

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### Senate Bill 508

FISCAL  
NOTE

BY SENATOR TAKUBO

[Introduced February 1, 2019; Referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §29-12E-1, §29-12E-2, §29-12E-3, §29-12E-4, §29-12E-5, §29-12E-6, §29-  
 3 12E-7, §29-12E-8, §29-12E-9, §29-12E-10, and §29-12E-11, all relating to creating a  
 4 private state exposure property and casualty insurance company to provide insurance  
 5 coverage for the state’s property and casualty exposures.

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

**ARTICLE 12E. STATE EXPOSURE PROPERTY AND CASUALTY INSURANCE**  
**COMPANY.**

**§29-12E-1. Scope of article.**

1 This article applies only to the private state exposure property and casualty insurance  
 2 company created to provide insurance coverage for the state's property and casualty exposures.

**§29-12E-2. Findings and purpose.**

1 (a) The Legislature finds that:

2 (1) There is a need for appropriate management of the state's property and casualty  
 3 exposures;

4 (2) Lack of appropriate controls and mismanagement of claims settlement decisions has  
 5 left the state exposed and paying excessive sums to settle claims;

6 (3) As a result, the state has little say in the defense of claims levied against them and  
 7 decisions are made without vital input of the state as to the proper defense of the claim;

8 (4) These failures are particularly damaging to the state given the precarious state of the  
 9 state's finances;

10 (5) Access to prudent and fair claims administration and defense is of the utmost  
 11 importance to the citizens of West Virginia;

12 (6) A mechanism is needed to provide an enduring solution to this recurring  
 13 mismanagement;

14 (7) A private state exposure property and casualty insurance company or a similar entity  
 15 has proven to be a successful mechanism in other states for helping state agencies and nonstate  
 16 agencies secure liability insurance and for stabilizing the insurance market;

17 (8) There is a substantial public interest in creating a method to provide a fiscally  
 18 responsible claims management approach;

19 (9) There is substantial public benefit in creating a stable self-sufficient entity which is a  
 20 source of liability insurance coverage for all state properties, activities, and responsibilities;

21 (10) A stable, financially viable insurer in the private sector will provide a continuing source  
 22 of insurance funds to compensate victims and ensure proper coverage for state properties; and

23 (11) Because the public will greatly benefit from the formation of a private state exposure  
 24 property and casualty insurance company, state efforts to encourage and support the formation  
 25 of such an entity, including providing a low-interest loan for a portion of the entity's initial capital,  
 26 is in the clear public interest.

27 (b) The purpose of this article is to create a mechanism for the formation of a private state  
 28 exposure property and casualty insurance company that will provide:

29 (1) A means for the state and related entities to obtain property and casualty insurance  
 30 that is available and affordable; and

31 (2) A measure of control in decisions related to settlement and litigation of claims.

**§29-12E-3. Definition.**

1 For purposes of this article, the term “commissioner” means the Insurance Commissioner  
 2 created in §33-2-1 of this code.

**§29-12E-4. Authorization for creation of company; requirements and limitations.**

1 (a) Subject to the provisions of this article, a state exposure property and casualty  
 2 insurance company shall be created as a domestic, private, stock, for-profit corporation. As an  
 3 incentive for its creation, the company shall be eligible for funds from the Legislature in  
 4 accordance with the provisions of §29-12E-7 of this code. The company must remain for the

5 duration of its existence a domestic insurance company owned by its stockholders. Until any and  
6 all debts owed by the company are fully repaid to the state, the company may declare dividends  
7 to its stockholders, but only on the approval of a majority of the board of directors; the owners  
8 may not sell, assign or transfer any stock; the owners may not sell, assign or transfer substantial  
9 assets of the company.

10 (b) For the duration of its existence, the company is not a department, unit, agency, or  
11 instrumentality of the state for any purpose. All debts, claims, obligations, and liabilities of the  
12 company, whenever incurred, are the debts, claims, obligations, and liabilities of the company  
13 only and not of the state or of any department, unit, agency, instrumentality, officer, or employee  
14 of the state.

15 (c) The moneys of the company are not part of the General Revenue Fund of the state.  
16 The debts, claims, obligations, and liabilities of the company are not a debt of the state or a pledge  
17 of the credit of the state.

18 (d) The company is not subject to provisions of §6-9A-1 et seq. or §29B-1-1 et seq. of this  
19 code.

20 (e)(1) All premiums collected by the company are subject to the premium taxes, except as  
21 exempted under §29-12-13 of this code: *Provided*, That while the loan to the company remains  
22 outstanding, the commissioner may waive the company's premium taxes and surcharges if  
23 payment would render the company insolvent or otherwise financially impaired.

24 (2) The State Treasurer shall notify the commissioner when the moneys appropriated have  
25 been fully replenished, at which time the commissioner shall resume depositing premium taxes  
26 and surcharges diverted pursuant to subdivision (1) of this subsection in accordance with the  
27 provisions of §33-3-14 and §33-3-14a of this code.

**§29-12E-5. Governance and organization.**

1 (a) The Department of Administration shall implement the initial formation and organization  
2 of the company as provided by this article.

3           (b) From July 1, 2019, until June 30, 2020, the company shall be governed by a provisional  
4 board of directors consisting of the Director of the Board of Risk and Insurance Management or  
5 a representative designated by him or her, the Dean of the West Virginia University College of  
6 Law or a representative designated by him or her, three public directors, appointed by the  
7 Governor, and five public directors appointed by the stockholders.

8           (c) In addition to the 10 directors required by subsection (b) of this section, the bylaws of  
9 the company may provide for the addition of at least three directors who represent an entity or  
10 institution which lends or otherwise provides funds to the company.

11           (d) The directors and officers of the company are to be chosen in accordance with the  
12 articles of incorporation and bylaws of the company.

13           (e) The incorporators are to prepare and file articles of incorporation and bylaws in  
14 accordance with the provisions of this article and the provisions of chapters 31 and 33 of this  
15 code.

**§29-12E-6. Management and administration of the company.**

1           (a) If it is determined that the services of a third-party administrator or other firm or  
2 company are necessary to properly administer the affairs of the company prior to July 1, 2019,  
3 the provisional board of directors shall avail itself of any existing contracts entered into by the  
4 Board of Risk and Insurance Management to manage its affairs.

5           (b) The provisional board of directors may enter into a one- year contract with a third-party  
6 administrator or other firm or company with suitable qualifications and experience to administer  
7 some or all of the affairs of the company from July 1, 2019, until June 30,2020, subject to the  
8 continuing direction of the board of directors as required by the articles of incorporation and  
9 bylaws of the company, and the contract. Any contract entered into pursuant to this subsection  
10 must be awarded by competitive bidding not later than November 1, 2019.

11           (c) After July 1, 2019, if the company's board of directors determines that the affairs of the  
12 company have been administered suitably and efficiently, the company may enter into a contract

13 with a licensed insurer, licensed reinsurer, licensed health service plan, insurance service  
14 organization, third-party administrator, insurance brokerage firm or other firm or company with  
15 suitable qualifications and experience to administer some or all of the affairs of the company,  
16 subject to the continuing direction of the board of directors as required by the articles of  
17 incorporation and bylaws of the company, and the contract. All such contracts shall be awarded  
18 by competitive bidding.

**§29-12E-7. Initial capital and surplus.**

1 There is created in the State Treasury a special revenue account designated as the “State  
2 Exposure Property and Casualty Insurance Company Account” solely for the purpose of receiving  
3 moneys transferred from the West Virginia Board of Risk and Insurance Management Fund  
4 pursuant to §29-12-5(a)(11) of this code for the company's use as initial capital and surplus.

**§29-12E-8. Application for license; authority of commissioner.**

1 (a) As soon as practical, the company, notwithstanding being established pursuant to the  
2 provisions of this article shall file its corporate charter and bylaws with the commissioner and  
3 apply for a license to transact insurance in this state. any other provision of this code, the  
4 commissioner shall act on the documents within 15 days of the filing by the company.

5 (b) In recognition of the liability insurance crisis in this state at the time of enactment of  
6 this article and the critical need to expedite the initial operation of the company, the Legislature  
7 authorizes the commissioner to review the documentation submitted by the company and to  
8 determine the initial capital and surplus requirements of the company, notwithstanding §33-3-5b  
9 of this code. The commissioner has the sole discretion to determine the capital and surplus funds  
10 of the company and to monitor the economic viability of the company during its initial operation  
11 and duration on not less than a monthly basis. The company shall furnish the commissioner with  
12 all information and cooperate in all respects necessary for the commissioner to perform the duties  
13 set forth in this section and in other provisions of this chapter, including annual audited financial  
14 statements required by §33-33-1 *et seq.* of this code and fidelity bond coverage for each of the

15 directors of the company.

16 (c) Subject to the provisions of subsection (d) of this section, the commissioner may waive  
17 other requirements imposed on stock insurance companies by the provisions of this chapter as  
18 the commissioner determines is necessary to enable the company to begin insuring the state and  
19 its entities at the earliest possible date.

20 (d) Within 40 months of the date of the issuance of its license to transact insurance, the  
21 company shall comply with the capital and surplus requirements set forth in §33-3-5b of this code.

**§29-12E-9. Kinds of coverage authorized; risk management practices authorized.**

1 (a) Upon approval by the commissioner for a license to transact insurance in this state,  
2 the company may issue nonassessable policies of insurance, as defined in §33-1-10 of this code  
3 insuring the state property, activities and responsibilities. Additionally, the company may issue  
4 other types of casualty, property, or liability insurance as may be approved by the commissioner.

5 (b) On the transfer date:

6 (1) The company shall assume all responsibility for and defend, indemnify and hold  
7 harmless the Board of Risk and Insurance Management and the state with respect to any and all  
8 liabilities and duties arising from the assets and responsibilities transferred to the company.

9 (2) The Board of Risk and Insurance Management shall disburse and pay to the company  
10 any funds attributable to premiums paid for the insurance coverage, on state property, activities  
11 and responsibilities, to the company pursuant to subdivision (1) of this subsection, with earnings  
12 thereon, less paid losses and expenses, and deposited in the Board of Risk and Insurance  
13 Management Fund created by §29-12-10 of this code as reflected on the ledgers of the Board of  
14 Risk and Insurance Management.

15 (3) All funds to be disbursed to the state exposure property and casualty company shall  
16 be transferred pursuant to terms of a surplus note or other loan arrangement satisfactory to the  
17 Board of Risk and Insurance Management and the Insurance Commissioner.

18 (c) The company shall make policies of insurance available to the state, regardless of

19 practice type or specialty.

20 (d) Notwithstanding the provisions of subsection (b) or (c) of this section, the company  
21 may:

22 (1) Establish reasonable classifications of state entities, insured activities and exposures  
23 based on a good faith determination of relative exposures and hazards among classifications;

24 (2) Vary the limits, coverages, exclusions, conditions and loss-sharing provisions among  
25 classifications; and

26 (3) Establish, for a state entity within a classification, reasonable variations in the terms of  
27 coverage, including rates, deductibles and loss-sharing provisions, based on the insured's prior  
28 loss experience and current professional training and capability.

29 (e) The company shall establish reasonable risk management and continuing education  
30 requirements which policyholders must meet to be and remain eligible for coverage.

**§29-12E-10. Controlling law.**

1 To the extent applicable, and when not in conflict with the provisions of this article, the  
2 provisions of chapters 31 and 33 of this code apply to the company created pursuant to the  
3 provisions of this article. If a provision of this article and another provision of this code are in  
4 conflict, the provision of this article controls.

**§29-12E-11. Liberal construction.**

1 This article is enacted to address a situation critical to the citizens of the State of West  
2 Virginia by providing a mechanism for the speedy and deliberate creation of a company to begin  
3 offering property and casualty insurance to the state at the earliest possible date; and to  
4 accomplish this purpose, this article shall be liberally construed.

NOTE: The purpose of this bill is to create a private state exposure property and casualty insurance company to provide insurance coverage for the state's property and casualty exposures.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.