

1 **Senate Bill No. 398**

2 (By Senator Minard)

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4 [Introduced January 24, 2012; referred to the Committee on

5 Banking and Insurance; and then to the Committee on the

6 Judiciary.]

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11 A BILL to amend and reenact §33-31-2 of the Code of West Virginia,

12 1931, as amended, relating to captive insurance; limiting risk

13 retention groups' risks on single subjects of insurance; and

14 requiring captive insurance companies to notify the Insurance

15 Commissioner of any material changes to certain information.

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

17 That §33-31-2 of the Code of West Virginia, 1931, as amended,

18 be amended and reenacted to read as follows:

19 **ARTICLE 31. CAPTIVE INSURANCE.**

20 **§33-31-2. Licensing; authority.**

21 (a) Any captive insurance company, when permitted by its

22 articles of association, charter or other organizational document,

23 may apply to the commissioner for a license to do any and all

1 insurance comprised in section ten, article one of this chapter:
2 *Provided*, That all captive insurance companies, except pure captive
3 insurance companies, shall maintain their principal office and
4 principal place of business in this state: *Provided, however*, That:

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

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

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

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

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

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

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

1 ~~(7)~~ (8) Any captive insurance company may provide excess
2 workers' compensation insurance to its parent and affiliated
3 companies, unless prohibited by the federal law or laws of the
4 state having jurisdiction over the transaction. Any captive
5 insurance company, unless prohibited by federal law, may reinsure
6 workers' compensation of a qualified self-insured plan of its
7 parent and affiliated companies; and

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

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

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

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

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

1 may be served.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (f) A captive insurance company shall notify the commissioner
22 in writing within thirty days of becoming aware of any material
23 change in information previously submitted to the commissioner,
24 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.