

The House Committee on Insurance offers the following substitute to HB 552:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for changes to the captive insurance company provisions; to add certain definitions;
3 to change prerequisites to transacting insurance; to amend provisions relating to directors;
4 to revise the required amounts of capital or surplus for each captive insurance company; to
5 provide for application of certain provisions to the examination of a captive insurance
6 company and add confidentiality of certain information and documents provided to the
7 Commissioner; to change the taxation requirements; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
11 revising Code Section 33-41-2, relating to definitions, as follows:

12 "33-41-2.

13 Terms not otherwise defined in this chapter shall have the same meaning ascribed to them
14 in this title. As used in this chapter, unless the context otherwise requires, the term:

15 (1) 'Affiliate' means an individual, partnership, corporation, trust, or estate that directly,
16 or indirectly through one or more intermediaries, controls, is controlled by, or is under
17 common control with one or more of the shareholders or members of a captive insurance
18 company. Affiliates shall also include employees of any shareholder or member, or any
19 affiliate thereof, of a captive insurance company. For the purpose of the foregoing
20 definition of affiliate, 'control' means:

21 (A) Ownership of shares of a corporation possessing 50 percent or more of the total
22 voting power of all classes of shares entitled to vote or possessing 50 percent or more
23 of the total value of the outstanding shares of the corporation; and

24 (B) Ownership of 50 percent or more by value of the beneficial interests in a
25 partnership, trust, or estate.
26

27 (2) 'Association' means any membership organization whose members consist of a group
 28 of individuals, corporations, partnerships, or other associations who engage in similar or
 29 related professional, trade, or business activities and who collectively own, control, or
 30 hold with power to vote all of the outstanding voting interests of an association captive
 31 insurance company or of a corporation that is the sole shareholder of an association
 32 captive insurance company.

33 (3) 'Association captive insurance company' means any domestic insurance company
 34 granted a certificate of authority under this chapter to insure or reinsure the similar or
 35 related risks of members and affiliates of members of its association.

36 (4) 'Captive insurance company' means any pure captive insurance company, association
 37 captive insurance company, industrial insured captive insurance company, or risk
 38 retention group captive insurance company.

39 (5) 'Controlled unaffiliated business' means:

40 (A) A person:

41 (i) That is not an affiliate;

42 (ii) That has an existing contractual relationship with an affiliate under which the
 43 affiliate bears a potential financial loss; and

44 (iii) The risks of which are managed by a captive insurance company under an
 45 arrangement approved by the Commissioner; or

46 (B) A reinsurance pooling arrangement with other captive insurance companies that
 47 is approved by the Commissioner.

48 ~~(5)~~(6) 'Industrial insured' means an insured:

49 (A) Who procures the insurance of any risk or risks through the use of the services of
 50 a full-time employee who acts as an insurance manager, risk manager, or insurance
 51 buyer or through the services of a person licensed as a property and casualty agent,
 52 broker, or counselor in such person's state of domicile;

53 (B) Whose aggregate annual premiums for insurance on all risks total at least
 54 \$25,000.00; and

55 (C) Who either:

56 (i) Has at least 25 full-time employees;

57 (ii) Has gross assets in excess of \$3 million; or

58 (iii) Has annual gross revenues in excess of \$5 million.

59 ~~(6)~~(7) 'Industrial insured captive insurance company' means any domestic insurance
 60 company granted a certificate of authority under this chapter to insure or reinsure the
 61 risks of industrial insureds and their affiliates and which has as its shareholders or
 62 members only industrial insureds that are insured or reinsured by the industrial insured
 63 captive insurance company or which has as its sole shareholder or sole member a

64 corporation whose only shareholders are industrial insureds that are insured or reinsured
65 by the industrial insured captive insurance company.

66 ~~(7)~~(8) 'Parent' means a corporation which directly owns shares representing more than
67 50 percent of the total outstanding voting power and value of a pure captive insurance
68 company.

69 ~~(8)~~(9) 'Pure captive insurance company' means any domestic insurance company granted
70 a certificate of authority under this chapter to insure or reinsure the risks of its parent and
71 affiliates of its parent, and controlled unaffiliated business.

72 ~~(9)~~(10) 'Risk retention group captive insurance company' is any pure, association, or
73 industrial insured captive insurance company which has been granted a certificate of
74 authority under this chapter and determined by the Commissioner to be established and
75 maintained as a 'risk retention group' as defined under the federal Liability Risk Retention
76 Act of 1986, as amended. A risk retention group may be chartered and licensed either
77 under this chapter or under Chapter 40 of this title.

78 ~~(10)~~(11) 'Transact,' as used in this chapter, shall not include the organizational activities
79 associated with the preliminary formation, incorporation, petitioning for a certificate of
80 authority, and initial capitalization of a captive insurance company."

81 SECTION 2.

82 Said title is further amended by revising Code Section 33-41-4, relating to prerequisites to
83 transacting insurance, as follows:

84 "33-41-4.

85 No captive insurance company may transact any insurance in this state unless:

86 (1) It first obtains from the Commissioner a certificate of authority authorizing it to
87 transact insurance in this state;

88 (2) It maintains its principal place of business in this state; ~~and~~

89 (3) Any organization providing the principal administrative or management services to
90 such captive insurance company shall maintain its principal place of business in this state
91 and shall be approved by the Commissioner; and

92 (4) Its board of directors holds at least one meeting each year in this state."

93 SECTION 3.

94 Said title is further amended by revising Code Section 33-41-7, relating to directors, as
95 follows:

96 "33-41-7.

97 (a) The affairs of every captive insurance company shall be managed by not less than three
98 directors.

99 (b) At least ~~one-third~~ one of the directors of every captive insurance company ~~must~~ shall
 100 be a resident of this state, ~~except that no more than three directors shall be required to be~~
 101 ~~residents of this state.~~ A and a majority of the directors ~~must~~ shall be citizens of the United
 102 States.

103 (c) Every captive insurance company ~~must~~ shall report to the Commissioner within 30
 104 days after any change in its directors including in its report a statement of the business and
 105 professional background and affiliations of any new director."

106 SECTION 4.

107 Said title is further amended by revising subsection (a) of Code Section 33-41-8, relating to
 108 amount of capital or surplus, as follows:

109 "(a) The amount of minimum capital or surplus required for each captive insurance
 110 company shall be determined on an individual basis, however:

111 (1) ~~No~~ A pure captive insurance company ~~incorporated as a stock insurer shall be issued~~
 112 ~~a certificate of authority unless it shall possess and thereafter maintain a minimum of~~
 113 ~~\$500,000.00 in capital~~ maintain at least \$250,000.00 in surplus; or

114 (2) ~~No~~ An association captive insurance company ~~incorporated as a mutual insurer shall~~
 115 ~~be issued a certificate of authority unless it shall possess and thereafter maintain a~~
 116 ~~minimum of \$500,000.00 in surplus.~~ maintain at least \$500,000.00 in surplus;

117 (3) An industrial insured captive insurance company shall maintain at least \$500,000.00
 118 in surplus; and

119 (4) A risk retention group shall maintain at least \$500,000.00 in surplus.

120 The Commissioner may require additional capital or surplus of any captive insurance
 121 company in an amount he or she deems appropriate under the circumstances based on the
 122 captive insurance company's business plan as described in paragraph (2) of subsection (a)
 123 of Code Section 33-41-10. Additional capital or surplus may be required if the captive
 124 insurance company's business plan indicates that an increase is required in order for the
 125 captive insurance company to meet its contractual obligations to its policyholders or to
 126 maintain its solvency."

127 SECTION 5.

128 Said title is further amended by revising Code Section 33-41-16, relating to examination by
 129 the Commissioner or agent, as follows:

130 "33-41-16.

131 (a) The Commissioner or his or her designated agent may visit each captive insurance
 132 company at any time and examine its affairs in order to ascertain its financial condition, its
 133 ability to fulfill its contractual obligations, and its compliance with this chapter. For these

134 purposes, the Commissioner or his or her designated agent shall have free access to all of
 135 the books and records relating to the business of the captive insurance company. The
 136 expenses and charges of any examination conducted pursuant to this Code section shall be
 137 paid directly by the captive insurance company examined.

138 (b) When necessary or desirable to assist in any examination under this Code section, the
 139 Commissioner may retain such independent agents as described in subsection (b) of Code
 140 Section 33-41-10, as the Commissioner deems appropriate, in order to facilitate his or her
 141 examination under this Code section. The expenses and charges of such persons so retained
 142 or designated shall be paid directly by the captive insurance company. The provision of
 143 subsection (g) of Code Section 33-2-14 shall apply to examinations of any captive
 144 insurance company.

145 (c) All portions of license applications reasonably designated confidential by or on behalf
 146 of an applicant pure captive insurance company, all information and documents, and any
 147 copies of the foregoing, produced or obtained by or submitted or disclosed to the
 148 Commissioner pursuant to this chapter that are reasonably designated confidential by a
 149 pure captive insurance company, and all examination reports, preliminary examination
 150 reports, working papers, recorded information, other documents, and any copies of any of
 151 the foregoing, produced or obtained by or submitted or disclosed to the Commissioner
 152 pursuant to this chapter shall be given confidential treatment, except as to disclosures
 153 consented to by the pure captive insurance company, and shall not be subject to subpoena,
 154 shall not be made public by the Commissioner, and shall not be provided or disclosed to
 155 any other person at any time except to:

156 (1) Insurance commissioners of any state or of any foreign country or jurisdiction,
 157 provided that:

158 (A) Such receiving party shall agree in writing to maintain the confidentiality of such
 159 information; and

160 (B) The laws of the receiving party require such information to be and to remain
 161 confidential; or

162 (2) A law enforcement official or agency of this state, any other state, or the United
 163 States of America so long as such official or agency agrees in writing to hold it
 164 confidential and in a manner consistent with this Code section."

165 **SECTION 6.**

166 Said title is further amended by revising Code Section 33-41-22, relating to taxation, as
 167 follows:

168 "33-41-22.

169 In lieu of any other taxes imposed by this title, all captive insurance companies licensed
170 under this chapter shall pay the following taxes:

171 (1) All captive insurance companies chartered and licensed under this chapter, except
172 pure captive insurance companies, shall be taxed under the provisions of Chapter 8 of this
173 title and any other provisions of law in the same manner as other domestic insurance
174 companies; and

175 (2) A pure captive insurance company shall pay a tax at the rate of four-tenths of 1
176 percent on the first \$20 million and three-tenths of 1 percent on each dollar thereafter on
177 the direct premiums collected and the annual maximum aggregate tax shall be
178 \$100,000.00."

179 **SECTION 7.**

180 All laws and parts of laws in conflict with this Act are repealed.