

The House Committee on Insurance offers the following substitute to SB 347:

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 extensive changes to the captive insurance company provisions of this title; to  
3 provide for definitions for types of captive insurance companies; to provide for creation and  
4 regulation of different types of captive insurance companies; to provide for certain  
5 exemptions; to change certain requirements; to provide for regulation by the Commissioner;  
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
10 revising Chapter 41, relating to captive insurance companies, as follows:

11 "CHAPTER 41

12 33-41-1.

13 This chapter shall be known and may be cited as the 'Georgia Captive Insurance Company  
14 Act.'

15 33-41-2.

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

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

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

27 (B) Ownership of 50 percent or more by value of the beneficial or membership  
 28 interests in a partnership, trust, limited liability company, or estate.

29 (2) 'Agency captive insurance' company means:

30 (A) An insurance company that is owned or controlled by an insurance agency,  
 31 brokerage, managing general agent, or reinsurance intermediary, or an affiliate thereof,  
 32 or under common ownership or control with such agency, brokerage, managing general  
 33 agent, or reinsurance intermediary, and that only reinsures the risk of insurance or  
 34 annuity contracts placed by or through such agency, brokerage, managing general  
 35 agent, or reinsurance intermediary; or

36 (B) An insurance company that is owned or controlled by a marketer, producer,  
 37 administrator, issuer, or provider of service contracts or warranties and that only  
 38 reinsures the contractual liability arising out of such service contracts or warranties sold  
 39 through such marketer, producer, administrator, issuer, or provider.

40 ~~(2)~~(3) 'Association' means any membership organization whose members consist of a  
 41 group of individuals, corporations, partnerships, or other entities or associations who  
 42 engage in similar or related professional, trade, or business activities and who collectively  
 43 own, control, or hold with power to vote all of the outstanding voting interests of an  
 44 association captive insurance company or of a ~~corporation~~ person that is the sole  
 45 shareholder of an association captive insurance company.

46 ~~(3)~~(4) 'Association captive insurance company' means any domestic insurance company  
 47 granted a certificate of authority under this chapter to insure or reinsure the similar or  
 48 related risks of members and affiliates of members of its association.

49 ~~(4)~~(5) 'Captive insurance company' means any pure captive insurance company,  
 50 association captive insurance company, agency captive insurance company, industrial  
 51 insured captive insurance company, or risk retention group captive insurance company.

52 ~~(5)~~(6) 'Controlled unaffiliated business' means:

53 (A) A person:

54 (i) That is not an affiliate of the parent;

55 (ii) That has an existing contractual relationship with an affiliate of the parent under  
 56 which the affiliate bears a potential financial loss; and

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

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

61 ~~(6)~~(7) 'Industrial insured' means an insured:

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

66 (B) Whose aggregate annual premiums for insurance on all risks total at least  
67 \$25,000.00; and

68 (C) Who either:

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

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

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

72 ~~(7)~~(8) 'Industrial insured captive insurance company' means any domestic insurance  
73 company granted a certificate of authority under this chapter to insure or reinsure the  
74 risks of industrial insureds and their affiliates and which has as its shareholders or  
75 members only industrial insureds that are insured or reinsured by the industrial insured  
76 captive insurance company or which has as its sole shareholder or sole member a  
77 ~~corporation~~ an entity whose only ~~shareholders~~ owners are industrial insureds that are  
78 insured or reinsured by the industrial insured captive insurance company.

79 ~~(8)~~(9) 'Parent' means ~~a corporation~~ an entity which directly owns shares representing  
80 more than 50 percent of the total outstanding voting power and value of a pure captive  
81 insurance company.

82 ~~(9)~~(10) 'Pure captive insurance company' means any domestic insurance company  
83 granted a certificate of authority under this chapter to insure or reinsure the risks of its  
84 parent and affiliates of its parent, and controlled unaffiliated business.

85 ~~(10)~~(11) 'Risk retention group captive insurance company' is any ~~pure, association, or~~  
86 ~~industrial insured~~ captive insurance company which has been granted a certificate of  
87 authority under this chapter and determined by the Commissioner to be established and  
88 maintained as a 'risk retention group' as defined under the federal Liability Risk Retention  
89 Act of 1986, as amended. A risk retention group may be chartered and licensed either  
90 under this chapter or under Chapter 40 of this title.

91 ~~(11)~~(12) 'Transact,' as used in this chapter, shall not include the organizational activities  
92 associated with the preliminary formation, incorporation, petitioning for a certificate of  
93 authority, and initial capitalization of a captive insurance company.

94 33-41-3.

95 (a) Subject to the provisions of subsection (c) of this Code section and the other provisions  
96 of this chapter, a captive insurance company, where permitted by its ~~charter~~ articles of

97 incorporation, may engage in the business of any of the following kinds of insurance or  
 98 reinsurance:

99 (1) Casualty, as described in Code Section 33-7-3 but excluding accident and sickness  
 100 insurance as defined in Code Section 33-7-2, except for a pure captive insurance  
 101 company, which may engage in the business of accident and sickness insurance as  
 102 defined in Code Section 33-7-2;

103 (2) Marine and transportation, as described in Code Section 33-7-5;

104 (3) Property, as described in Code Section 33-7-6; and

105 (4) Surety, as described in Code Section 33-7-7.

106 (b) Insurance policies and bonds issued by a captive insurance company for workers'  
 107 compensation insurance and motor vehicle accident insurance shall be in conformity with  
 108 all minimum requirements for coverages and coverage amounts established by the state for  
 109 such types of insurance. Such insurance policies and bonds issued by a captive insurance  
 110 company shall constitute satisfactory proof that the motor vehicle owners or employers, as  
 111 applicable, insured under such policies or bonds have satisfied the requirements for motor  
 112 vehicle accident insurance prescribed by Code Section 33-34-4 and for workers'  
 113 compensation insurance prescribed by Code Section 34-9-121.

114 (c) Except as otherwise provided in subsection (d) of this Code section:

115 (1) A captive insurance company ~~may~~ shall not insure or reinsure any risks resulting  
 116 from:

117 (A) Any personal, familial, or household responsibilities; or

118 (B) Activities other than risks resulting from responsibilities arising out of any  
 119 business, whether profit or nonprofit; trade; product; services, including professional  
 120 or fiduciary services; or commercial premises or commercial operations;

121 (2) A captive insurance company may only cede reinsurance as provided in Code Section  
 122 33-41-14;

123 (3) A pure captive insurance company may only insure or reinsure the risks of its parent,  
 124 ~~and~~ affiliates of its parent, and its controlled unaffiliated business;

125 (4) An association captive insurance company may only insure or reinsure the risks of  
 126 the members of its association and their affiliates;

127 (5) An industrial insured captive insurance company may only insure or reinsure the  
 128 risks of the industrial insureds, and their affiliates, that are its shareholders or  
 129 shareholders of its sole shareholder; and

130 (6) A risk retention group captive insurance company may only insure or reinsure the  
 131 risks of its group members.

132 (d) A captive insurance company may reinsure the risks insured or reinsured either directly  
 133 or indirectly by:

- 134 (1) Any other captive insurance company; or  
 135 (2) Any foreign or alien insurance company which satisfies the ownership or  
 136 membership requirements of a captive insurance company under this chapter; provided,  
 137 however, that the risks insured or reinsured from the foreign or alien insurance company  
 138 are solely those of its owners or members or their affiliates.

139 33-41-4.

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

- 141 (1) It first obtains from the Commissioner a certificate of authority authorizing it to  
 142 transact insurance in this state;  
 143 (2) It maintains its principal place of business in this state;  
 144 (3) Any organization providing the principal administrative or management services to  
 145 such captive insurance company shall ~~maintain its principal place of business in this state~~  
 146 ~~and shall~~ be approved by the Commissioner; and  
 147 (4) Its board of directors holds at least one meeting each year in this state.

148 33-41-5.

- 149 (a) A pure captive insurance company or an agency captive insurance company must be  
 150 incorporated as a stock insurer with its capital divided into shares.  
 151 (b) An association captive insurance company, or an industrial insured captive insurance  
 152 company, or a risk retention group captive insurance company ~~must~~ shall be incorporated:  
 153 (1) As a stock insurer with its capital divided into shares; or  
 154 (2) As a mutual insurer without capital stock, the governing body of which is elected by  
 155 its members.  
 156 (c) The applicable statutes of this state relating to the powers and procedures of domestic  
 157 corporations ~~formed for profit~~ shall apply to captive insurance companies, except where  
 158 in conflict with the express provisions of this chapter or regulations promulgated  
 159 hereunder; provided, however, that captive insurance companies are exempt from the  
 160 requirements of subsection (b) of Code Section 33-14-5.  
 161 (d) The incorporation procedures of Code Sections 33-14-4 through 33-14-6, inclusive,  
 162 and the amendment procedures of Code Section 33-14-8 shall apply to captive insurance  
 163 companies; provided, however, that captive insurance companies are exempt from the  
 164 publishing and probate court certification requirements of Code Sections 33-14-5 and  
 165 33-14-8.

166 33-41-6.

167 (a) A captive insurance company shall not use any name which is either similar,  
 168 misleading, or confusing with respect to any other name already in use by any other captive  
 169 insurance company, domestic mutual or stock insurance company, corporation, or  
 170 association organized or doing business in this state. The ~~Secretary of State~~ Commissioner  
 171 shall not ~~issue a charter to~~ approve the articles of incorporation of an applicant attempting  
 172 to use such a name nor shall the Commissioner approve an application for a certificate of  
 173 authority from such applicant.

174 (b)(1) With the exception of risk retention group captive insurance companies, the name  
 175 of a captive insurance company shall include the words 'captive insurance company.'  
 176 ~~company' and have such word or words, abbreviation, suffix, or prefix included in the~~  
 177 ~~name or attached to it in such a manner as to clearly indicate that it is a corporation.~~

178 (2) The name of a risk retention group captive insurance company shall include the  
 179 words 'risk retention group captive insurance company.' ~~company' and have such word~~  
 180 ~~or words, abbreviation, suffix, or prefix included in the name or attached to it in such a~~  
 181 ~~manner as to clearly indicate that it is a corporation.~~

182 (c) If the captive insurance company is a mutual insurer, the word 'mutual' shall also be  
 183 a part of the name.

184 33-41-7.

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

187 (b) At least one of the directors of every captive insurance company shall be a resident of  
 188 this state, and a majority of the directors shall be citizens of the United States.

189 (c) Every captive insurance company shall report to the Commissioner within 30 days after  
 190 any change in its directors including in its report a statement of the business and  
 191 professional background and affiliations of any new director.

192 33-41-8.

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

195 (1) A pure captive insurance company shall maintain at least \$250,000.00 in surplus;

196 (2) An association captive insurance company shall maintain at least \$500,000.00 in  
 197 surplus;

198 (3) An agency captive insurance company shall maintain at least \$250,000.00 in surplus;

199 ~~(3)(4)~~ (4) An industrial insured captive insurance company shall maintain at least  
 200 \$500,000.00 in surplus; and

201 ~~(4)~~(5) A risk retention group shall maintain at least \$500,000.00 in surplus.  
 202 The Commissioner may require additional capital or surplus of any captive insurance  
 203 company in an amount he or she deems appropriate under the circumstances based on the  
 204 captive insurance company's business plan as described in paragraph (2) of subsection (a)  
 205 of Code Section 33-41-10. Additional capital or surplus may be required if the captive  
 206 insurance company's business plan indicates that an increase is required in order for the  
 207 captive insurance company to meet its contractual obligations to its policyholders or to  
 208 maintain its solvency.

209 (b) Minimum capital or surplus of up to \$500,000.00 shall be maintained in any of the  
 210 following:

211 (1) Cash;  
 212 (2) Certificates of deposit or similar certificates or evidences of deposits in banks or trust  
 213 companies but only to the extent that the certificates or deposits are insured by the  
 214 Federal Deposit Insurance Corporation; ~~or~~  
 215 (3) Savings accounts, certificates of deposit, or similar certificates or evidences of  
 216 deposit in savings and loan associations and building and loan associations but only to  
 217 the extent that the same are insured by the Federal Savings and Loan Insurance  
 218 Corporation; or  
 219 (4) Promissory notes or other obligations of shareholders secured by one or more letters  
 220 of credit, as described in Code Section 33-41-9.

221 (c) One hundred thousand dollars of the minimum capital or surplus of an association  
 222 captive insurance company, an industrial insured captive insurance company, or a risk  
 223 retention group captive insurance company must be deposited with the state prior to the  
 224 issuance of a certificate of authority.

225 (d) Any additional capital or surplus in excess of \$500,000.00 required by the  
 226 Commissioner pursuant to subsection (a) of this Code section may be provided and  
 227 maintained in any of the following:

228 (1) Any eligible investments of minimum capital or surplus authorized under Code  
 229 Section 33-11-5;  
 230 (2) Promissory notes or other obligations of shareholders secured by one or more letters  
 231 of credit, as described in Code Section 33-41-9; or  
 232 (3) Any other investments approved by the Commissioner that do not impair the  
 233 financial solvency of the captive insurance company.

234 33-41-9.

235 (a) Any letter of credit used to meet the requirements set forth in Code Sections 33-41-8,  
 236 33-41-12, and 33-41-14 shall be:

- 237 (1) ~~Must be clean,~~ Clean, irrevocable, and unconditional;
- 238 (2) ~~Must be issued~~ Issued by a bank approved by the Commissioner, which is either a  
 239 bank chartered by the State of Georgia or a national bank which is a member of the  
 240 Federal Reserve System;
- 241 (3) ~~Must provide that it is presentable~~ Presentable and payable within the State of  
 242 Georgia; and
- 243 (4) ~~Must be provided~~ Provided in conformity with any other requirements established  
 244 by the Commissioner.
- 245 (b) The Commissioner may require any captive insurance company to draw upon its letters  
 246 of credit at any time, in amounts determined by the Commissioner, if the Commissioner  
 247 determines that such action is necessary for the protection of the interests of the captive  
 248 insurance company's policyholders.

249 33-41-10.

- 250 (a) The application for an original certificate of authority for a captive insurance company  
 251 must be filed with the Commissioner and shall contain the following:
- 252 (1) A ~~certified~~ copy of the captive insurance company's adopted or proposed articles of  
 253 incorporation and bylaws;
- 254 (2) A business plan which shall contain the following:
- 255 (A) A plan of operation or a feasibility study describing the anticipated activities and  
 256 results of the captive insurance company which shall include:
- 257 (i) A description of the coverages, coverage limits and deductibles, and premium  
 258 rating systems for the lines of insurance or reinsurance that the captive insurance  
 259 company intends to offer;
- 260 (ii) Historical and expected loss experience of the risks to be insured or reinsured by  
 261 the captive insurance company;
- 262 (iii) Pro forma financial statements and projections of the proposed business  
 263 operations of the captive insurance company;
- 264 (iv) An analysis of the adequacy of the captive insurance company's proposed  
 265 premiums and capital and surplus levels relative to the risks to be insured or reinsured  
 266 by the captive insurance company;
- 267 (v) A statement of the captive insurance company's net retained limit of liability on  
 268 any contract of insurance or reinsurance it intends to issue and the nature of any  
 269 reinsurance it intends to cede;
- 270 (vi) A statement certifying that the captive insurance company's investment policy  
 271 is in compliance with this title and specifying the type of investments to be made  
 272 pursuant to Code Section 33-41-18;



- 273 (vii) A statement identifying the geographic areas in which the captive insurance  
274 company intends to operate;
- 275 (viii) A statement identifying the persons or organizations who will perform the  
276 captive insurance company's major operational functions, including management,  
277 underwriting, accounting, investment of assets, claims adjusting and loss control, and  
278 the adequacy of the expertise, experience, and character of such persons or  
279 organizations; and
- 280 (ix) Whenever required by the Commissioner, an appropriate opinion by a qualified  
281 independent casualty actuary regarding the adequacy of the captive insurance  
282 company's proposed capital, surplus, and premium levels; and
- 283 (B) Such other items deemed relevant by the Commissioner in ascertaining whether  
284 the proposed captive insurance company will be able to meet its contractual obligations.
- 285 (b) In determining whether to approve an application for an original or renewal certificate  
286 of authority to a captive insurance company, the Commissioner shall examine the items  
287 submitted to him pursuant to subsections (a), (e), and (f) of this Code section. The  
288 Commissioner may rely upon and accept the reports of independent agents who may  
289 include licensed insurance counselors, brokers, agents, or adjusters discussed under  
290 Chapter 23 of this title, certified actuarial consultants, certified public accountants, risk  
291 managers, and examiners of insurance companies in order to facilitate his examination of  
292 the application for a certificate of authority by a captive insurance company. The expenses  
293 and charges of such independent agents shall be paid directly by the captive insurance  
294 company.
- 295 (c) Each captive insurance company shall pay to the Commissioner an amount equal to all  
296 costs of examining, investigating, and processing its application for an original or renewal  
297 certificate of authority. In addition, it shall pay a fee for the initial year of registration and  
298 a renewal fee for each year thereafter in the amount periodically imposed under this title  
299 upon other domestic insurance companies.
- 300 (d) Pursuant to Code Section 33-3-15, if the Commissioner is satisfied that the documents  
301 and statements filed by the captive insurance company comply with the provisions of this  
302 chapter, he shall notify the captive insurance company of his intention to issue a certificate  
303 of authority.
- 304 (e) After the captive insurance company has been notified pursuant to subsection (d) of  
305 this Code section, the captive insurance company shall provide the Commissioner with:
- 306 (1) Evidence satisfactory to the Commissioner that the minimum capital or surplus  
307 required for the particular captive insurance company under Code Section 33-41-8 has  
308 been paid in and that the appropriate amount thereof has been deposited with the state;  
309 and

310 (2) A financial statement showing the assets and liabilities of the captive insurance  
 311 company which is certified by its president and calculated in accordance with the  
 312 accounting standards set out in Chapter 10 of this title, except as modified by this chapter.  
 313 Thereafter, the Commissioner shall promptly issue a certificate of authority authorizing the  
 314 captive insurance company to transact insurance in this state until the thirtieth day of June  
 315 thereafter.

316 (f) Any material change in the items required under subsection (a) of this Code section  
 317 shall require the prior approval of the Commissioner. Any material change which is not  
 318 disapproved by the Commissioner within 30 days after its submission shall be deemed  
 319 approved.

320 33-41-11.

321 (a) The certificate of authority of a captive insurance company to transact insurance in this  
 322 state may be refused; or suspended; or not be renewed pursuant to Code Sections 33-3-17  
 323 through 33-3-19, inclusive.

324 (b) A certificate of authority shall expire, be renewed, and be amended by the  
 325 Commissioner pursuant to Code Section 33-3-16; provided, however, that captive  
 326 insurance companies shall not be subject to the publishing requirements of such Code  
 327 section.

328 33-41-12.

329 For the purposes of determining the financial condition of a captive insurance company,  
 330 including, but not limited to, the maintenance of adequate reserves pursuant to Code  
 331 Section 33-41-13, the reporting of business affairs pursuant to Code Section 33-41-15, and  
 332 the examinations and investigations pursuant to Code Section 33-41-16, there shall be  
 333 allowed as assets of a captive insurance company:

- 334 (1) Those assets described in Code Section 33-10-1;  
 335 (2) Those assets otherwise authorized by Code Sections 33-41-8 and 33-41-14; and  
 336 (3) Obligations for premium payments, provided that such obligations are secured by  
 337 letters of credit, as described in Code Section 33-41-9; and  
 338 (4) Assets that are approved by the Commissioner as admitted assets under rules adopted  
 339 pursuant to this chapter.

340 33-41-13.

341 (a) Every captive insurance company shall maintain reserves in an amount estimated in the  
 342 aggregate to provide for the payment of all unpaid losses and claims incurred, whether  
 343 reported or unreported, for which such captive insurance company may be liable, together

344 with the expenses of adjustment or settlement of such losses and claims. Every captive  
345 insurance company shall keep a complete and itemized record, in a form satisfactory to the  
346 Commissioner, showing all losses and claims on which it has received notice.

347 (b) If the loss experience of a captive insurance company shows that its loss reserves,  
348 however estimated, are inadequate, the Commissioner shall require the captive insurance  
349 company to maintain increased amounts of loss reserves as are needed to make its loss  
350 reserves adequate.

351 (c) Every captive insurance company shall maintain an unearned premium reserve on all  
352 policies in force which shall never be less in the aggregate than the captive insurance  
353 company's actual liability to all its insureds for the return of gross unearned premiums  
354 computed pursuant to the method commonly referred to as the monthly pro rata method.

355 33-41-14.

356 (a) A captive insurance company may cede any part of its risks to a reinsurer pursuant to  
357 a written reinsurance agreement and may take credit as an asset or a deduction from its  
358 liabilities for the amount of reinsurance premiums recoverable under such reinsurance  
359 agreement:

360 (1) If the reinsurer is in compliance with Code Section 33-7-14;

361 (2) To the extent that assets are deposited or withheld from the reinsurer under a written  
362 trust or escrow agreement approved by the Commissioner pursuant to an express  
363 provision in the reinsurance agreement as security for the payment of the reinsurer's  
364 obligations thereunder, provided that:

365 (A) The assets deposited or withheld are held subject to withdrawal by, and under the  
366 control of, the ceding captive insurance company; or

367 (B) The assets deposited or withheld are placed in a trust or escrow account for such  
368 purposes in a bank which is either chartered by the State of Georgia or a national bank  
369 which is a member of the Federal Reserve System and withdrawals cannot be made  
370 without the express written consent of the ceding captive insurance company;

371 (3) To the extent of the amount of a letter of credit, as described in Code Section  
372 33-41-9, given pursuant to an express provision in the reinsurance agreement as security  
373 for the payment of the reinsurer's obligations thereunder; or

374 (4) When the Commissioner shall otherwise authorize such credits or deductions.

375 (b) Any assets deposited or withheld under paragraph (2) of subsection (a) of this Code  
376 section must be in the form of cash, as defined in Code Section 33-11-6, or securities which  
377 must have a market value equal to or greater than the credit taken and are qualified as  
378 allowed assets for a domestic insurer under Chapter 11 of this title.

379 (c) No credit shall be allowed for reinsurance in any unauthorized assuming reinsurer  
380 unless such reinsurer designates the Commissioner as agent for service of process in any  
381 action arising out of, or in connection with, such reinsurance.

382 33-41-15.

383 Each captive insurance company shall be required to file annual and other reports of its  
384 business affairs and operations as prescribed by Code Section 33-3-21.

385 33-41-16.

386 (a) The Commissioner or his or her designated agent may visit each captive insurance  
387 company at any time and examine its affairs in order to ascertain its financial condition, its  
388 ability to fulfill its contractual obligations, and its compliance with this chapter. For these  
389 purposes, the Commissioner or his or her designated agent shall have free access to all of  
390 the books and records relating to the business of the captive insurance company. The  
391 expenses and charges of any examination conducted pursuant to this Code section shall be  
392 paid directly by the captive insurance company examined.

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

400 (c) All portions of license applications reasonably designated confidential by or on behalf  
401 of an applicant pure or agency captive insurance company, all information and documents,  
402 and any copies of the foregoing, produced or obtained by or submitted or disclosed to the  
403 Commissioner pursuant to this chapter that are reasonably designated confidential by a  
404 pure or agency captive insurance company, and all examination reports, preliminary  
405 examination reports, working papers, recorded information, other documents, and any  
406 copies of any of the foregoing, produced or obtained by or submitted or disclosed to the  
407 Commissioner pursuant to this chapter shall be given confidential treatment, except as to  
408 disclosures consented to by the pure or agency captive insurance company, and shall not  
409 be subject to subpoena, shall not be made public by the Commissioner, and shall not be  
410 provided or disclosed to any other person at any time except to:

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

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

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

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

420 33-41-17.

421 The Commissioner may impose fines as prescribed by Code Section 33-3-20.

422 33-41-18.

423 Except as provided in Code Section 33-41-8:

424 (1) ~~An~~ Risk retention group captive insurance companies, industrial insured captive  
425 insurance companies, and association captive insurance ~~company~~ companies shall comply  
426 with the investment requirements contained in Article 2 of Chapter 11 of this title; and

427 (2) ~~No pure~~ Pure captive insurance ~~company or industrial insured~~ companies and agency  
428 captive insurance ~~company~~ companies shall not be subject to any restrictions on eligible  
429 investments whatever, including those limitations contained in Chapter 11 of this title;  
430 provided, however, that the Commissioner may prohibit or limit any investment that  
431 threatens the solvency or liquidity of any such captive insurance company.

432 33-41-19.

433 (a) No captive insurance company shall be required to join or use the rates, rating systems,  
434 underwriting rules, or policy or bond forms of a rating or advisory organization as defined  
435 in Code Section 33-9-2.

436 (b) No captive insurance company shall be required to file its premium rates or policy  
437 forms with, or seek approval of such rates or forms from, the Commissioner or any other  
438 authority of this state. However, the Commissioner shall impose minimum premiums upon  
439 association captive insurance companies which write motor vehicle liability insurance  
440 coverage required by law and do not participate in the Georgia Insurers Insolvency Pool.

441 (c) Each captive insurance company shall provide the following notice in ten-point type  
442 on the front page and declaration page on all policies and on the front page of all  
443 applications for policies:

444 'This captive insurance company is not subject to all of the insurance laws and regulations  
445 of the State of Georgia. State insurers insolvency guaranty funds are not available to the  
446 policyholders of this captive insurance company.'

447 33-41-20.

448 (a)(1) No captive insurance company other than an association or industrial insured  
449 captive insurance company issuing workers' compensation insurance contracts shall be  
450 permitted to join or contribute financially to the Georgia Insurers Insolvency Pool under  
451 Chapter 36 of this title or any other plan, pool, or association guaranty or insolvency fund  
452 in this state. Other than an association or industrial insured captive insurance company  
453 issuing workers' compensation insurance contracts, no captive insurance company, or its  
454 insureds or claimants against its insureds, nor its parent or any affiliated company shall  
455 receive any benefit from the Georgia Insurers Insolvency Pool or any other plan, pool,  
456 or association guaranty or insolvency fund for claims arising out of the operations of such  
457 captive insurance company.

458 (2) No captive insurance company shall be required to participate in any FAIR Plan  
459 established and maintained in this state under Chapter 33 of this title.

460 (3) No captive insurance company shall be required to participate in any joint  
461 underwriting association established and maintained in this state under Chapter 9 of this  
462 title.

463 (b) Captive insurance companies shall be assessed on the same basis as self-insurers for  
464 the purpose of payments to the Subsequent Injury Trust Fund as described in Chapter 9 of  
465 Title 34.

466 33-41-20.1.

467 (a) On and after January 1, 2008, every association and industrial insured captive  
468 insurance company issuing workers' compensation insurance contracts shall become a  
469 member of the Georgia Insurers Insolvency Pool under Chapter 36 of this title as to  
470 workers' compensation only. Such captive insurance companies shall be liable for  
471 assessments pursuant to Code Section 33-36-7 and for all other obligations imposed  
472 pursuant to Chapter 36 of this title as to workers' compensation only.

473 (b) Except as provided for in Code Section 33-36-20, the Georgia Insurers Insolvency Pool  
474 shall not be liable for any claims incurred by any captive insurance company before  
475 January 1, 2008.

476 33-41-21.

477 The provisions of Chapter 37 of this title shall apply to and govern the rehabilitation,  
478 reorganization, conservation, and liquidation of captive insurance companies.

479 33-41-22.

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

482 (1) A tax at the rate of 0.4 percent on the first \$20 million and 0.3 percent on each dollar  
483 thereafter on its direct premiums collected, after deducting from the direct premiums  
484 subject to the tax the amounts paid to policyholders as return premiums which must  
485 include dividends on unabsorbed premiums or premium deposits returned or credited to  
486 policyholders;

487 (2) A tax at the rate of 0.225 percent on the first \$20 million of assumed reinsurance  
488 premium, and 0.150 percent on the next \$20 million and 0.050 percent on the next \$20  
489 million, and 0.025 percent of each dollar thereafter. However, no reinsurance tax applies  
490 to premiums for risks or portions of risks that are subject to taxation on a direct basis  
491 pursuant to paragraph (1) of this Code section. No reinsurance premium tax shall be  
492 payable in connection with the receipt of assets in exchange for the assumption of loss  
493 reserves and other liabilities of another insurer under common ownership and control,  
494 provided that the Commissioner verifies that such transaction is part of a plan to  
495 discontinue the operations of such other insurer, and if the intent of the parties to such  
496 transaction is to renew or maintain such business with the captive insurance company;

497 (3) If the aggregate taxes to be paid by a captive insurance company calculated under  
498 paragraphs (1) and (2) of this Code section amount to more than \$100,000.00 in any year,  
499 the captive insurance company shall pay a maximum tax of \$100,000.00 for that year;

500 (4) Two or more captive insurance companies under common ownership and control  
501 shall be taxed as though they were a single captive insurance company; and

502 (5) The tax provided for in paragraphs (1) and (2) of this Code section shall be calculated  
503 on an annual basis, notwithstanding policies or contracts of insurance or contracts of  
504 reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the  
505 premium shall be prorated for purposes of determining the tax due.

506 33-41-23.

507 The Commissioner may establish such rules and regulations and issue such interpretive  
508 rulings as may be necessary to carry out the provisions of this chapter.

509 33-41-24.

510 Any provisions of this title which are inconsistent with the provisions of this chapter shall  
511 not apply to captive insurance companies; provided, however, that pure and agency captive  
512 insurance companies shall not be subject to the requirements of Chapter 13 of this title."

513

**SECTION 2.**

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