

SB 428

FILED

2004 APR -5 A 11:48

OFFICE OF THE SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2004

ENROLLED

SENATE BILL NO. 428

(By Senator HOWARD)

PASSED MARCH 13, 2004

In Effect 90 Days From Passage

FILED

2004 APR -5 A 11:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED
Senate Bill No. 428

(BY SENATOR MINARD)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §33-31-1, §33-31-2, §33-31-4, §33-31-5, §33-31-6, §33-31-7, §33-31-8, §33-31-9, §33-31-10, §33-31-11, §33-31-13, §33-31-14 and §33-31-15 of the code of West Virginia, 1931, as amended; to amend said code by adding thereto nine new sections, designated §33-31-17, §33-31-18, §33-31-19, §33-31-20, §33-31-21, §33-31-22, §33-31-23, §33-31-24 and §33-31-25; and to amend said code by adding thereto a new article, designated §33-31A-1, §33-31A-2, §33-31A-3, §33-31A-4, §33-31A-5, §33-31A-6, §33-31A-7, §33-31A-8 and §33-31A-9, all relating to captive insurance companies; authorizing establishment of and regulating branch captive insurance companies and sponsored cell captives; and generally modernizing the captive insurance law.

Be it enacted by the Legislature of West Virginia:

That §33-31-1, §33-31-2, §33-31-4, §33-31-5, §33-31-6, §33-31-7, §33-31-8, §33-31-9, §33-31-10, §33-31-11, §33-31-13,

§33-31-14 and §33-31-15 of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto nine new sections, designated §33-31-17, §33-31-18, §33-31-19, §33-31-20, §33-31-21, §33-31-22, §33-31-23, §33-31-24 and §33-31-25; and that said code be amended by adding thereto a new article, designated §33-31A-1, §33-31A-2, §33-31A-3, §33-31A-4, §33-31A-5, §33-31A-6, §33-31A-7, §33-31A-8 and §33-31A-9, all 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 insured
5 or a member organization by virtue of common ownership,
6 control, operation or management.

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

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

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

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

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

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

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

35 (6) "Branch captive insurance company" means any
36 alien captive insurance company licensed by the commis-
37 sioner to transact the business of insurance in this state
38 through a business unit with a principal place of business
39 in this state.

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

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

51 (9) "Commissioner" means the insurance commissioner
52 of West Virginia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 (15) "Mutual corporation" means a corporation orga-
89 nized without stockholders and includes a nonprofit
90 corporation with members.

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

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

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

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

102 (18) "Risk retention group" means a captive insurance
103 company organized under the laws of this state pursuant
104 to the Liability Risk Retention Act of 1986, 15 U. S. C.
105 §3901, *et seq.*, as amended, as a stock or mutual corpora-
106 tion, a reciprocal or other limited liability entity.

§33-31-2. Licensing; authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

62 (B) Submit to the commissioner for approval a descrip-
63 tion of the coverages, deductibles, coverage limits and
64 rates, together with such additional information as the
65 commissioner may reasonably require. In the event of any
66 subsequent material change in any item in such descrip-
67 tion, the captive insurance company shall submit to the
68 commissioner for approval an appropriate revision and
69 shall not offer any additional kinds of insurance until a
70 revision of such description is approved by the commis-
71 sioner. The captive insurance company shall inform the
72 commissioner of any material change in rates within thirty
73 days of the adoption of such change.

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

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

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

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

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

83 (E) Such other factors deemed relevant by the commis-
84 sioner in ascertaining whether the proposed captive
85 insurance company will be able to meet its policy obliga-
86 tions.

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

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

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

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

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

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

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

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

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

128 (e) If the commissioner is satisfied that the documents
129 and statements that such captive insurance company has
130 filed comply with the provisions of this chapter, the
131 commissioner may grant a license authorizing it to do
132 insurance business in this state until April first, thereafter,
133 which license may be renewed.

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

1 (a) No captive insurance company shall be issued a
2 license unless it shall possess and thereafter maintain
3 unimpaired paid-in capital of:

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

6 (2) In the case of an association captive insurance
7 company, not less than three hundred fifty thousand
8 dollars;

9 (3) In the case of an industrial insured captive insurance
10 company, not less than two hundred fifty thousand
11 dollars;

12 (4) In the case of a risk retention group , not less than
13 five hundred thousand dollars; and

14 (5) In the case of a sponsored captive insurance com-
15 pany, not less than two hundred fifty thousand dollars.

16 (b) No captive insurance company shall be issued a
17 license unless it possesses and thereafter maintains
18 unimpaired paid-in surplus of:

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

21 (2) In the case of an association captive insurance
22 company, not less than three hundred fifty thousand
23 dollars;

24 (3) In the case of an industrial insured captive insurance
25 company, not less than two hundred fifty thousand
26 dollars;

27 (4) In the case of a risk retention group, not less than
28 five hundred thousand dollars; and

29 (5) In the case of a sponsored captive insurance com-
30 pany, not less than two hundred fifty thousand dollars.

31 (c) The commissioner may prescribe additional capital
32 and surplus based upon the type, volume, and nature of
33 insurance business transacted.

34 (d) Capital and surplus may be in the form of cash or an
35 irrevocable letter of credit issued by a bank chartered by
36 the state of West Virginia or a member bank of the federal
37 reserve system and approved by the commissioner.

§33-31-5. Dividends.

1 No captive insurance company may pay a dividend out
2 of, or other distribution with respect to, capital or surplus
3 without the prior approval of the commissioner. Ap-
4 proval of an ongoing plan for the payment of dividends or
5 other distributions shall be conditioned upon the reten-
6 tion, at the time of each payment, of capital or surplus in
7 excess of amounts specified by, or determined in accor-
8 dance with formulas approved by, the commissioner.

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

1 (a) A pure captive insurance company may be incorpo-
2 rated as a stock insurer with its capital divided into
3 shares and held by the stockholders, or as a nonprofit
4 corporation with 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
8 divided into shares and held by the stockholders;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63 (h) Captive insurance companies formed as nonprofit
64 corporations under the provisions of this article shall have
65 the privileges and be subject to the provisions of chapter
66 thirty-one-e of this code as well as the applicable provi-
67 sions contained in this chapter. In the event of conflict
68 between the provisions of chapter thirty-one-e of this
69 code and the provisions of this chapter, the latter shall
70 control.

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

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

85 (2) An alien insurer may be a party to a merger autho-
86 rized under this subsection: *Provided*, That the require-
87 ments for a merger between a captive insurance company
88 and a foreign insurer under section twenty-five, article
89 five of this chapter shall apply to a merger between a
90 captive insurance company and an alien insurer under
91 this subsection. Such alien insurer shall be treated as a
92 foreign insurer under section twenty-five, article five of
93 this chapter and such other jurisdictions shall be the
94 equivalent of a state for purposes of section twenty-five,
95 article five of this chapter.

96 (j) Captive insurance companies formed as reciprocal
97 insurers under the provisions of this chapter shall have
98 the privileges and be subject to the provisions of article

99 twenty-one of this chapter in addition to the applicable
100 provisions of this chapter. In the event of a conflict
101 between the provisions of article twenty-one of this
102 chapter and the provisions of this chapter, the latter shall
103 control. To the extent a reciprocal insurer is made subject
104 to other provisions of this chapter pursuant to article
105 twenty-one of this chapter, such provisions shall not be
106 applicable to a reciprocal insurer formed under this
107 chapter unless such provisions are expressly made appli-
108 cable to captive insurance companies under this chapter.

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

116 (l) The subscribers' agreement or other organizing
117 document of a captive insurance company formed as a
118 reciprocal insurer may authorize a quorum of its subscrib-
119 ers' advisory committee to consist of no fewer than one
120 third of the 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 chap-
3 ter.

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

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

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

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

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

§33-31-8. Examinations and investigations.

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

10 two of this chapter in regard to the expense and conduct
11 of the examination.

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

**§33-31-9. Grounds and procedures for suspension or revocation
of license.**

1 (a) The license of a captive insurance company may be
2 suspended or revoked by the commissioner for any of the
3 following reasons:

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

5 (2) Failure to meet the requirements of section four of
6 this article;

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

11 (4) Failure to comply with the provisions of its own
12 charter, bylaws or other organizational document;

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

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

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

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

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

§33-31-10. Legal investments.

1 (a) Association captive insurance companies and risk
2 retention groups shall comply with the investment
3 requirements contained in article eight of this chapter, as
4 applicable. Section eleven, article seven of this chapter
5 shall apply to association captive insurance companies
6 and risk retention groups except to the extent it is incon-
7 sistent with approved accounting standards in use by the
8 company. Notwithstanding any other provision of this
9 chapter, the commissioner may approve the use of alter-
10 native reliable methods of valuation and rating.

11 (b) No pure captive insurance company or industrial
12 insured captive insurance company shall be subject to any

13 restrictions on allowable investments whatever, including
14 those limitations contained in article eight of this chapter:
15 *Provided*, That the commissioner may prohibit or limit
16 any investment that threatens the solvency or liquidity of
17 any such company.

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

§33-31-11. Reinsurance.

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

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

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

23 financial obligations. The commissioner may deny
24 authorization or impose any limitations on the activities
25 of a reinsurance pool, exchange or association that, in the
26 commissioner's judgment, are necessary and proper to
27 provide adequate security for the ceding captive insur-
28 ance company and for the protection and consequent
29 benefit of the public at large.

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

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

1 No captive insurance company may be permitted to join
2 or contribute financially to any plan, pool, association, or
3 guaranty or insolvency fund in this state, nor may any
4 captive insurance company, or any insured or affiliate
5 thereof, receive any benefit from any such plan, pool,
6 association, or guaranty or insolvency fund for claims
7 arising out of the operations of such captive insurance
8 company.

§33-31-14. Tax on premiums collected.

1 (a) Each pure captive insurance company which main-
2 tains its principal office and principal place of business in
3 this state shall pay to the commissioner, in the month of
4 February of each year, a tax at the rate of five tenths of
5 one percent on the gross amount of all premiums collected
6 or contracted for on policies or contracts of insurance
7 written by the pure captive insurance company during the
8 year ending December thirty-first, next preceding, after
9 deducting from the direct premiums, subject to the tax,
10 the amounts paid to policyholders as return premiums
11 which shall include dividends on unabsorbed premiums or
12 premium deposits returned or credited to policyholders;
13 *Provided*, That no tax shall be due or payable as to
14 considerations received for annuity contracts.

15 (b) Except as otherwise provided in subsection (a) of
16 this section, each captive insurance company shall pay to
17 the commissioner in the month of February of each year,
18 a tax at the rate of two percent on the gross amount of all
19 premiums collected on or contracted for on policies or
20 contracts of insurance written by the captive insurance
21 company during the year ending December thirty-first,
22 next preceding, after deducting from the direct premiums,
23 subject to the tax, the amounts paid to policyholders as
24 return premiums which shall include dividends on
25 unabsorbed premiums or premium deposits returned or
26 credited to policyholders. Each captive insurance com-
27 pany shall also be subject to the additional premium taxes
28 levied by sections fourteen-a and fourteen-d, article three
29 of this chapter and the surcharge levied by section
30 thirty-three, article three of this chapter.

31 (c) The tax provided for in this section shall constitute
32 all taxes collectible under the laws of this state from any
33 captive insurance company, and no other occupation tax
34 or other taxes shall be levied or collected from any captive
35 insurance company by the state or any county, city or
36 municipality within this state, except ad valorem taxes.

37 (d) The tax provided for in this section shall be calcu-
38 lated on an annual basis, notwithstanding policies or
39 contracts of insurance or contracts of reinsurance issued
40 on a multiyear basis. In the case of multiyear policies or
41 contracts, the premium shall be prorated for purposes of
42 determining the tax under this section.

§33-31-15. Rules and regulations.

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

§33-31-17. Delinquency.

1 Except as otherwise provided in this article, the terms
2 and conditions set forth in article ten of this chapter,

3 pertaining to insurance reorganizations, receiverships and
4 injunctions, shall apply in full to captive insurance
5 companies formed or licensed under this article.

§33-31-18. Rules for controlled unaffiliated business.

1 The commissioner may adopt rules establishing stan-
2 dards to ensure that a parent or affiliated company is able
3 to exercise control of the risk management function of
4 any controlled unaffiliated business to be insured by the
5 pure captive insurance company. Until such time as rules
6 under this section are adopted, the commissioner may
7 approve the coverage of such risks by a pure captive
8 insurance company.

§33-31-19. Conversion to or merger with reciprocal insurer.

1 (a) An association captive insurance company, risk
2 retention group, or industrial insured captive insurance
3 company formed as a stock or mutual corporation may be
4 converted to or merged with and into a reciprocal insurer
5 in accordance with a plan therefore and the provisions of
6 this section.

7 (b) Any plan for such conversion or merger shall provide
8 a fair and equitable plan for purchasing, retiring or
9 otherwise extinguishing the interests of the stockholders
10 and policyholders of a stock insurer and the members and
11 policyholders of a mutual insurer, including a fair and
12 equitable provision for the rights and remedies of dissent-
13 ing stockholders, members or policyholders.

14 (c) In the case of a conversion authorized under subsec-
15 tion (a) of this section:

16 (1) Such conversion shall be accomplished under such
17 reasonable plan and procedure as approved by the
18 commissioner. The commissioner may not approve any
19 plan of conversion unless the plan:

20 (A) Satisfies the provisions of subsection (b) of this
21 section;

22 (B) Provides for a hearing, of which notice is given or to
23 be given to the captive insurance company, its directors,
24 officers and policyholders, and, in the case of a stock
25 insurer, its stockholders, and in the case of a mutual
26 insurer, its members, all of which persons shall be entitled
27 to attend and appear at such hearing. If notice of a
28 hearing is given and no director, officer, policyholder,
29 member or stockholder requests a hearing, the commis-
30 sioner may cancel such hearing;

31 (C) Provides a fair and equitable plan for the conversion
32 of stockholder, member or policyholder interests into
33 subscriber interests in the resulting reciprocal insurer,
34 substantially proportionate to the corresponding interests
35 in the stock or mutual insurer: *Provided*, That this
36 requirement shall not preclude the resulting reciprocal
37 insurer from applying underwriting criteria that could
38 affect ongoing ownership interests; and

39 (D) Is approved:

40 (i) In the case of a stock insurer, by a majority of the
41 shares entitled to vote represented in person or by proxy
42 at a duly called regular or special meeting at which a
43 quorum is present; and

44 (ii) In the case of a mutual insurer, by a majority of the
45 voting interests of policyholders represented in person or
46 by proxy at a duly called regular or special meeting
47 thereof at which a quorum is present;

48 (2) The commissioner shall approve such plan of conver-
49 sion if the commissioner finds that the conversion will
50 promote the general good of the state in conformity with
51 those standards set forth in subdivision (2), subsection (d),
52 section six of this article;

53 (3) If the commissioner approves the plan, the commis-
54 sioner shall amend the converting insurer's certificate of
55 authority to reflect conversion to a reciprocal insurer and

56 issue such amended certificate of authority to the com-
57 pany's attorney-in-fact;

58 (4) Upon the issuance of an amended certificate of
59 authority of a reciprocal insurer by the commissioner, the
60 conversion shall be effective; and

61 (5) Upon the effectiveness of such conversion the
62 corporate existence of the converting insurer shall cease
63 and the resulting reciprocal insurer shall notify the
64 secretary of state of such conversion.

65 (d) A merger authorized under subsection (a) of this
66 section shall be accomplished substantially in accordance
67 with the procedures set forth in sections twenty-five and
68 twenty-eight, article five of this chapter, except that,
69 solely for purposes of such merger:

70 (1) The plan of merger shall satisfy the provisions of
71 subsection (b) of this section;

72 (2) The subscribers' advisory committee of a reciprocal
73 insurer shall be equivalent to the board of directors of a
74 stock or mutual insurance company;

75 (3) The subscribers of a reciprocal insurer shall be the
76 equivalent of the policyholders of a mutual insurance
77 company;

78 (4) If a subscribers' advisory committee does not have a
79 president or secretary, the officers of such committee
80 having substantially equivalent duties shall be deemed
81 the president or secretary of such committee;

82 (5) The commissioner shall approve the articles of
83 merger if the commissioner finds that the merger will
84 promote the general good of the state in conformity with
85 those standards set forth in subdivision (2), subsection (d),
86 section six of this article. If the commissioner approves
87 the articles of merger, the commissioner shall endorse the
88 commissioner's approval thereon and the surviving

89 insurer shall present the same to the secretary of state at
90 the secretary of state's office;

91 (6) Notwithstanding section four of this article, the
92 commissioner may permit the formation, without surplus,
93 of a captive insurance company organized as a reciprocal
94 insurer, into which an existing captive insurance company
95 may be merged for the purpose of facilitating a transac-
96 tion under this section: *Provided*, That there shall be no
97 more than one authorized insurance company surviving
98 such merger; and

99 (7) An alien insurer may be a party to a merger autho-
100 rized under subsection (a) of this section: *Provided*, That
101 the requirements for a merger between a domestic and a
102 foreign insurer under section twenty-five, article five of
103 this chapter shall apply to a merger between a domestic
104 and an alien insurer under this subsection. Such alien
105 insurer shall be treated as a foreign insurer under section
106 twenty-five, article five of this chapter and such other
107 jurisdictions shall be the equivalent of a state for pur-
108 poses of section twenty-five, article five of this chapter.

§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
3 this state only insurance or reinsurance of the employee
4 benefit business of its parent and affiliated companies
5 which is subject to the provisions of the federal Employee
6 Retirement Income Security Act of 1974 and set forth in
7 29 U. S. C. §1001, *et seq.*, as amended. In addition to the
8 general provisions of this chapter, the provisions of
9 sections twenty-one through twenty-five, inclusive, of this
10 article 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
14 this state.

§33-31-21. Security required.

1 In the case of a branch captive insurance company, as
2 security for the payment of liabilities attributable to the
3 branch operations, the commissioner shall require that a
4 trust fund, funded by an irrevocable letter of credit or
5 other acceptable asset, be established and maintained in
6 the United States for the benefit of United States policy-
7 holders and United States ceding insurers under insur-
8 ance policies issued or reinsurance contracts issued or
9 assumed by the branch captive insurance company
10 through its branch operations. The amount of such
11 security may be no less than the amount set forth in
12 subdivision (1), subsection (a), section four of this article
13 and the reserves on such insurance policies or such
14 reinsurance contracts, including reserves for losses
15 allocated loss adjustment expenses, incurred but not
16 reported losses and unearned premiums with regard to
17 business written through the branch operations: *Provided,*
18 That the commissioner may permit a branch captive
19 insurance company that is required to post security for
20 loss reserves on branch business by its reinsurer to reduce
21 the funds in the trust account required by this section by
22 the same amount so long as the security remains posted
23 with the reinsurer. If the form of security selected is a
24 letter of credit, the letter of credit must be established by,
25 or issued or confirmed by, a bank chartered in this state
26 or a member bank of the federal reserve system.

§33-31-22. Certificate of general good.

1 In the case of a captive insurance company licensed as
2 a branch captive, the alien captive insurance company
3 shall petition the commissioner to issue a certificate
4 setting forth the commissioner's finding that, after
5 considering the character, reputation, financial responsi-
6 bility, insurance experience and business qualifications of
7 the officers and directors of the alien captive insurance
8 company, the licensing and maintenance of the branch
9 operations will promote the general good of the state. The

10 alien captive insurance company may register to do
11 business in this state after the commissioner's certificate
12 is issued.

§33-31-23. Reports.

1 Prior to the first day of March of each year, or with the
2 approval of the commissioner within sixty days after its
3 fiscal year-end, a branch captive insurance company shall
4 file with the commissioner a copy of all reports and
5 statements required to be filed under the laws of the
6 jurisdiction in which the alien captive insurance company
7 is formed, verified under oath by its president and secre-
8 tary. If the commissioner is satisfied that the annual
9 report filed by the alien captive insurance company in its
10 domiciliary jurisdiction provides adequate information
11 concerning the financial condition of the alien captive
12 insurance company, the commissioner may waive the
13 requirement for completion of the captive annual state-
14 ment for business written in the alien jurisdiction.

§33-31-24. Examination.

1 (a) The examination of a branch captive insurance
2 company pursuant to section eight of this article shall be
3 of branch business and branch operations only, so long as
4 the branch captive insurance company annually provides
5 to the commissioner a certificate of compliance, or its
6 equivalent, issued by or filed with the licensing authority
7 of the jurisdiction in which the branch captive insurance
8 company is formed and demonstrates to the commis-
9 sioner's satisfaction that it is operating in sound financial
10 condition in accordance with all applicable laws and
11 regulations of such jurisdiction.

12 (b) As a condition of licensure, the alien captive insur-
13 ance company shall grant authority to the commissioner
14 for examination of the affairs of the alien captive insur-
15 ance company in the jurisdiction in which the alien
16 captive insurance company is formed.

§33-31-25. Taxation.

1 In the case of a branch captive insurance company, the
2 tax provided for in section fourteen of this article shall
3 apply only to the branch business of such company.

ARTICLE 31A. SPONSORED CAPTIVE INSURANCE COMPANY FORMATION.**§33-31A-1. Applicability of article.**

1 In addition to the provisions of article thirty-one of this
2 chapter, the provisions of this article shall apply to all
3 sponsored captive insurance companies.

§33-31A-2. Definitions.

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

3 (1) "Participant" means associations, corporations,
4 limited liability companies, partnerships, trusts and other
5 business entities and any affiliates thereof that are
6 insured by a sponsored captive insurance company where
7 the losses of the participant are limited through a partici-
8 pant contract to such participant's pro rata share of the
9 assets of one or more protected cells identified in such
10 participant contract.

11 (2) "Participant contract" means a contract by which a
12 sponsored captive insurance company insures the risks of
13 a participant and limits the losses of each such partici-
14 pant to its pro rata share of the assets of one or more
15 protected cells identified in such participant contract.

16 (3) "Protected cell" means a separate account estab-
17 lished by a sponsored captive insurance company formed
18 or licensed under the provisions of this chapter in which
19 assets are maintained for one or more participants in
20 accordance with the terms of one or more participant
21 contracts to fund the liability of the sponsored captive
22 insurance company assumed on behalf of such partici-
23 pants as set forth in such participant contracts.

24 (4) "Sponsor" means any entity that meets the require-
25 ments of section six of this article and is approved by the
26 commissioner to provide all or part of the capital and
27 surplus required by applicable law and to organize and
28 operate a sponsored captive insurance company.

29 (5) "Sponsored captive insurance company" means any
30 captive insurance company:

31 (A) In which the minimum capital and surplus required
32 by applicable law is provided by one or more sponsors;

33 (B) That is formed or licensed under the provisions of
34 this chapter;

35 (C) That insures the risks only of its participants
36 through separate participant contracts; and

37 (D) That funds its liability to each participant through
38 one or more protected cells and segregates the assets of
39 each protected cell from the assets of other protected cells
40 and from the assets of the sponsored captive insurance
41 company's general account.

**§33-31A-3. Formation of sponsored captive insurance compa-
nies.**

1 One or more sponsors may form a sponsored captive
2 insurance company under the provisions of this article. A
3 sponsored captive insurance company shall be incorpo-
4 rated as a stock insurer with its capital divided into
5 shares and held by the stockholders.

§33-31A-4. Supplemental application materials.

1 In addition to the information required by subdivisions
2 (1) and (2), subsection (c), section two, article thirty-one
3 of this chapter, each applicant-sponsored captive insur-
4 ance company shall file with the commissioner the
5 following:

6 (1) Materials demonstrating how the applicant will
7 account for the loss and expense experience of each

8 protected cell at a level of detail found to be sufficient by
9 the commissioner and how it will report such experience
10 to the commissioner;

11 (2) A statement acknowledging that all financial records
12 of the sponsored captive insurance company, including
13 records pertaining to any protected cells, shall be made
14 available for inspection or examination by the commis-
15 sioner or the commissioner's designated agent;

16 (3) All contracts or sample contracts between the
17 sponsored captive insurance company and any partici-
18 pants; and

19 (4) Evidence that expenses shall be allocated to each
20 protected cell in a fair and equitable manner.

§33-31A-5. Protected cells.

1 A sponsored captive insurance company formed or
2 licensed under the provisions of this article may establish
3 and maintain one or more protected cells to insure risks of
4 one or more participants, subject to the following condi-
5 tions:

6 (1) The shareholders of a sponsored captive insurance
7 company shall be limited to its participants and sponsors:
8 *Provided*, That a sponsored captive insurance company
9 may issue nonvoting securities to other persons on terms
10 approved by the commissioner;

11 (2) Each protected cell shall be accounted for separately
12 on the books and records of the sponsored captive insur-
13 ance company to reflect the financial condition and
14 results of operations of such protected cell, net income or
15 loss, dividends or other distributions to participants and
16 such other factors as may be provided in the participant
17 contract or required by the commissioner;

18 (3) The assets of a protected cell shall not be chargeable
19 with liabilities arising out of any other insurance business
20 the sponsored captive insurance company may conduct;

21 (4) No sale, exchange or other transfer of assets may be
22 made by such sponsored captive insurance company
23 between or among any of its protected cells without the
24 consent of such protected cells;

25 (5) No sale, exchange, transfer of assets, dividend or
26 distribution may be made from a protected cell to a
27 sponsor or participant without the commissioner's
28 approval and in no event shall such approval be given if
29 the sale, exchange, transfer, dividend or distribution
30 would result in insolvency or impairment with respect to
31 a protected cell;

32 (6) Each sponsored captive insurance company shall
33 annually file with the commissioner such financial reports
34 as the commissioner shall require, which shall include,
35 without limitation, accounting statements detailing the
36 financial experience of each protected cell;

37 (7) Each sponsored captive insurance company shall
38 notify the commissioner in writing within ten business
39 days of any protected cell that is insolvent or otherwise
40 unable to meet its claim or expense obligations;

41 (8) No participant contract shall take effect without the
42 commissioner's prior written approval and the addition of
43 each new protected cell and withdrawal of any partici-
44 pant or termination of any existing protected cell shall
45 constitute a change in the business plan requiring the
46 commissioner's prior written approval; and

47 (9) The business written by a sponsored captive, with
48 respect to each cell, shall be:

49 (A) Fronted by an insurance company licensed under the
50 laws of any state;

51 (B) Reinsured by a reinsurer authorized or approved by
52 the state of West Virginia; or

53 (C) Secured by a trust fund in the United States for the
54 benefit of policyholders and claimants or funded by an

55 irrevocable letter of credit or other arrangement that is
56 acceptable to the commissioner. The amount of security
57 provided shall be no less than the reserves associated with
58 those liabilities which are neither fronted nor reinsured,
59 including reserves for losses, allocated loss adjustment
60 expenses, incurred but not reported losses and unearned
61 premiums for business written through the participant's
62 protected cell. The commissioner may require the spon-
63 sored captive to increase the funding of any security
64 arrangement established under this subdivision. If the
65 form of security is a letter of credit, the letter of credit
66 must be established, issued or confirmed by a bank
67 chartered in this state, a member of the federal reserve
68 system or a bank chartered by another state if such state
69 chartered bank is acceptable to the commissioner. A trust
70 maintained pursuant to this paragraph shall be estab-
71 lished in a form and upon such terms approved by the
72 commissioner.

§33-31A-6. Qualification of sponsors.

1 A sponsor of a sponsored captive insurance company
2 shall be an insurer licensed under the laws of any state, a
3 reinsurer authorized or approved under the laws of any
4 state or a captive insurance company formed or licensed
5 under this article. A risk retention group shall not be
6 either a sponsor or a participant of a sponsored captive
7 insurance company.

§33-31A-7. Authorized participants.

1 Associations, corporations, limited liability companies,
2 partnerships, trusts and other business entities may be
3 participants in any sponsored captive insurance company
4 formed or licensed under this chapter. A sponsor may be
5 a participant in a sponsored captive insurance company.
6 A participant need not be a shareholder of the sponsored
7 captive insurance company or any affiliate thereof. A
8 participant shall insure only its own risks through a
9 sponsored captive insurance company.

§33-31A-8. Investments.

1 Notwithstanding the provisions of section five of this
2 article, the assets of two or more protected cells may be
3 combined for purposes of investment, and such combina-
4 tion shall not be construed as defeating the segregation of
5 such assets for accounting or other purposes. Sponsored
6 captive insurance companies shall comply with the
7 investment requirements contained in article eight of this
8 chapter, as applicable: *Provided*, That compliance with
9 such investment requirements shall be waived for spon-
10 sored captive insurance companies to the extent that
11 credit for reinsurance ceded to reinsurers is allowed
12 pursuant to section eleven, article thirty-one of this
13 chapter or to the extent otherwise deemed reasonable and
14 appropriate by the commissioner. Notwithstanding any
15 other provision of this chapter, the commissioner may
16 approve the use of alternative reliable methods of valua-
17 tion and rating.

§33-31A-9. Delinquency.

1 In the case of a delinquency of a sponsored captive
2 insurance company, the provisions of section seventeen,
3 article thirty-one of this chapter shall apply, provided:

4 (1) The assets of a protected cell may not be used to pay
5 any expenses or claims other than those attributable to
6 such protected cell; and

7 (2) Its capital and surplus shall at all times be available
8 to pay any expenses of or claims against the sponsored
9 captive insurance company.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 5th
Day of April....., 2004.
[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/1/04

Time 10:00am