WEST VIRGINIA CODE CHAPTER 33 ARTICLE 31

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§33-31-1. Definitions.

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

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

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

(3) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations or other entities that has been in continuous existence for at least one year, the member organizations of which, or which does itself, whether or not in conjunction with some or all of the member organizations:

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

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

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

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

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

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

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

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company or risk retention group formed or licensed under the provisions of this article. For purposes of this article, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise

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permitted by the commissioner.

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

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

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

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

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

(11) "Industrial insured" means an insured:

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

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

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

(12) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies. (13)"Industrial insured group" means any group of industrial insureds that collectively:

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

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

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

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

(15) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members.(16) "Parent" means a corporation, limited liability company, partnership, other entity, or individual that directly or indirectly owns, controls or holds with power to vote more than fifty percent of the outstanding voting:

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

(B) Membership interests of a pure captive insurance company organized as a nonprofit

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corporation.

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

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

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§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association, charter or other organizational document, may apply to the commissioner for a license to do any and all insurance comprised in section ten, article one of this chapter: Provided, That all captive insurance companies, except pure captive insurance companies, shall maintain their principal office and principal place of business in this state: Provided, however, That:

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

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

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

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

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

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

(7) No risk retention group may retain any risk on any one subject of insurance, whether located or to be performed in West Virginia or elsewhere, in an amount exceeding ten percent of the surplus required by section four of this article unless approved by the commissioner;

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

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

(10) A professional employer organization licensed pursuant to the provisions of article forty-six-a of this chapter may insure its risks for insurance coverage for accident and sickness, as such insurance coverage is defined under subsection (b), section ten, article one of this chapter, for all employees and covered employees through a captive insurance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Information submitted pursuant to this subsection shall be and remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner

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without the written consent of the company, except that:

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

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

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

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

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

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

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

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for examining, investigating and processing its application for license, and the commissioner is authorized to retain legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of subsection (r), section nine, article two of this chapter shall apply to examinations, investigations and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each year thereafter of $300.

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

(f) A captive insurance company shall notify the commissioner in writing within thirty days of becoming aware of any material change in information previously submitted to the commissioner, including information submitted in or with the license application.

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§33-31-3. Names of companies.

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

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

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

(1) In the case of a pure captive insurance company, not less than $100,000;

(2) In the case of an association captive insurance company, not less than 350,000;

(3) In the case of an industrial insured captive insurance company, not less than $250,000;

(4) In the case of a risk retention group, not less than $500,000; and

(5) In the case of a sponsored captive insurance company, not less than $250,000.

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

(1) In the case of a pure captive insurance company, not less than $150,000;

(2) In the case of an association captive insurance company, not less than $350,000;

(3) In the case of an industrial insured captive insurance company, not less than $250,000;

(4) In the case of a risk retention group, not less than $500,000; and

(5) In the case of a sponsored captive insurance company, not less than $250,000.

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

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

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§33-31-5. Dividends.

No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner.

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

(e) The capital stock of a captive insurance company incorporated as a stock insurer may be

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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 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

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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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§33-31-7. Reports and statements.

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

(b) On or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each risk retention group shall file its report in the form required by section fourteen, article four of this chapter, and each risk retention group shall comply with the requirements set forth in article thirty-two of this chapter. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report.

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

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

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

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§33-31-8. Examinations and investigations.

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

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

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

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

(1) Insolvency or impairment of capital or surplus;

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

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

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

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

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

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

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

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

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§33-31-10. Legal investments.

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

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

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

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§33-31-11. Reinsurance.

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

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

(c) In addition to reinsurers authorized under the provisions of section fifteen, article four of this chapter, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer which has been authorized by the commissioner. The commissioner may require any other documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

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

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

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

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

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

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§33-31-14. Tax on premiums collected.

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

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

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

(d) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

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§33-31-15. Rules.

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

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§33-31-16. Laws applicable.

No provisions of this chapter, other than those contained in this article or contained in specific references in this article, may apply to captive insurance companies.

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§33-31-16a. Laws applicable; Risk Retention Groups.

In addition to the applicable provisions of this article, any captive insurance company organized as a risk retention group is subject to the following provisions of this chapter: section nine, article two (examination of insurers, agents, brokers and solicitors; access to books, records, etc.); section fourteen, article four (financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner); section fifteen-a, article four (credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date); article seven (assets and liabilities); article ten (rehabilitation and liquidation); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (Business Transacted with Producer Controlled Property/Casualty Insurer Act); article thirty-seven (managing general agents); article thirty-eight (Reinsurance Intermediary Act); article forty (risk-based capital for insurers); and article forty-one (Insurance Fraud Prevention Act), as well as any rules promulgated under those provisions in accordance with article three, chapter twenty-nine-a of this code, including any rule relating to property and casualty actuarial opinions.

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§33-31-17. Delinquency.

Except as otherwise provided in this article, the terms and conditions set forth in article ten of this chapter, pertaining to insurance reorganizations, receiverships and injunctions, shall apply in full to captive insurance companies formed or licensed under this article.

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

The commissioner may adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. Until such time as rules under this section are adopted, the commissioner may approve the coverage of such risks by a pure captive insurance company.

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

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

(b) Any plan for such conversion or merger shall provide a fair and equitable plan for purchasing, retiring or otherwise extinguishing the interests of the stockholders and policyholders of a stock insurer and the members and policyholders of a mutual insurer, including a fair and equitable provision for the rights and remedies of dissenting stockholders, members or policyholders.

(c) In the case of a conversion authorized under subsection (a) of this section:

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

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

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

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

(D) Is approved:

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

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

(2) The commissioner shall approve such plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards

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set forth in subdivision (2), subsection (d), section six of this article;

(3) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue such amended certificate of authority to the company's attorney-in-fact;

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

(5) Upon the effectiveness of such conversion the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of such conversion.

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

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

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

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

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

(5) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in subdivision (2), subsection (d), section six of this article. If the commissioner approves the articles of merger, the commissioner shall endorse the commissioner's approval thereon and the surviving insurer shall present the same to the Secretary of State at the Secretary of State's office;

(6) Notwithstanding section four of this article, the commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section: Provided, That there shall be no more than one authorized insurance company surviving such merger; and

(7) An alien insurer may be a party to a merger authorized under subsection (a) of this section: Provided, That the requirements for a merger between a domestic and a foreign insurer under section twenty-five, article five of this chapter shall apply to a merger between a domestic and an alien insurer under this subsection. Such alien insurer shall be treated as

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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.

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

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

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

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§33-31-21. Security required.

In the case of a branch captive insurance company, as security for the payment of liabilities attributable to the branch operations, the commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The amount of such security may be no less than the amount set forth in subdivision (1), subsection (a), section four of this article and the reserves on such insurance policies or such reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operations: Provided, That the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this state or a member bank of the federal reserve system.

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

In the case of a captive insurance company licensed as a branch captive, the alien captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the state. The alien captive insurance company may register to do business in this state after the commissioner's certificate is issued.

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§33-31-23. Reports.

Prior to March 1 of each year, or with the approval of the commissioner within sixty days after its fiscal year-end, a branch captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified under oath by its president and secretary. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

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§33-31-24. Examination.

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

(b) As a condition of licensure, the alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

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§33-31-25. Taxation.

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

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