WEST VIRGINIA CODE: §33-31-2

§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association, charter or other organizational document, may apply to the commissioner for a license to do any and all insurance comprised in section ten, article one of this chapter: Provided, That all captive insurance companies, except pure captive insurance companies, shall maintain their principal office and principal place of business in this state: Provided, however, That:

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

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

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

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

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

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

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

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

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

(10) A professional employer organization licensed pursuant to the provisions of article forty-six-a of this chapter may insure its risks for insurance coverage for accident and sickness, as

WV Legislature

such insurance coverage is defined under subsection (b), section ten, article one of this chapter, for all employees and covered employees through a captive insurance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

WV Legislature