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2012 MAR 30 PM 4: 13

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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

HB 4256

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(BY DELEGATES PERRY, ASHLEY, WALTERS AND HALL)

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[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

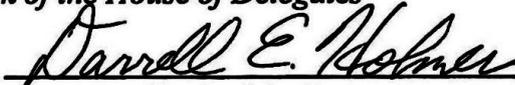
Originating in the House.

To take effect ninety days from passage.

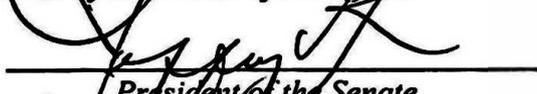
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SECRETARY OF STATE

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\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

The within is appended this the 30<sup>th</sup>  
day of March, 2012.

  
\_\_\_\_\_  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 28 2012

Time 10:00 am