquency proceedings; compulsory associations; countersignatures not required; purchasing groups exemption; notice and

registration requirements of purchasing groups; restrictions on insurance purchased by purchasing groups; administrative and procedural authority; penalties; duty on agents or brokers to obtain license; binding effect of orders issued in the United States District Court; and rules.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated articles thirty-one and thirty-two, to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

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

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

7 (2) "Association" means any legal association of
8 individuals, corporations, partnerships or associations
9 that has been in continuous existence for at least one
10 year, the member organizations of which collectively:

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

14 (B) Have complete voting control over an association
15 captive insurance company incorporated as a mutual
16 insurer.

17 (3) "Association captive insurance company" means
18 any company that insures risks of the member organ-
19 izations of the association, and their affiliated
20 companies.

21 (4) "Captive insurance company" means any pure
22 captive insurance company, association captive insu-
23 rance company, or industrial insured captive insurance
24 company formed or licensed under the provisions of this

25 chapter.

26 (5) "Commissioner" means the insurance commission
27 of West Virginia.

28 (6) "Industrial insured" means an insured:

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

32 (B) Whose aggregate annual premiums for insurance
33 on all risks total at least twenty-five thousand dollars;
34 and

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

36 (7) "Industrial insured captive insurance company"
37 means any company that insures risks of the industrial
38 insureds that comprise the industrial insured group and
39 their affiliated companies.

40 (8) "Industrial insured group" means any group that
41 meets either of the following criteria:

42 (A) Any group of industrial insureds that collectively:

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

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

50 (B) Any group which is created under the Product
51 Liability Risk Retention Act of 1981 (U.S. Public Law
52 97-45) as a corporation or other limited liability
53 association taxable as a stock insurance company or a
54 mutual insurer under the law of the state of West
55 Virginia:

56 (i) Whose primary activity consists of assuming and
57 spreading all, or any portion, of the product liability or
58 completed operations liability risk exposure of its group
59 members;

60 (ii) Which is organized for the primary purpose of

61 conducting the activity described in subdivision (i) of
62 this section;

63 (iii) Which does not exclude any person from member-
64 ship in the group solely to provide for members of such
65 group a competitive advantage over such a person; and

66 (iv) Which is composed of members each of whose
67 principal activity consists of the manufacture, design,
68 importation, distribution, packaging, labeling, lease or
69 sale of a product or products.

70 (9) "Member organization" means any individual,
71 corporation, partnership or association that belongs to
72 an association.

73 (10) "Parent" means a corporation, partnership or
74 individual that directly or indirectly owns, controls, or
75 holds with power to vote more than fifty percent of the
76 outstanding voting securities of a pure captive insurance
77 company.

78 (11) "Pure captive insurance company" means any
79 company that insures risks of its parent and affiliated
80 companies.

§33-31-2. Licensing; authority.

1 (a) Any captive insurance company, when permitted
2 by its articles of association or charter, may apply to the
3 commissioner for a license to do any and all insurance
4 comprised in chapter thirty-three of this code: *Provided,*
5 That said captive insurance company maintains its
6 principal office and principal place of business in this
7 state: *Provided, however,* That:

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

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

15 (3) No industrial insured captive insurance company
16 may insure any risks other than those of the industrial

17 insureds that comprise the industrial insured group and
18 their affiliated companies;

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

22 (5) No captive insurance company may accept or cede
23 reinsurance except as provided in section eleven hereof.

24 (b) No captive insurance company may do any insu-
25 rance business in this state unless:

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

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

30 (3) It maintains its principal place of business in this
31 state; and

32 (4) It appoints a resident registered agent to accept
33 service of process and to otherwise act on its behalf in
34 this state. Whenever such registered agent cannot with
35 reasonable diligence be found at the registered office of
36 the captive insurance company, the secretary of state
37 shall be an agent of such captive insurance company
38 upon whom any process, notice, or demand may be
39 served.

40 (c) Before receiving a license, a captive insurance
41 company shall file with the commissioner a certified
42 copy of its charter and bylaws, a statement under oath
43 of its president and secretary showing its financial
44 condition, and any other statements or documents
45 required by the commissioner.

46 In addition to the information required above, each
47 applicant captive insurance company shall file with the
48 commissioner evidence of the following:

49 (1) The amount and liquidity of its assets relative to
50 the risks to be assumed;

51 (2) The adequacy of the expertise, experience, and
52 character of the person or persons who will manage it;

53 (3) The overall soundness of its plan of operation;

54 (4) The adequacy of the loss prevention programs of
55 its parent, member organizations, or industrial insureds
56 as applicable; and

57 (5) Such other factors deemed relevant by the com-
58 missioner in ascertaining whether the proposed captive
59 insurance company will be able to meet its policy
60 obligations.

61 (d) Each captive insurance company shall pay to the
62 commissioner a nonrefundable fee of two hundred
63 dollars for examining, investigating, and processing its
64 application for license and upon issuance of a license, an
65 annual license fee of three hundred dollars. In addition,
66 it shall pay fees and charges in accordance with article
67 three of this chapter.

68 (e) If the commissioner is satisfied that the documents
69 and statements that such captive insurance company has
70 filed comply with the provisions of this chapter, he may
71 grant a license authorizing it to do insurance business
72 in this state until April first, thereafter, which license
73 may be renewed.

§33-31-3. Names of companies.

1 No captive insurance company shall adopt a name
2 that is the same, deceptively similar, or likely to be
3 confused with or mistaken for any other existing
4 business name registered in the state of West Virginia.

§33-31-4. Minimum capital; letter of credit.

1 No pure captive insurance company, association
2 captive insurance company incorporated as a stock
3 insurer, or industrial insured captive insurance
4 company incorporated as a stock insurer shall be issued
5 a license unless it shall possess and thereafter maintain
6 unimpaired paid-in capital of:

7 (1) In the case of a pure captive insurance company,
8 not less than one hundred thousand dollars;

9 (2) In the case of an association captive insurance
10 company incorporated as a stock insurer, not less than

11 three hundred twenty thousand dollars; and

12 (3) In the case of an industrial insured captive
13 insurance company incorporated as a stock insurer, not
14 less than one hundred sixty thousand dollars.

15 Such capital may be in the form of cash or an
16 irrevocable letter of credit issued by a bank chartered
17 by the state of West Virginia or a member bank of the
18 federal reserve system and approved by the
commissioner.

§33-31-5. Minimum surplus; letter of credit.

1 No captive insurance company shall be issued a
2 license unless it shall possess and thereafter maintain
3 free surplus of:

4 (1) In the case of a pure captive insurance company,
5 not less than one hundred fifty thousand dollars;

6 (2) In the case of an association captive insurance
7 company incorporated as a stock insurer, not less than
8 two hundred eighty thousand dollars;

9 (3) In the case of an industrial insured captive
10 insurance company incorporated as a stock insurer, not
11 less than two hundred forty thousand dollars;

12 (4) In the case of an association captive insurance
13 company incorporated as a mutual insurer, not less than
14 six hundred thousand dollars; and

15 (5) In the case of an industrial insured captive
16 insurance company incorporated as a mutual insurer,
17 not less than four hundred thousand dollars.

18 Such surplus may be in the form of cash or an
19 irrevocable letter of credit issued by a bank chartered
20 by the state of West Virginia or member bank of the
21 federal reserve system and approved by the commis-
22 sioner.

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

1 (a) A pure captive insurance company shall be
2 incorporated as a stock insurer with its capital divided

3 into shares and held by the stockholders.

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

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

9 (2) As a mutual insurer without capital stock, the
10 governing body of which is elected by the member
11 organizations of its association.

12 (c) A captive insurance company shall have at least
13 one incorporator who shall be a resident of this state.

14 (d) Before the articles of association are transmitted
15 to the secretary of state, the incorporators shall petition
16 the commissioner to issue a certificate setting forth his
17 finding that the establishment and maintenance of the
18 proposed corporation will promote the general good of
19 the state. In arriving at such finding the commissioner
20 shall consider:

21 (1) The character, reputation, financial standing and
22 purpose of the incorporators;

23 (2) The character, reputation, financial responsibility,
24 insurance experience, and business qualifications of the
25 officers and directors; and

26 (3) Such other aspects as the commissioner shall deem
27 advisable.

28 (e) The articles of association, such certificate, and the
29 organization fee shall be transmitted to the secretary of
30 state, who shall thereupon record both the articles of
31 incorporation and the certificate.

32 (f) The capital stock of a captive insurance company
33 incorporated as a stock insurer shall be issued at not less
34 than par value.

35 (g) At least one of the members of the board of
36 directors of a captive insurance company incorporated
37 in this state shall be a resident of this state.

38 (h) Captive insurance companies formed under the

39 provisions of this chapter shall have the privileges and
40 be subject to the provisions of the general corporation
41 law as well as the applicable provisions contained in this
42 chapter. In the event of conflict between the provisions
43 of said general corporation law and the provisions of this
44 chapter, the latter shall control.

§33-31-7. Reports and statements.

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

4 (b) On or before March first 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
7 of its executive officers. Each association captive
8 insurance company shall file its report in the form
9 required by section fourteen, article three of this
10 chapter. The commissioner shall by rule propose the
11 form in which pure captive insurance companies and
12 industrial insured captive insurance companies shall
13 report.

§33-31-8. Examinations and investigations.

1 At least once in three years, and whenever the
2 commissioner determines it to be prudent, he shall
3 personally, or by some competent person appointed by
4 him, visit each captive insurance company and tho-
5 roughly inspect and examine its affairs to ascertain its
6 financial condition, its ability to fulfill its obligations
7 and whether it has complied with the provisions of this
8 chapter. The commissioner upon application, in his
9 discretion, may extend the aforesaid three-year period
10 to five years, provided said captive insurance company
11 is subject to a comprehensive annual audit during such
12 period of a scope satisfactory to the commissioner by
13 independent auditors approved by him. The expenses
14 and charges of the examination shall be paid to the state
15 by the company or companies examined and the finance
16 director shall issue his warrants for the proper charges
17 incurred in all examinations.

§33-31-9. Grounds and procedures for suspension or

revocation of license.

1 (a) The license of a captive insurance company to do
2 any insurance business in this state may be suspended
3 or revoked by the commissioner for any of the following
4 reasons:

5 (1) Insolvency or impairment of capital or surplus;

6 (2) Failure to meet the requirements of section four
7 or five of this article;

8 (3) Refusal or failure to submit an annual report, as
9 required by section seven of this article, or any other
10 report or statement required by law or by lawful order
11 of the commissioner;

12 (4) Failure to comply with the provisions of its own
13 charter or bylaws;

14 (5) Failure to submit to examination or any legal
15 obligation relative thereto, as required by section eight
16 of this article;

17 (6) Refusal or failure to pay the cost of examination
18 as required by section eight of this article;

19 (7) Use of methods that, although not otherwise
20 specifically prohibited by law, nevertheless render its
21 operation detrimental or its condition unsound with
22 respect to the public or to its policyholders; or

23 (8) Failure otherwise to comply with the laws of this
24 state.

25 (b) If the commissioner finds, upon examination,
26 hearing or other evidence, that any captive insurance
27 company has committed any of the acts specified in
28 subsection (a), he may suspend or revoke such license if
29 he deems it in the best interest of the public and the
30 policyholders of such captive insurance company,
31 notwithstanding any other provision of this title.

§33-31-10. Legal investments.

1 (a) An association captive insurance company shall
2 comply with the investment requirements of the
3 commissioner.

4 (b) No pure captive insurance company or industrial
5 insured captive insurance company may be subject to
6 any restrictions on allowable investments whatever. The
7 commissioner may, however, prohibit or limit any
8 investment that threatens the solvency or liquidity of
9 any such company.

§33-31-11. Reinsurance.

1 (a) Any captive insurance company may provide
2 reinsurance, as required in section fifteen, article four
3 of this chapter, on risks ceded by any other insurer.

4 (b) Any captive insurance company may take credit
5 for reserves on risks ceded to a reinsurer: *Provided,*
6 That no captive insurance company may reinsure a risk
7 or part thereof with reinsurers not complying with the
8 provisions of section seventeen, article four of this
9 chapter.

§33-31-12. Rating organizations; memberships.

1 No captive insurance company may be required to join
2 a rating organization.

§33-31-13. Exemption from compulsory associations.

1 No captive insurance company may be permitted to
2 join or contribute financially to any plan, pool, associ-
3 ation or guaranty or insolvency fund in this state, nor
4 any captive insurance company, or its insured, or its
5 parent or any affiliated company, or any member
6 organization of its association, receive any benefit from
7 any such plan, pool, association or guaranty or insol-
8 vency fund for claims arising out of the operations of
9 such captive insurance company.

§33-31-14. Tax on premiums collected.

1 (a) Each captive insurance company shall pay to the
2 commissioner, in the month of February of each year,
3 a tax at the rate of five tenths of one percent on the gross
4 amount of all premiums collected or contracted for on
5 policies or contracts of insurance covering property or
6 risks in this state and on risks and property situated
7 elsewhere upon which no premium tax is otherwise paid
8 during the year ending December thirty-first, next

9 preceding, after deducting from the gross amount of
10 premiums, subject to the tax, the amount received as
11 reinsurance premiums on business in the state and the
12 amount paid to policyholders as return premiums which
13 shall include dividends on unabsorbed premiums or
14 premium deposits returned or credited to policyholders.

15 (b) The tax provided for in this section shall constitute
16 all taxes collectible under the laws of this state from any
17 captive insurance company, and no other premium tax
18 or other taxes shall be levied or collected from any
19 captive insurance company by the state or any county,
20 city or municipality within this state, except ad valorem
21 taxes.

§33-31-15. Rules.

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

§33-31-16. Laws applicable.

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

ARTICLE 32. RISK RETENTION ACT.

§33-32-1. Purpose and short title.

1 The purpose of this act is to regulate the formation
2 and operation of risk retention groups in this state
3 formed pursuant to the provisions of the federal liability
4 risk retention act of 1986, hereinafter referred to as
5 "RRA 1986". This article may be referred to as the Risk
6 Retention Act of West Virginia.

§33-32-2. Definitions.

1 As used in this article, the term:

2 (a) "Commissioner" means the insurance commis-
3 sioner of the State of West Virginia or the commissioner,
4 director or superintendent of insurance in any other
5 state.

6 (b) "Completed operations liability" means liability
7 arising out of the installation, maintenance, or repair of
8 any product at a site which is now owned or controlled
9 by:

10 (1) Any person who performs that work; or

11 (2) Any person who hires an independent contractor
12 to perform that work; but shall include liability for
13 activities which are completed or abandoned before the
14 date of the occurrence giving rise to the liability.

15 (c) "Domicile" for purposes of determining the state
16 in which a purchasing group is domiciled, means:

17 (1) For a corporation, the state in which the purchas-
18 ing group is incorporated; and

19 (2) For an unincorporated entity, the state of its
20 principal place of business.

21 (d) "Hazardous" financial condition" means that,
22 based on its present or reasonably anticipated financial
23 condition, a risk retention group, although not yet
24 financially impaired or insolvent, is unlikely to be able:

25 (1) To meet obligations to policyholders with respect
26 to known claims and reasonably anticipated claims; or

27 (2) To pay other obligations in the normal course of
28 business;

29 (e) "Insurance" means primary insurance, excess
30 insurance, reinsurance, surplus lines insurance, and any
31 other arrangement for shifting and distributing risk
32 which is determined to be insurance under the laws of
33 this state.

34 (f) "Liability" means legal liability for damages
35 (including costs of defense, legal costs and fees, and
36 other claims expenses) because of injuries to other
37 persons, damage to their property, or other damage or
38 loss to such other persons resulting from or arising out
39 of:

40 (1) Any business (whether profit or nonprofit), trade,
41 product, services (including professional services),
42 premises, or operations;

43 (2) Any activity of any state or local government, or
44 any agency or political subdivision thereof; or

45 (3) Does not include personal risk liability and an
46 employer's liability with respect to its employees other
47 than legal liability under the Federal Employers'
48 Liability Act.

49 (g) "Personal risk liability" means liability for
50 damages because of injury to any person, damage to
51 property, or other loss or damage resulting from any
52 personal, familial, or household responsibilities or
53 activities, rather than from responsibilities or activities
54 referred to herein;

55 (h) "Plan of operation" or a "feasibility study" means
56 an analysis which presents the expected activities and
57 results of a risk retention group including at a
58 minimum:

59 (1) The coverages, deductibles, coverage limits, rates,
60 and rating classification systems for each line of
61 insurance the group intends to offer;

62 (2) Historical and expected loss experience of the
63 proposed members and national experience of similar
64 exposures to the extent that this experience is reason-
65 ably available;

66 (3) Pro forma financial statements and projections;

67 (4) Appropriate opinions by a qualified, independent
68 casualty actuary, including a determination of min-
69 imum premium or participation levels required to
70 commence operations and to prevent a hazardous
71 financial condition;

72 (5) Identification of management, underwriting
73 procedures, managerial oversight methods, investment
74 policies; and

75 (6) Such other matters as may be prescribed by the
76 commissioner for liability insurance companies autho-
77 rized by the insurance laws of the state in which the risk
78 retention group is chartered.

79 (i) "Product liability" means liability for damages

80 because of any personal injury, death, emotional harm,
81 consequential economic damage, or property damage
82 (including damages resulting from the loss of use of
83 property) arising out of the manufacture, design,
84 importation, distribution, packaging, labeling, lease, or
85 sale of a product, but does not include the liability of
86 any person for those damages if the product involved
87 was in the possession of such a person when the incident
88 giving rise to the claim occurred.

89 (j) "Purchasing group" means any group which:

90 (1) Has as one of its purposes the purchase of liability
91 insurance on a group basis;

92 (2) Purchases such insurance only for its group
93 members and only to cover their similar or related
94 liability exposure, as described in subparagraph (3);

95 (3) Is composed of members whose businesses or
96 activities are similar or related with respect to the
97 liability to which members are exposed by virtue of any
98 related, similar, or common business, trade, product,
99 services, premises, or operations; and

100 (4) Is domiciled in any state.

101 (k) "Risk retention group" means any corporation or
102 other limited liability association formed under the laws
103 of any state:

104 (1) Whose primary activity consists of assuming and
105 spreading all, or any portion, of the liability exposure
106 of its group members;

107 (2) Which is organized for the primary purpose of
108 conducting the activity described under subparagraph
109 (1);

110 (3) Which: (i) is chartered and licensed as a liability
111 insurance company and authorized to engage in the
112 business of insurance under the laws of any state; or (ii)
113 before the first day of January, one thousand nine
114 hundred eighty-eight, was chartered or licensed and
115 authorized to engage in the business of insurance under
116 the laws of this state, and, before such date, had
117 certified to the insurance commissioner of at least one

118 state that it satisfied the capitalization requirements of
119 such state, except that any such group shall be consi-
120 dered to be a risk retention group only if it has been
121 engaged in business continuously since such date and
122 only for the purpose of continuing to provide insurance
123 to cover product liability or completed operations
124 liability as such terms were defined in the product
125 liability risk retention act of 1986 before the date of the
126 enactment of the risk retention act of 1986;

127 (4) Which does not exclude any person from member-
128 ship in the group solely to provide for members of such
129 a group a competitive advantage over such a person;

130 (5) Which has as its members only persons who have
131 an ownership interest in the group and which has as its
132 owners only persons who are members who are provided
133 insurance by the risk retention group;

134 (A) Has as its sole owner an organization which is
135 owned by persons who are provided insurance by the
136 risk retention group.

137 (6) Whose members are engaged in businesses or
138 activities similar or related with respect to the liability
139 of which such members are exposed by virtue of any
140 related, similar, or common business trade, product,
141 services, premises, or operations;

142 (7) Whose activities do not include the provision of
143 insurance other than:

144 (A) Liability insurance for assuming and spreading
145 all or any portion of the liability of its group members;
146 and

147 (B) Reinsurance with respect to the liability of any
148 other risk retention group or any members of such other
149 group which is engaged in businesses or activities so
150 that such group or member meets the reinsurance
151 requirement set forth herein, from membership in the
152 risk retention group which provides such reinsurance;
153 and

154 (8) The name of which includes the phrase "Risk
155 Retention Group".

156 (l) "State" means any state of the United States or the
157 District of Columbia.

§33-32-3. Risk retention groups chartered in this state.

1 A risk retention group seeking to be chartered in this
2 state must be chartered and licensed as a liability
3 insurance company authorized by the insurance laws of
4 this state and, except as provided elsewhere in this
5 article, must comply with all of the laws, rules,
6 regulations and requirements applicable to such
7 insurers chartered and licensed in this state and with
8 section 4 of this article to the extent such requirements
9 are not a limitation on laws, rules, regulations or
10 requirements of this state. Before it may offer insurance
11 in any state, each risk retention group shall also submit
12 for approval to the insurance commissioner of this state
13 a plan of operation or a feasibility study and revisions
14 of such plan or study if the group intends to offer any
15 additional lines of liability insurance.

**§33-32-4. Risk retention groups not chartered in this
state.**

1 Risk retention groups chartered in states other than
2 this state and seeking to do business as a risk retention
3 group in this state must observe and abide by the laws
4 of this state as follows:

5 (A) *Notice of operations and designation of commis-*
6 *sioner as agent.*

7 (a) Before offering insurance in this state, a risk
8 retention group shall submit to the commissioner:

9 (1) A statement identifying the state or states in
10 which the risk retention group is chartered and licensed
11 as a liability insurance company, date of chartering, its
12 principal place of business, and such other information
13 including information on its membership, as the
14 commissioner of this state may require to verify that the
15 risk retention group is qualified under this article;

16 (2) A copy of its plan of operations or a feasibility
17 study and revisions of such plan or study submitted to
18 its state of domicile: *Provided, however,* That the

19 provision relating to the submission of a plan of
20 operation or a feasibility study shall not apply with
21 respect to any line or classification of liability insurance
22 which (a) was defined in the federal product liability
23 risk retention act of 1981 before the twenty-seventh day
24 of October, one thousand nine hundred eighty-six and (b)
25 was offered before such date by any risk retention group
26 which had been chartered and operating for not less
27 than three years before such date; and

28 (3) A statement of registration which designates the
29 commissioner as its agent for the purpose of receiving
30 service of legal documents or process.

31 (B) *Financial condition.*

32 Any risk retention group doing business in this state
33 shall submit to the commissioner:

34 (1) A copy of the group's financial statement submit-
35 ted to its state of domicile, which shall be certified by
36 an independent public accountant and contain a state-
37 ment of opinion on loss and loss adjustment expense
38 reserves made by a member of the American academy
39 of actuaries or a qualified loss reserve specialist (under
40 criteria established by the national association of
41 insurance commissioners);

42 (2) A copy of each examination of the risk retention
43 group as certified by the commissioner or public official
44 conducting the examination;

45 (3) Upon request by the commissioner, a copy of any
46 audit performed with respect to the risk retention
47 group; and

48 (4) Such information as may be required to verify its
49 continuing qualification as a risk retention group under
50 this article.

§33-32-5. Tax on premiums collected.

1 (a) Each risk retention group shall be subject to the
2 same interests, fines and penalties for non-payment as
3 that generally applicable to insurers under article three,
4 chapter thirty-three of this code: *Provided*, That the
5 premium tax or other taxes on each risk retention group

6 shall be in accordance with the provisions of this section.
7 Each risk retention group insurance company shall pay
8 to the commissioner, in the month of February of each
9 year, a tax at the rate of three quarters of one percent
10 on the gross amount of all premiums collected or
11 contracted for on policies or contracts of insurance
12 covering property or risks in this state and on risks and
13 property situated elsewhere upon which no premium tax
14 is otherwise paid during the year ending December 31
15 next preceding, after deducting from the gross amount
16 of premiums subject to the tax the amount received as
17 reinsurance premiums on business in the state and the
18 amount paid to policyholders as return premiums which
19 shall include dividends on unabsorbed premiums or
20 premium deposits returned or credited to policyholders:
21 *Provided, however,* That the three quarters of one
22 percent premium tax provided for herein shall be
23 waived for a period of five years and thereafter be
24 applicable at a reduced rate of one-half of one percent
25 on the gross amount of premiums provided for herein-
26 above, if the said risk retention groups makes a
27 minimum qualified investment of two million dollars in
28 the state of West Virginia during the five year waiver
29 period, as a direct result thereof and the tax commis-
30 sioner so certifies.

31 (b) The tax provided for in this section shall constitute
32 all taxes collectible under the laws of this state from any
33 risk retention group, and no other premium tax or other
34 taxes shall be levied or collected from any risk retention
35 group by the state or any county, city or municipality
36 within this state, except ad valorem taxes

37 (c) To the extent agents or brokers are utilized, they
38 shall report and pay the taxes for the premiums for
39 risks which they have placed with or on behalf of a risk
40 retention group not chartered in this state.

41 (d) To the extent agents or brokers are not utilized or
42 fail to pay the subject tax, or taxes, each risk retention
43 group shall pay the subject tax or taxes, risks insured
44 within the state. Further, each risk retention group
45 shall report all premiums paid to it for risks insured
46 within the state.

§33-32-6. Compliance with unfair claims settlement practices law.

1 Any risk retention group, its agents and representa-
2 tives, shall comply with the laws of this state, as set
3 forth in chapter thirty-three of this code, regarding
4 unfair claims settlement practices act of this state.

§33-32-7. Prohibitive, deceptive, false, or fraudulent practices.

1 Any risk retention group shall comply with the laws
2 of this state, as provided in chapter thirty-three of this
3 code, regarding prohibitive, deceptive, false or fraudu-
4 lent acts or practices. However, if the commissioner
5 seeks an injunction regarding such conduct, the injunc-
6 tion must be obtained from a court of competent
jurisdiction.

§33-32-8. Examination regarding financial condition.

1 Any risk retention group must submit to an exami-
2 nation by the commissioner to determine its financial
3 condition if the commissioner of the jurisdiction in
4 which the group is chartered has not initiated an
5 examination or does not initiate an examination within
6 sixty days after a request by the commissioner of this
7 state. Any such examination shall be coordinated to
8 avoid unjustified repetition and conducted in an
9 expeditious manner.

§33-32-9. Notice to purchasers.

1 Any policy issued by a risk retention group shall
2 contain in ten-point type on the front page and the
3 declaration page, the following notice:

4 **NOTICE**

5 This policy is issued by your risk retention group.
6 Your risk retention group may not be subject to all of
7 the insurance laws and regulations of your state. State
8 insurance insolvency guaranty funds are not available
9 for your risk retention group.

§33-32-10. Prohibited acts regarding solicitation or sale.

1 The following acts by a risk retention group are

2 hereby prohibited:

3 (1) The solicitation or sale of insurance by a risk
4 retention group to any person who is not eligible for
5 membership in such group; and

6 (2) The solicitation or sale of insurance by, or oper-
7 ation of, a risk retention group that is in a hazardous
8 financial condition or is financially impaired.

§33-32-11. Prohibition on ownership by an insurance company.

1 No risk retention group shall be allowed to do business
2 in this state if an insurance company is directly or
3 indirectly a member or owner of such risk retention
4 group, other than in the case of a risk retention group
5 all of whose members are insurance companies.

§33-32-12. Prohibited coverage.

1 No risk retention group may offer insurance policy
2 coverage prohibited by chapter thirty-three of this code
3 or ruled unlawful by the highest court of this state.

§33-32-13. Delinquency proceedings.

1 A risk retention group not chartered in this state and
2 doing business in this state must comply with a lawful
3 order issued in a voluntary dissolution proceeding or in
4 a delinquency proceeding commenced by a state insu-
5 rance commissioner if there has been a finding of
6 financial impairment after an examination under
7 section four of this article.

§33-32-14. Compulsory associations.

1 No risk retention group shall be permitted to join or
2 contribute financially to any insurance insolvency
3 guaranty fund, or similar mechanism, in this state, nor
4 shall any risk retention group, or its insureds, receive
5 any benefit from any such fund for claims arising out
6 of the operations of such risk retention group.

§33-32-15. Countersignatures not required.

1 A policy of insurance issued to a risk retention group
2 or any member of that group shall not be required to

3 be countersigned.

§33-32-16. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.

1 Any purchasing group meeting the criteria estab-
2 lished under the provisions of the federal Liability Risk
3 Retention Act of 1986 shall be exempt from any law of
4 this state relating to the creation of groups for the
5 purchase of insurance, prohibition of group purchasing
6 or any law that would discriminate against a purchasing
7 group or its members. In addition, an insurer shall be
8 exempt from any law of this state which prohibits
9 providing, or offering to provide, to a purchasing group
10 or its members advantages based on their loss and
11 expense experience not afforded to other persons with
12 respect to rates, policy forms, coverages or other
13 matters. A purchasing group shall be subject to all other
14 applicable laws of this state.

§33-32-17. Notice and registration requirements of purchasing groups.

1 (a) A purchasing group which intends to do business
2 in this state shall furnish notice to the commissioner
3 which shall:

4 (1) Identify the state in which the group is domiciled;

5 (2) Specify the lines and classifications of liability
6 insurance which the purchasing group intends to
7 purchase;

8 (3) Identify the insurance company from which the
9 group intends to purchase its insurance and the domicile
10 of such company;

11 (4) Identify the principal place of business of the
12 groups; and

13 (5) Provide such other information as may be re-
14 quired by the commissioner to verify that the purchas-
15 ing group is qualified under this article.

16 (b) The purchasing group shall register with and
17 designate the commissioner (or other appropriate

18 authority) as its agent solely for the purpose of receiving
19 service of legal documents or process, except that such
20 requirements shall not apply in the case of a purchasing
21 group which:

22 (1) Was domiciled before the first day of April, one
23 thousand nine hundred eighty-six;

24 (2) Is domiciled on and after the second day of
25 October, one thousand nine hundred eighty-six in any
26 state of the United States which:

27 (i) Before the twenty-seventh day of October, one
28 thousand nine hundred eighty-six purchased insurance
29 from an insurance carrier licensed in any state; and

30 (ii) Since the twenty-seventh day of October, one
31 thousand nine hundred eighty-six, purchased its insu-
32 rance from an insurance carrier licensed in any state;

33 (3) Which was a purchasing group under the require-
34 ments of the product liability risk retention act of 1981
35 before the twenty-seventh day of October, one thousand
36 nine hundred eighty-six; and

37 (4) Which does not purchase insurance that was not
38 authorized for purposes of an exemption under that Act,
39 as in effect before the twenty-seventh day of October,
40 one thousand nine hundred eighty-six.

§33-32-18. Restrictions on insurance purchased by purchasing groups.

1 A purchasing group may not purchase insurance from
2 a risk retention group that is not chartered in a state
3 or from an insurer not admitted in the state in which
4 the purchasing group is located, unless the purchase is
5 effected through a licensed agent or broker acting
6 pursuant to the surplus lines laws and regulations of
7 such state.

§33-32-19. Administrative and procedural authority regarding risk retention groups and purchasing groups.

1 The commissioner is authorized to make use of any of
2 the powers established under chapter thirty-three of this

3 code to enforce the laws of this state so long as those
4 powers are not specifically preempted by the national
5 product liability risk retention act of 1981, as amended
6 by the risk retention amendments of 1986. This includes,
7 but is not limited to, the commissioner's administrative
8 authority to investigate, issue subpoenas, conduct
9 depositions and hearings, issue orders, and impose
10 penalties. With regard to any investigation, administra-
11 tive proceedings, or litigation, the commissioner can rely
12 on the procedural law and regulations of the state. The
13 injunctive authority of the commissioner in regard to
14 risk retention groups is restricted by the requirement
15 that any injunction be issued by a court of competent
16 jurisdiction.

§33-32-20. Penalties.

1 A risk retention group which violates any provision of
2 this Act will be subject to fines and penalties applicable
3 to licensed insurers generally, including revocation of its
4 license and/or the right to do business in this state.

§33-32-21. Duty on agents or brokers to obtain license.

1 Any person acting, or offering to act, as an agent or
2 broker for a risk retention group or purchasing group,
3 which solicits members, sells insurance coverage,
4 purchases coverage for its members located within the
5 state or otherwise does business in this state shall, before
6 commencing any such activity, obtain a license from the
7 commissioner.

§33-32-22. Binding effect of orders issued in United States district court.

1 An order issued by any district court of the United
2 States enjoining a risk retention group from soliciting
3 or selling insurance, or operating, in any state (or in all
4 states or in any territory or possession of the United
5 States) upon a finding that such a group is in a
6 hazardous financial condition shall be enforceable in the
7 courts of the state.

§33-32-23. Rules.

1 The commissioner may establish and from time to

2 time amend such rules relating to risk retention groups
3 as may be necessary or desirable to carry out the
4 provisions of this article.

Handwritten signatures and initials, including "S. J. ..."

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Lyle Sattles
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Stetler
Clerk of the Senate

Donald L. Hoops
Clerk of the House of Delegates

Don Toukouril
President of the Senate

Robert Clark
Speaker of the House of Delegates

The within *approved* this the *2nd*
day of *April*, 1987.

Anna. Prange
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/87

Time 2:46 p.m.