

Senate Bill 347

By: Senator Bethel of the 54th

AS PASSED

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.