

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 356**

(SENATORS MINARD, JENKINS AND STOLLINGS, *original sponsors*)

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[Passed March 10, 2011; to take effect July 1, 2011.]

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

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

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

**ARTICLE 31. CAPTIVE INSURANCE.**

**§33-31-1. Definitions.**

1 As used in this article, unless the context requires other-  
2 wise:

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

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

14 (3) “Association” means any legal association of individu-  
15 als, 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  
18 which, or which does itself, whether or not in conjunction  
19 with some or 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  
22 insurance company incorporated as a stock insurer;

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

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

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

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

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

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

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

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

51 (10) "Controlled unaffiliated business" means any com-  
52 pany:

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

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

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

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

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

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

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

66 (12) "Industrial insured captive insurance company" means  
67 any company that insures risks of the industrial insureds  
68 that comprise the industrial insured group and their affili-  
69 ated companies.

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

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

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

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

81 (14) "Member organization" means any individual, corpo-  
82 ration, limited liability company, partnership, association or  
83 other entity that belongs to an association.

84 (15) "Mutual corporation" means a corporation organized  
85 without stockholders and includes a nonprofit corporation  
86 with members.

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

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

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

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

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

**§33-31-2. Licensing; authority.**

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

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

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

15 (3) No industrial insured captive insurance company may  
16 insure any risks other than those of the industrial insureds  
17 that comprise the industrial insured group, and their affili-  
18 ated companies;

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

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

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

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

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

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

40 (1) It first obtains from the commissioner a license autho-  
41 rizing it to do insurance business in this state;

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

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

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

54 (A) File with the commissioner a certified copy of its  
55 organizational documents, a statement under oath of its  
56 president and secretary showing its financial condition, and  
57 any other statements or documents required by the commis-  
58 sioner; and

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

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

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

75 (B) The adequacy of the expertise, experience and charac-  
76 ter of the person or persons who will manage it;

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

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

80 (E) Such other factors deemed relevant by the commis-  
81 sioner in ascertaining whether the proposed captive insur-  
82 ance company will be able to meet its policy obligations.

83 (3) Information submitted pursuant to this subsection shall  
84 be and remain confidential and may not be made public by  
85 the commissioner or an employee or agent of the commis-  
86 sioner without the written consent of the company, except  
87 that:

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

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

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

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

102 (B) The commissioner may, in the commissioner's discre-  
103 tion, disclose such information to a public officer having  
104 jurisdiction over the regulation of insurance in another state,  
105 if:

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

108 (ii) The laws of the state in which such public official  
109 serves require such information to be and to remain confi-  
110 dential.

111 (d) Each captive insurance company shall pay to the  
112 commissioner a nonrefundable fee of two hundred dollars for  
113 examining, investigating and processing its application for  
114 license, and the commissioner is authorized to retain legal,



115 financial and examination services from outside the depart-  
116 ment, the reasonable cost of which may be charged against  
117 the applicant. The provisions of subsection (r), section nine,  
118 article two of this chapter shall apply to examinations,  
119 investigations and processing conducted under the authority  
120 of this section. In addition, each captive insurance company  
121 shall pay a license fee for the year of registration and a  
122 renewal fee for each year thereafter of \$300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82 (2) An alien insurer may be a party to a merger authorized  
83 under this subsection: *Provided*, That the requirements for  
84 a merger between a captive insurance company and a foreign  
85 insurer under section twenty-five, article five of this chapter  
86 shall apply to a merger between a captive insurance com-  
87 pany and an alien insurer under this subsection. Such alien  
88 insurer shall be treated as a foreign insurer under section  
89 twenty-five, article five of this chapter and such other  
90 jurisdictions shall be the equivalent of a state for purposes of  
91 section twenty-five, article five of this chapter.

92 (j) Captive insurance companies formed as reciprocal  
93 insurers under the provisions of this article shall have the  
94 privileges and be subject to the provisions of article twenty-  
95 one of this chapter in addition to the applicable provisions of  
96 this article. In the event of a conflict between the provisions  
97 of article twenty-one of this chapter and the provisions of  
98 this article, the latter shall control. To the extent a reciprocal  
99 insurer is made subject to other provisions of this article  
100 pursuant to article twenty-one of this chapter, such provi-  
101 sions shall not be applicable to a reciprocal insurer formed  
102 under this article unless such provisions are expressly made  
103 applicable to captive insurance companies under this article.

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

110 (l) The subscribers' agreement or other organizing docu-  
111 ment of a captive insurance company formed as a reciprocal  
112 insurer may authorize a quorum of its subscribers' advisory  
113 committee to consist of no fewer than one third of the  
114 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 article.

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

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

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

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

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

1 (a) At least once in five years, and whenever the commis-  
2 sioner determines it to be prudent, the commissioner shall  
3 personally, or by some competent person appointed by the

4 commissioner, visit each captive insurance company and  
5 thoroughly inspect and examine its affairs to ascertain its  
6 financial condition, its ability to fulfill its obligations and  
7 whether it has complied with the provisions of this article.  
8 The captive insurance company shall be subject to the  
9 provisions of section nine, article two of this chapter in  
10 regard to the expense and conduct of the examination.

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

### **§33-31-10. Legal investments.**

1 (a) Association captive insurance companies and risk  
2 retention groups shall comply with the investment require-  
3 ments contained in article eight of this chapter, as applica-  
4 ble. Subsection (b), section ten and section eleven, article  
5 seven of this chapter shall apply to association captive  
6 insurance companies and risk retention groups except to the  
7 extent it is inconsistent with approved accounting standards  
8 in use by the company. Notwithstanding any other provision  
9 of this article, the commissioner may approve the use of  
10 alternative 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 any  
16 investment that threatens the solvency or liquidity of any  
17 such company.

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

**§33-31-11. Reinsurance.**

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

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

17 (c) In addition to reinsurers authorized under the provi-  
18 sions of section fifteen, article four of this chapter, a captive  
19 insurance company may take credit for the reinsurance of  
20 risks or portions of risks ceded to a pool, exchange or

21 association acting as a reinsurer which has been authorized  
22 by the commissioner. The commissioner may require any  
23 other documents, financial information or other evidence  
24 that such a pool, exchange or association will be able to  
25 provide adequate security for its financial obligations. The  
26 commissioner may deny authorization or impose any limita-  
27 tions on the activities of a reinsurance pool, exchange or  
28 association that, in the commissioner's judgment, are  
29 necessary and proper to provide adequate security for the  
30 ceding captive insurance company and for the protection and  
31 consequent benefit of the public at large.

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

**§33-31-15. Rules.**

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

**§33-31-16. Laws applicable.**

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

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

1 In addition to the applicable provisions of this article, any  
2 captive insurance company organized as a risk retention  
3 group is subject to the provisions of section nine, article two  
4 (examination of insurers, agents, brokers and solicitors;  
5 access to books, records, etc.); section fourteen, article four  
6 (financial statement filings; annual and quarterly statements;  
7 required format; foreign insurers; agents of the commis-  
8 sioner); section fifteen-a, article four (credit for reinsurance;



9 definitions; requirements; trust accounts; reductions from  
 10 liability; security; effective date); article seven (assets and  
 11 liabilities); article ten (rehabilitation and liquidation); article  
 12 twenty-seven (insurance holding company systems); article  
 13 thirty-three (annual audited financial report); article  
 14 thirty-four (administrative supervision); article thirty-four-a  
 15 (standards and commissioner's authority for companies  
 16 deemed to be in hazardous financial condition); article  
 17 thirty-five (criminal sanctions for failure to report impair-  
 18 ment); article thirty-six (Business Transacted with Producer  
 19 Controlled Property/Casualty Insurer Act); article  
 20 thirty-seven (managing general agents); article thirty-eight  
 21 (Reinsurance Intermediary Act); and article forty-one  
 22 (Insurance Fraud Prevention Act) of this chapter and any  
 23 rules promulgated thereunder in accordance with article  
 24 three, chapter twenty-nine-a of this code.

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

**ARTICLE 36. BUSINESS TRANSACTED WITH PRO-  
 DUCER-CONTROLLED PROPERTY/CASUALTY  
 INSURER ACT.**

**§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  
5 established from time to time by the national association of  
6 insurance commissioners.

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

27 (c) “Controlled insurer” means a licensed insurer which is  
28 controlled, directly or indirectly, by a producer.

29 (d) “Controlling producer” means a producer who, directly  
30 or indirectly, controls an insurer.

31 (e) “Licensed insurer” or “insurer” means any person, firm,  
32 association or corporation duly licensed to transact a  
33 property or casualty insurance business, or both property  
34 and casualty insurance, in this state: *Provided*, That the  
35 following are not licensed insurers for the purposes of this  
36 article:

37 (1) All residual market pools and joint underwriting  
38 authorities or associations; and

39 (2) All captive insurance companies as defined in article  
40 thirty-one of this chapter: *Provided*, That a captive insur-  
41 ance company organized as a risk retention group shall be  
42 considered a licensed insurer for the purposes of this article.

43 (f) “Producer” means an insurance broker or brokers or  
44 any other person, firm, association or corporation, when, for  
45 any compensation, commission or other thing of value, the  
46 person, firm, association or corporation acts or aids in any  
47 manner in soliciting, negotiating or procuring the making of  
48 any insurance contract on behalf of an insured other than the  
49 person, firm, association or corporation: *Provided*, That the  
50 designation of any individual or entity as a producer does not  
51 expand upon or provide for activities beyond those permitted  
52 by article twelve of this chapter.

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

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

To take effect July 1, 2011.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*Acting President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2011.

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*Governor*