

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4256

(By Delegates Perry, Ashley, Walters and Hall)



Passed March 9, 2012

To Take Effect Ninety Days From Passage

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H. B. 4256

(BY DELEGATES PERRY, ASHLEY, WALTERS AND HALL)

[Passed March 9, 2012; to take effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-2. Licensing; authority.

- 1 (a) Any captive insurance company, when permitted by
- 2 its articles of association, charter or other organizational
- 3 document, may apply to the commissioner for a license to do

4 any and all insurance comprised in section ten, article one of
5 this chapter: *Provided*, That all captive insurance companies,
6 except pure captive insurance companies, shall maintain their
7 principal office and principal place of business in this state:
8 *Provided, however*, That:

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

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

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

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

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

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

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

32 (8) Any captive insurance company may provide excess
33 workers' compensation insurance to its parent and affiliated
34 companies, unless prohibited by the federal law or laws of the
35 state having jurisdiction over the transaction. Any captive
36 insurance company, unless prohibited by federal law, may
37 reinsure workers' compensation of a qualified self-insured
38 plan of its parent and affiliated companies; and

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

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

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

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

50 (3) It appoints a registered agent to accept service of
51 process and to otherwise act on its behalf in this state:
52 *Provided*, That whenever such registered agent cannot with
53 reasonable diligence be found at the registered office of the
54 captive insurance company, the Secretary of State shall be an
55 agent of such captive insurance company upon whom any
56 process, notice, or demand may be served.

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

59 (A) File with the commissioner a certified copy of its
60 organizational documents, a statement under oath of its

61 president and secretary showing its financial condition, and
62 any other statements or documents required by the
63 commissioner; and

64 (B) Submit to the commissioner for approval a
65 description of the coverages, deductibles, coverage limits and
66 rates, together with such additional information as the
67 commissioner may reasonably require. In the event of any
68 subsequent material change in any item in such description,
69 the captive insurance company shall submit to the
70 commissioner for approval an appropriate revision and shall
71 not offer any additional kinds of insurance until a revision of
72 such description is approved by the commissioner. The
73 captive insurance company shall inform the commissioner of
74 any material change in rates within thirty days of the
75 adoption of such change.

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

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

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

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

83 (D) The adequacy of the loss prevention programs of its
84 insureds; and

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

88 (3) Information submitted pursuant to this subsection
89 shall be and remain confidential and may not be made public
90 by the commissioner or an employee or agent of the
91 commissioner without the written consent of the company,
92 except that:

93 (A) Such information may be discoverable by a party in
94 a civil action or contested case to which the captive insurance
95 company that submitted such information is a party, upon a
96 showing by the party seeking to discover such information
97 that:

98 (i) The information sought is relevant to and necessary
99 for the furtherance of such action or case;

100 (ii) The information sought is unavailable from other
101 nonconfidential sources; and

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

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

111 (i) The public official shall agree in writing to maintain
112 the confidentiality of such information; and

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

116 (d) Each captive insurance company shall pay to the
117 commissioner a nonrefundable fee of \$200 for examining,
118 investigating and processing its application for license, and
119 the commissioner is authorized to retain legal, financial and
120 examination services from outside the department, the
121 reasonable cost of which may be charged against the
122 applicant. The provisions of subsection (r), section nine,
123 article two of this chapter shall apply to examinations,
124 investigations and processing conducted under the authority
125 of this section. In addition, each captive insurance company
126 shall pay a license fee for the year of registration and a
127 renewal fee for each year thereafter of \$300.

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

134 (f) A captive insurance company shall notify the
135 commissioner in writing within thirty days of becoming
136 aware of any material change in information previously
137 submitted to the commissioner, including information
138 submitted in or with the license application.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor