

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4256**

5 (By Delegates Perry, Ashley, Walters and Hall)

6
7 [Passed March 9, 2012; in effect ninety days from passage.]

8
9 AN ACT to amend and reenact §33-31-2 of the Code of West Virginia,
10 1931, as amended, relating to captive insurance; limiting risk
11 retention groups' risks on single subjects of insurance; and
12 requiring captive insurance companies to notify the insurance
13 commissioner of any material changes to certain information.

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

15 That §33-31-2 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 31. CAPTIVE INSURANCE.**

18 **§33-31-2. Licensing; authority.**

19 (a) Any captive insurance company, when permitted by its
20 articles of association, charter or other organizational document,
21 may apply to the commissioner for a license to do any and all
22 insurance comprised in section ten, article one of this chapter:

23 *Provided*, That all captive insurance companies, except pure captive
24 insurance companies, shall maintain their principal office and
25 principal place of business in this state: *Provided, however*, That:

26 (1) No pure captive insurance company may insure any risks

1 other than those of its parent and affiliated companies or
2 controlled unaffiliated business;

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

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

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

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

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

15 (7) No risk retention group may retain any risk on any one
16 subject of insurance, whether located or to be performed in West
17 Virginia or elsewhere, in an amount exceeding ten percent of the
18 surplus required by section four of this article, unless approved
19 by the commissioner;

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

1 (9) Any captive insurance company which insures risks
2 described in subsections (a) and (b) of section ten, article one of
3 this chapter shall comply with all applicable state and federal
4 laws.

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

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

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

12 (3) It appoints a registered agent to accept service of
13 process and to otherwise act on its behalf in this state: *Provided,*
14 That whenever such registered agent cannot with reasonable
15 diligence be found at the registered office of the captive
16 insurance company, the Secretary of State shall be an agent of such
17 captive insurance company upon whom any process, notice, or demand
18 may be served.

19 (c) (1) Before receiving a license, a captive insurance company
20 shall:

21 (A) File with the commissioner a certified copy of its
22 organizational documents, a statement under oath of its president
23 and secretary showing its financial condition, and any other
24 statements or documents required by the commissioner; and

25 (B) Submit to the commissioner for approval a description of
26 the coverages, deductibles, coverage limits and rates, together

1 with such additional information as the commissioner may reasonably
2 require. In the event of any subsequent material change in any
3 item in such description, the captive insurance company shall
4 submit to the commissioner for approval an appropriate revision and
5 shall not offer any additional kinds of insurance until a revision
6 of such description is approved by the commissioner. The captive
7 insurance company shall inform the commissioner of any material
8 change in rates within thirty days of the adoption of such change.

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

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

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

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

16 (D) The adequacy of the loss prevention programs of its
17 insureds; and

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

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

25 (A) Such information may be discoverable by a party in a civil
26 action or contested case to which the captive insurance company

1 that submitted such information is a party, upon a showing by the
2 party seeking to discover such information that:

3 (I) The information sought is relevant to and necessary for
4 the furtherance of such action or case;

5 (ii) The information sought is unavailable from other
6 nonconfidential sources; and

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

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

14 (I) The public official shall agree in writing to maintain the
15 confidentiality of such information; and

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

18 (d) Each captive insurance company shall pay to the
19 commissioner a nonrefundable fee of \$200 for examining,
20 investigating and processing its application for license, and the
21 commissioner is authorized to retain legal, financial and
22 examination services from outside the department, the reasonable
23 cost of which may be charged against the applicant. The provisions
24 of subsection (r) , section nine, article two of this chapter shall
25 apply to examinations, investigations and processing conducted
26 under the authority of this section. In addition, each captive

1 insurance company shall pay a license fee for the year of
2 registration and a renewal fee for each year thereafter of \$300.

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

8 (f) A captive insurance company shall notify the commissioner
9 in writing within thirty days of becoming aware of any material
10 change in information previously submitted to the commissioner,
11 including information submitted in or with the license application.