

1  
2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 356**

5 (By Senators Minard, Jenkins and Stollings)

6 \_\_\_\_\_  
7 [Originating in the Committee on Banking and Insurance;  
8 reported February 23, 2011.]  
9 \_\_\_\_\_

10 A BILL to amend and reenact §33-31-1, §33-31-2, §33-31-6, §33-31-7,  
11 §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-  
12 31-20 of the Code of West Virginia, 1931, as amended; to amend  
13 said code by adding thereto a new section, designated §33-31-  
14 16a; and to amend and reenact §33-36-2 of said code, all  
15 relating to captive insurance; subjecting any captive  
16 insurance company organized as a risk retention group to  
17 certain insurance code provisions; and correcting technical  
18 errors.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-  
21 10, §33-31-11, §33-31-15, §33-31-16, §33-31-20 and §33-36-2 of the  
22 Code of West Virginia, 1931, as amended, be amended and reenacted;  
23 and that said code be amended by adding thereto a new section,  
24 designed §33-31-16a, all to read as follows:

25 **ARTICLE 31. CAPTIVE INSURANCE.**

1 **§33-31-1. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

12 (8) "Captive insurance company" means any pure captive  
13 insurance company, association captive insurance company, sponsored  
14 captive insurance company, industrial insured captive insurance  
15 company or risk retention group formed or licensed under the  
16 provisions of this ~~chapter~~ article. For purposes of this ~~chapter~~  
17 article, a branch captive insurance company shall be a pure captive  
18 insurance company with respect to operations in this state, unless  
19 otherwise permitted by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (15) "Mutual corporation" means a corporation organized  
26 without stockholders and includes a nonprofit corporation with members.

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

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

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

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

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

17 **§33-31-2. Licensing; authority.**

18 (a) Any captive insurance company, when permitted by its  
19 articles of association, charter or other organizational document,  
20 may apply to the commissioner for a license to do any and all  
21 insurance comprised in section ten, article one of this chapter  
22 ~~except as indicated in subdivision (4) subsection (a) of this~~  
23 ~~section:~~ *Provided*, That all captive insurance companies, except  
24 pure captive insurance companies, shall maintain their principal  
25 office and principal place of business in this state: *Provided*,  
26 *however*, That:

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

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

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

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

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

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

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

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

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

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

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

8 (3) It appoints a registered agent to accept service of  
9 process and to otherwise act on its behalf in this state:

10 *Provided*, That whenever such registered agent cannot with  
11 reasonable diligence be found at the registered office of the  
12 captive insurance company, the Secretary of State shall be an agent  
13 of such captive insurance company upon whom any process, notice, or  
14 demand may be served.

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

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

21 (B) Submit to the commissioner for approval a description of  
22 the coverages, deductibles, coverage limits and rates, together  
23 with such additional information as the commissioner may reasonably  
24 require. In the event of any subsequent material change in any  
25 item in such description, the captive insurance company shall  
26 submit to the commissioner for approval an appropriate revision and

1 shall not offer any additional kinds of insurance until a revision  
2 of such description is approved by the commissioner. The captive  
3 insurance company shall inform the commissioner of any material  
4 change in rates within thirty days of the adoption of such change.

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

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

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

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

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

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

17 (3) Information submitted pursuant to this subsection shall be  
18 and remain confidential and may not be made public by the  
19 commissioner or an employee or agent of the commissioner without  
20 the written consent of the company, except that:

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

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

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

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

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

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

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

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

25 (e) If the commissioner is satisfied that the documents and  
26 statements that such captive insurance company has filed comply

1 with the provisions of this ~~chapter~~ article, the commissioner may  
2 grant a license authorizing it to do insurance business in this  
3 state until ~~April 1~~ May 31, thereafter, which license may be  
4 renewed.

5 **§33-31-6. Formation of captive insurance companies in this state.**

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

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

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

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

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

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

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

23 (1) (A) Formed as a corporation the incorporators shall  
24 petition the commissioner to issue a certificate setting forth the  
25 commissioner's finding that the establishment and maintenance of  
26 the proposed corporation will promote the general good of the

1 state. In arriving at such a finding the commissioner shall  
2 consider:

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

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

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

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

14 (2) Formed as a reciprocal insurer, the organizers shall  
15 petition the commissioner to issue a certificate setting forth the  
16 commissioner's finding that the establishment and maintenance of  
17 the proposed association will promote the general good of the  
18 state. In arriving at such a finding the Commissioner shall  
19 consider the items set forth in subparagraphs (i), (ii) and (iii),  
20 paragraph (A), subdivision (1) of this subsection.

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

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

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

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

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

12 (h) Captive insurance companies formed as nonprofit  
13 corporations under the provisions of this article shall have the  
14 privileges and be subject to the provisions of chapter thirty-one-e  
15 of this code as well as the applicable provisions contained in this  
16 ~~chapter~~ article. In the event of conflict between the provisions of  
17 chapter thirty-one-e of this code and the provisions of this  
18 ~~chapter~~ article, the latter shall control.

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

26 (1) The commissioner may waive or modify the requirements for

1 public notice and hearing in accordance with rules which the  
2 commissioner may adopt addressing categories of transactions. If a  
3 notice of public hearing is required, but no one requests a  
4 hearing, then the commissioner may cancel the hearing; and

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

15 (j) Captive insurance companies formed as reciprocal insurers  
16 under the provisions of this ~~chapter~~ article shall have the  
17 privileges and be subject to the provisions of article twenty-one  
18 of this chapter in addition to the applicable provisions of this  
19 ~~chapter~~ article. In the event of a conflict between the provisions  
20 of article twenty-one of this chapter and the provisions of this  
21 ~~chapter~~ article, the latter shall control. To the extent a  
22 reciprocal insurer is made subject to other provisions of this  
23 ~~chapter~~ article pursuant to article twenty-one of this chapter,  
24 such provisions shall not be applicable to a reciprocal insurer  
25 formed under this ~~chapter~~ article unless such provisions are  
26 expressly made applicable to captive insurance companies under this

1 ~~chapter~~ article.

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

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

12 **§33-31-7. Reports and statements.**

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

15 (b) On or before March 1 of each year, each captive insurance  
16 company shall submit to the commissioner a report of its financial  
17 condition, verified by oath of two of its executive officers. Each  
18 captive insurance company shall report using generally accepted  
19 accounting principles, unless the commissioner approves the use of  
20 statutory accounting principles, with any appropriate or necessary  
21 modifications or adaptations thereof required or approved or  
22 accepted by the commissioner for the type of insurance and kinds of  
23 insurers to be reported upon, and as supplemented by additional  
24 information required by the commissioner. Except as otherwise  
25 provided, each association captive insurance company and each risk  
26 retention group shall file its report in the form required by

1 section fourteen, article ~~three~~ four of this chapter, and each risk  
2 retention group shall comply with the requirements set forth in  
3 article thirty-two of this chapter. The commissioner shall by rule  
4 propose the forms in which pure captive insurance companies and  
5 industrial insured captive insurance companies shall report.

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

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

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

19 **§33-31-8. Examinations and investigations.**

20 (a) At least once in five years, and whenever the commissioner  
21 determines it to be prudent, the commissioner shall personally, or  
22 by some competent person appointed by the commissioner, visit each  
23 captive insurance company and thoroughly inspect and examine its  
24 affairs to ascertain its financial condition, its ability to  
25 fulfill its obligations and whether it has complied with the  
26 provisions of this ~~chapter~~ article. The captive insurance company

1 shall be subject to the provisions of section nine, article two of  
2 this chapter in regard to the expense and conduct of the  
3 examination.

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

22 **§33-31-10. Legal investments.**

23 (a) Association captive insurance companies and risk retention  
24 groups shall comply with the investment requirements contained in  
25 article eight of this chapter, as applicable. ~~Section~~ Subsection  
26 (b), section ten and section eleven, article seven of this chapter

1 shall apply to association captive insurance companies and risk  
2 retention groups except to the extent it is inconsistent with  
3 approved accounting standards in use by the company.  
4 Notwithstanding any other provision of this ~~chapter~~ article, the  
5 commissioner may approve the use of alternative reliable methods of  
6 valuation and rating.

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

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

19 **§33-31-11. Reinsurance.**

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

26 (b) Any captive insurance company may take credit for the

1 reinsurance of risks or portions of risks ceded to reinsurers  
2 complying with the provisions of sections fifteen-a and fifteen-b,  
3 article four of this chapter. Prior approval of the commissioner  
4 shall be required for ceding or taking credit for the reinsurance  
5 of risks or portions of risks ceded to reinsurers not complying  
6 with sections fifteen-a and fifteen-b, article four of this  
7 chapter, except for business written by an alien captive insurance  
8 company outside of the United States.

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

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

1 **§33-31-15. Rules.**

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

6 **§33-31-16. Laws applicable.**

7 No provisions of this ~~code~~ chapter, other than those contained  
8 in this ~~chapter~~ article or contained in specific references  
9 ~~contained~~ in this ~~chapter~~ article, may apply to captive insurance  
10 companies.

11 **§33-31-16a. Same - Risk Retention Groups.**

12 In addition to the applicable provisions of this article, any  
13 captive insurance company organized as a risk retention group is  
14 subject to the provisions of section nine, article two (examination  
15 of insurers, agents, brokers and solicitors; access to books,  
16 records, etc.); section fourteen, article four (financial statement  
17 filings; annual and quarterly statements; required format; foreign  
18 insurers; agents of the commissioner); section fifteen-a, article  
19 four (credit for reinsurance; definitions; requirements; trust  
20 accounts; reductions from liability; security; effective date);  
21 article seven (assets and liabilities); article ten (rehabilitation  
22 and liquidation); article twenty-seven (insurance holding company  
23 systems); article thirty-three (annual audited financial report);  
24 article thirty-four (administrative supervision); article  
25 thirty-four-a (standards and commissioner's authority for companies

1 deemed to be in hazardous financial condition); article thirty-five  
2 (criminal sanctions for failure to report impairment); article  
3 thirty-six (Business Transacted with Producer Controlled  
4 Property/Casualty Insurer Act); article thirty-seven (managing  
5 general agents); article thirty-eight (Reinsurance Intermediary  
6 Act); and article forty-one (Insurance Fraud Prevention Act) of  
7 this chapter and any rules promulgated thereunder in accordance  
8 with article three, chapter twenty-nine-a of this code.

9 **§33-31-20. Branch captive insurance company formation.**

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

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

23 **ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED**  
24 **PROPERTY/CASUALTY INSURER ACT.**

25 **§33-36-2. Definitions.**

1           As used in this article:

2           (a) "Accredited state" means a state in which the insurance  
3 department or regulatory agency has qualified as meeting the  
4 minimum financial regulatory standards promulgated and established  
5 from time to time by the national association of insurance  
6 commissioners.

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

26           (c) "Controlled insurer" means a licensed insurer which is

1 controlled, directly or indirectly, by a producer.

2 (d) "Controlling producer" means a producer who, directly or  
3 indirectly, controls an insurer.

4 (e) "Licensed insurer" or "insurer" means any person, firm,  
5 association or corporation duly licensed to transact a property or  
6 casualty insurance business, or both property and casualty  
7 insurance, in this state: *Provided*, That the following are not  
8 licensed insurers for the purposes of this article:

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

11 ~~(2)~~(1) All residual market pools and joint underwriting  
12 authorities or associations; and

13 ~~(3)~~(2) All captive insurance companies as defined in article  
14 thirty-one of this chapter: *Provided*, That a captive insurance  
15 company organized as a risk retention group shall be considered a  
16 licensed insurer for the purposes of this article.

17 (f) "Producer" means an insurance broker or brokers or any  
18 other person, firm, association or corporation, when, for any  
19 compensation, commission or other thing of value, the person, firm,  
20 association or corporation acts or aids in any manner in  
21 soliciting, negotiating or procuring the making of any insurance  
22 contract on behalf of an insured other than the person, firm,  
23 association or corporation: *Provided*, That the designation of any  
24 individual or entity as a producer does not expand upon or provide  
25 for activities beyond those permitted by article twelve of this  
26 chapter.

(NOTE: The purpose of this bill is to make a captive insurance company that is organized as a risk retention group subject to certain insurance code provisions and to generally correct technical errors found in article thirty-one of chapter thirty-three.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§33-31-16a is new; therefore, strike-throughs and underscoring have been omitted.)