WEST VIRGINIA CODE: §33-31-6

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Formed as a reciprocal insurer, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed association will promote the general good of the state. In arriving at such a finding the Commissioner shall consider the items set forth in subparagraphs (i), (ii) and (iii),

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paragraph (A), subdivision (1) of this subsection.

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

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

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

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

(g) Other than captive insurance companies formed as nonprofit corporations under chapter thirty-one-e of this code, captive insurance companies formed as corporations under the provisions of this article shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this article. In the event of conflict between the provisions of said general corporation law and the provisions of this article, the latter shall control.(h) Captive insurance companies formed as nonprofit corporations under the provisions of this article shall have the privileges and be subject to the provisions of chapter thirty-one-e of this code as well as the applicable provisions contained in this article. In the event of conflict between the provisions of chapter thirty-one-e of this code and the provisions of this article, the latter shall control.

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

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

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

(j) Captive insurance companies formed as reciprocal insurers under the provisions of this article shall have the privileges and be subject to the provisions of article twenty-one of this

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chapter in addition to the applicable provisions of this article. In the event of a conflict between the provisions of article twenty-one of this chapter and the provisions of this article, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this article pursuant to article twenty-one of this chapter, such provisions shall not be applicable to a reciprocal insurer formed under this article unless such provisions are expressly made applicable to captive insurance companies under this article.

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

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

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