

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4256**

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

5
6 (Originating in the Committee on the Judiciary)

7
8 [February 24, 2012]

9
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:
24 *Provided*, That all captive insurance companies, except pure captive
25 insurance companies, shall maintain their principal office and
26 principal place of business in this state: *Provided, however*, That:

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

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

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

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

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

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

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

21 ~~(7)~~ (8) Any captive insurance company may provide excess
22 workers' compensation insurance to its parent and affiliated
23 companies, unless prohibited by the federal law or laws of the
24 state having jurisdiction over the transaction. Any captive
25 insurance company, unless prohibited by federal law, may reinsure
26 workers' compensation of a qualified self-insured plan of its

1 parent and affiliated companies; and

2 ~~(8)~~ (9) Any captive insurance company which insures risks
3 described in subsections (a) and (b) of section ten, article one of
4 this chapter shall comply with all applicable state and federal
5 laws.

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

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

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

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

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

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

26 (B) Submit to the commissioner for approval a description of

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

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

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

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

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

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

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

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

26 (A) Such information may be discoverable by a party in a civil

1 action or contested case to which the captive insurance company
2 that submitted such information is a party, upon a showing by the
3 party seeking to discover such information that:

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

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

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

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

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

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

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

1 under the authority of this section. In addition, each captive
2 insurance company shall pay a license fee for the year of
3 registration and a renewal fee for each year thereafter of \$300.

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

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