

1 **H. B. 4256**

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

4 [ By request of the Insurance Commissioner]

5 [Introduced January 23, 2012; referred to the

6 Committee on Banking and Insurance then the Judiciary.]

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

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

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

18 **ARTICLE 31. CAPTIVE INSURANCE.**

19 **§33-31-2. Licensing; authority.**

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

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

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

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

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

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

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

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

19 (7) No risk retention group may retain any risk on any one  
20 subject of insurance, whether located or to be performed in West  
21 Virginia or elsewhere, in an amount exceeding ten percent of the  
22 surplus required by subdivision (4), subsection (a), section four  
23 of this article, unless approved by the commissioner;

24 ~~(7)~~ (8) Any captive insurance company may provide excess

1 workers' compensation insurance to its parent and affiliated  
2 companies, unless prohibited by the federal law or laws of the  
3 state having jurisdiction over the transaction. Any captive  
4 insurance company, unless prohibited by federal law, may reinsure  
5 workers' compensation of a qualified self-insured plan of its  
6 parent and affiliated companies; and

7 ~~(8)~~ (9) Any captive insurance company which insures risks  
8 described in subsections (a) and (b) of section ten, article one of  
9 this chapter shall comply with all applicable state and federal  
10 laws.

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

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

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

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

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

3 (A) File with the commissioner a certified copy of its  
4 organizational documents, a statement under oath of its president  
5 and secretary showing its financial condition, and any other  
6 statements or documents required by the commissioner; and

7 (B) Submit to the commissioner for approval a description of  
8 the coverages, deductibles, coverage limits and rates, together  
9 with such additional information as the commissioner may reasonably  
10 require. In the event of any subsequent material change in any  
11 item in such description, the captive insurance company shall  
12 submit to the commissioner for approval an appropriate revision and  
13 shall not offer any additional kinds of insurance until a revision  
14 of such description is approved by the commissioner. The captive  
15 insurance company shall inform the commissioner of any material  
16 change in rates within thirty days of the adoption of such change.

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

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

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

23 © The overall soundness of its plan of operation;

24 (D) The adequacy of the loss prevention programs of its

1 insureds; and

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

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

9       (A) Such information may be discoverable by a party in a civil  
10 action or contested case to which the captive insurance company  
11 that submitted such information is a party, upon a showing by the  
12 party seeking to discover such information that:

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

15       (ii) The information sought is unavailable from other  
16 nonconfidential sources; and

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

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

24       (I) The public official shall agree in writing to maintain the

1 confidentiality of such information; and

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

4 (d) Each captive insurance company shall pay to the  
5 commissioner a nonrefundable fee of \$200 for examining,  
6 investigating and processing its application for license, and the  
7 commissioner is authorized to retain legal, financial and  
8 examination services from outside the department, the reasonable  
9 cost of which may be charged against the applicant. The provisions  
10 of subsection ®, section nine, article two of this chapter shall  
11 apply to examinations, investigations and processing conducted  
12 under the authority of this section. In addition, each captive  
13 insurance company shall pay a license fee for the year of  
14 registration and a renewal fee for each year thereafter of \$300.

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

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

NOTE: The purpose of this bill is to make risk retention groups subject to certain risk limitations and to require all captive insurance companies to notify the Insurance Commissioner of any material changes to information submitted during the application for license process.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.