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HOUSE BILL NO. 2171

Offered January 8, 2003

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A BILL to amend and reenact §§ 38.2-1904, 38.2-1908, 38.2-1919, 65.2-801, and 65.2-802 of the Code of Virginia, relating to workers' compensation insurance; experience data for businesses engaged in bituminous coal mining.

 Patron—Phillips

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1904, 38.2-1908, 38.2-1919, 65.2-801, and 65.2-802 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1904. Rate standards.

A. Rates for the classes of insurance to which this chapter applies shall not be excessive, inadequate or unfairly discriminatory. All rates and all changes and amendments to rates to which this chapter applies for use in this Commonwealth shall consider loss experience and other factors within Virginia if relevant and actuarially sound; provided, other data, including countrywide, regional or other state data, may be considered where such data is relevant and where a sound actuarial basis exists for considering data other than Virginia-specific data.

1. No rate shall be held to be excessive unless it is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate applies.

2. No rate shall be held inadequate unless it is unreasonably low for the insurance provided and (i) continued use of it would endanger solvency of the insurer or (ii) use of the rate by the insurer has or, if continued, will have the effect of destroying competition or creating a monopoly.

3. No rate shall be unfairly discriminatory if a different rate is charged for the same coverage and the rate differential (i) is based on sound actuarial principles or (ii) is related to actual or reasonably anticipated experience.

B. 1. In determining whether rates comply with the standards of subsection A of this section, separate consideration shall be given to (i) past and prospective loss experience within and outside this Commonwealth, (ii) conflagration or catastrophe hazards, (iii) a reasonable margin for underwriting profit and contingencies, (iv) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, (v) past and prospective expenses both countrywide and those specifically applicable to this Commonwealth, (vi) the loss reserving practices, standards and procedures utilized by the insurer, (vii) investment income earned or realized by insurers from their unearned premium and loss reserve and the Commission may give separate consideration to investment income earned on surplus funds, and (viii) all other relevant factors within and outside this Commonwealth. When actual experience or data does not exist, the Commission may consider estimates.

2. In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

3. In the case of workers' compensation insurance rates for volunteer firefighters or volunteer lifesaving or volunteer rescue squad members, the rates shall be calculated based upon the combined experience of both volunteer firefighters or volunteer lifesaving or volunteer rescue squad members and paid firefighters or paid lifesaving or paid rescue squad members, so that the resulting rate is the same for both volunteer and paid members, but in no event shall resulting premiums be less than forty dollars per year for any volunteer firefighter or rescue squad member.

4. *In the case of workers' compensation insurance rates for persons employed in bituminous coal underground mining, the rates shall be calculated based upon the combined experience of employers who provide workers' compensation insurance through any of the methods identified in subdivisions 1, 2, and 3 of subsection A of § 65.2-801.*

4 5. In the case of uninsured motorist coverage required by subsection A of § 38.2-2206, consideration shall be given to all sums distributed by the Commission from the Uninsured Motorists Fund in accordance with the provisions of Chapter 30 (§ 38.2-3000 et seq.) of this title.

C. For the classes of insurance to which this chapter applies, including insurance against contingent, consequential and indirect losses as defined in § 38.2-133 (i) the systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups

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59 of insurers to reflect the requirements of the operating methods of any such insurer or group for any
60 class of insurance, or with respect to any subdivision or combination of insurance for which separate
61 expense provisions are applicable, and (ii) risks may be grouped by classifications for the establishment
62 of rates and minimum premiums. Classification rates may be modified to produce rates for individual
63 risks in accordance with rating plans that establish standards for measuring variations in hazards,
64 expense provisions, or both. The standards may measure any difference between risks that can be
65 demonstrated to have a probable effect upon losses or expenses. Notwithstanding any other provision of
66 this subsection, except as permitted by § 38.2-1908, each member of a rate service organization shall use
67 the uniform classification system, uniform experience rating plan, and uniform statistical plan of its
68 designated rate service organization in the provision of insurance defined in § 38.2-119.

69 D. No insurer shall use any information pertaining to any motor vehicle conviction or accident to
70 produce increased or surcharged rates above their filed manual rates for individual risks for a period
71 longer than thirty-six months. This period shall begin no later than twelve months after the date of the
72 conviction or accident.

73 E. Each authorized insurer subject to the provisions of this chapter may file with the Commission an
74 expense reduction plan that permits variations in expense provisions. Such filing may contain provisions
75 permitting agents to reduce their commission resulting in an appropriate reduction in premium. Nothing
76 in this section shall be construed to require an agent to reduce a commission, nor may an insurer
77 unreasonably refuse to reduce a premium due to a commission reduction as permitted by its filed
78 expense reduction plan.

79 § 38.2-1908. Rate making and delegation of filing obligation.

80 A. An insurer shall establish rates and supplementary rate information for any market segment based
81 on the factors in § 38.2-1904. A rate service organization shall establish prospective loss costs and
82 supplementary rate information for any market segment based on the factors in § 38.2-1904. An insurer
83 may use supplementary rate information prepared by a rate service organization and may use prospective
84 loss costs determined by the rate service organization with modification for its own expense and profit.
85 The insurer may modify the prospective loss costs based on its own loss experience as the credibility of
86 that loss experience allows.

87 B. An insurer may discharge its obligation to file supplementary rate information under subsection A
88 of § 38.2-1906 by giving notice to the Commission that it uses supplementary rate information prepared
89 and filed with the Commission by a designated rate service organization of which it is a member,
90 subscriber, or service purchaser. The Commission may by order require an insurer to provide
91 information in addition to that filed by the rate service organization. The insurer's supplementary rate
92 information shall be that filed from time to time by the rate service organization, including any
93 amendments to the supplementary rate information, subject to modifications filed by the insurer.

94 C. Every insurer shall adhere to the uniform classification system, uniform experience rating plan,
95 and uniform statistical plan approved by the Commission in the provision of insurance defined in
96 § 38.2-119. An insurer may develop subclassifications of the uniform classification system upon which
97 rates for insurance defined in § 38.2-119 may be made; however, such subclassification must first be
98 filed with and approved by the Commission. An insurer filing such subclassifications must certify to the
99 Commission that the data it produces can be reported in a manner consistent with the uniform statistical
100 plan and uniform classification system of its designated rate service organization.

101 D. *Rates established by an insurer for rates for insurance defined in § 38.2-119 for persons engaged*
102 *in a business classified in code 1222 (bituminous coal underground mining) as defined in the Standard*
103 *Industrial Classification Manual issued by the U.S. Office of Management and Budget, shall reflect, in*
104 *addition to such other factors as are required pursuant to this chapter, prospective loss costs data*
105 *provided by (i) an individual self-insurer as required by § 65.2-801 and (ii) a group self-insurance*
106 *association as required by § 65.2-802.*

107 § 38.2-1919. Collection of experience data; uniformity; compilations available to insurers and rate
108 service organizations.

109 A. The Commission may promulgate reasonable rules and statistical plans for each of the rating
110 systems on file with it, which may be modified from time to time. These rules and plans shall be used
111 by each insurer in the recording and reporting of its loss and countrywide expense experience, so that
112 the experience of all insurers may be made available, at least annually, in the form and detail necessary
113 to aid the Commission in determining whether rating systems comply with the standards set forth in
114 § 38.2-1904. The rules and plans may also provide for the recording and reporting of expense experience
115 items that are specially applicable to this Commonwealth and cannot be determined by prorating the
116 countrywide experience.

117 B. In promulgating the rules and plans the Commission shall give due consideration (i) to the rating
118 systems on file with it and (ii) to the rules and to the form of the plans used for rating systems in other
119 states so that the rules and plans may be as uniform as is practicable among the several states.

120 C. The Commission may designate one or more rate service organizations or other agencies to assist

it in gathering the experience data and making compilations of it. These compilations shall be made available, subject to reasonable rules promulgated by the Commission, to insurers and rate service organizations. Any rate service organization designated by the Commission shall retain the experience data and compilations of the experience data in the format and detail required by the applicable statistical plan and shall submit this information to the Commission upon request. *Any rate service organization designated by the Commission to gather and compile experience data for any classification of workers' compensation insurance that includes business firms engaged in a business classified in code 1222 (bituminous coal underground mining), as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget, shall report such data annually to the Commission for the preceding 5 years.*

D. Every rate service organization that has uniform (i) statistical plans, (ii) classification systems, (iii) experience rating plans, and (iv) manual rules filed and approved in accordance with the provisions of § 38.2-1913 D shall gather and compile the experience data of its members for insurance as defined in § 38.2-119. Each member insurer shall adhere to such uniform plans, systems, and rules of its designated rate service organization in the recording of its experience and the reporting of such information to the rate service organization. Each rate service organization that gathers and compiles information pursuant to this subsection shall be subject to the provisions of subsection C as to the availability, retention, and filing of the experience data of its members.

§ 65.2-801. Insurance or proof of financial ability to pay required.

A. Every employer subject to this title shall secure his liability thereunder by one of the following methods:

1. Insuring and keeping insured his liability in an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth;

2. Receiving a certificate pursuant to § 65.2-808 from the Workers' Compensation Commission authorizing such employer to be an individual self-insurer;

3. Being a member in good standing of a group self-insurance association licensed by the State Corporation Commission; or

4. Entering into an agreement with a professional employer organization for professional employer services which includes voluntary market workers' compensation insurance for coemployees of the professional employer organization and the client company procured from an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth. A professional employer organization may obtain voluntary market workers' compensation insurance in its own name for all coemployees which it shares or which are assigned or allocated to it pursuant to the agreement between the professional employer organization and the client company. The client company shall maintain separate voluntary market workers' compensation insurance insuring any and all employees of the client company not insured through the policy obtained by the professional employer organization.

B. An employer who satisfies the requirements of this section shall be certified by the Workers' Compensation Commission as an individual self-insurer and permitted to pay direct the compensation in the amount and manner and when due as provided for in this title. The Commission shall not certify an employer as a self-insurer unless it receives in such form as it requires satisfactory proof of the solvency of such employer, the financial ability of the employer to meet his obligations and the ability of the employer to pay or cause to be paid the compensation in the amount and manner and when due as provided for in this title. The Commission shall establish reasonable requirements and standards for approval of an employer as a self-insurer including, without limitation, the quality and amount of security deposits, bonds or indemnity, the amount of advance payments and reserves required, the investment of such funds, and the form and content of financial information to be submitted by the employer and the frequency of such submissions. For the purposes of any debt/equity ratio (total liabilities to net worth) minimum standard, a ratio of less than 2:2 shall be deemed satisfactory. The Commission shall, after notice and hearing, embody such requirements and standards and such other requirements as may be reasonably necessary for the purposes of this section in regulations. The Bureau of Insurance of the State Corporation Commission shall, at the request of the Commission, assist the Commission in establishing the reasonable requirements and standards for approval and certification of an employer as a self-insurer. The Workers' Compensation Commission may in its discretion require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

C. *The Commission shall not certify an employer that is engaged in bituminous coal underground mining as a self-insurer unless the employer agrees to submit to the State Corporation Commission, or to any rate service organization that the State Corporation Commission designates, experience data and compilations of the experience data with such frequency, in such format, and containing such detail as is consistent with the data provision requirements of § 38.2-1919.*

D. The State Treasurer shall be the custodian of securities deposited by the employer under the

requirements of this section, or under § 65.2-802, and for such services he shall receive a compensation of one-tenth of one percent per year of the amount of securities deposited with him, payable by or on behalf of such employers.

§ 65.2-802. Requirements for licensure as group self-insurance association; annual assessment.

A. Two or more employers having a common interest may be licensed by the State Corporation Commission as a group self-insurance association and permitted to enter into agreements to pool their liabilities under this title. The members of any such group self-insurance association may also enter into agreements to pool their liabilities for workers' compensation benefits which may arise under the laws of any other jurisdiction and other types of employers' liabilities for the death or disablement of, or injury to, their employees. Benefits payable by any such association for such members' liabilities under the laws of any other jurisdiction shall extend only to employees otherwise eligible for coverage under the provisions of this title.

B. The State Corporation Commission shall not license a group self-insurance association or grant authorization for an employer to become a member of such group unless it receives in such form as it requires satisfactory proof of the solvency of any such employer, the financial ability of each to meet his obligations as a member, and the ability of the group to pay or cause to be paid the compensation in the amount and manner and when due as provided for in this title and as may be agreed upon with respect to other types of employers' liabilities which may be authorized and provided hereunder.

C. Members of a group shall execute a written agreement under which each agrees to jointly and severally assume and discharge any liability under this title of employers party to such agreement. Agreements among the members shall be subject to approval by the State Corporation Commission; however, no such agreement nor membership in a group self-insurance association shall relieve an employer of the liabilities imposed by this title with respect to his employees. In addition to the rights of the association under such agreements, in the event of failure of the association to enforce such rights after reasonable notice to the association, the State Corporation Commission shall have the right independently to enforce on behalf of the association the joint and several liability of its members under this title and the liability of members for any unpaid contributions and assessments. The State Corporation Commission shall be entitled to recover its expenses and attorneys' fees.

D. Any person, firm, or corporation desiring to engage in the business of providing services for a group self-insurance association shall satisfy the State Corporation Commission of its ability to perform the services necessary to fulfill the employer's obligations under this title before it undertakes to provide such services to any group self-insurance association. The State Corporation Commission may from time to time review and alter any decision approving an employer as a member of a group or its approval of a group or of an agency servicing a group. The State Corporation Commission may in its discretion require the deposit of an acceptable security, indemnity, or bond or the purchase of such excess insurance or the ceding of reinsurance on a specific or aggregate excess of loss basis as may be required by the circumstances.

E. The State Corporation Commission may establish reasonable requirements and standards for the approval of a group self-insurance association and the administration of such associations including, without limitation, the quality, amount and accounting of security deposits, bonds, excess insurance and reinsurance, the membership in any group self-insurance association, the amount of advance payments and reserves required of group self-insurance associations, the investment of such funds, the form and content of financial information to be submitted by a group self-insurance association and the frequency of such submissions, and the terms of agreements between members of a group self-insurance association. *The State Corporation Commission shall not license a group self-insurance association, or grant authorization for an employer to become a member of such an association, that proposes to satisfy the obligations of employers engaged in bituminous coal underground mining to secure their liability established by this title, unless the association agrees to submit to the State Corporation Commission, or to any rate service organization that it designates, experience data and compilations of the experience data with such frequency, in such format, and containing such detail as is consistent with the data provision requirements of § 38.2-1919.* The State Corporation Commission may, after notice and hearing, embody such requirements and standards and such other requirements as may be reasonably necessary for the purposes of this section in regulations; however, any group self-insurance association entering into a reinsurance transaction pursuant to the provisions of this section shall be deemed an insurer for purposes of such transaction and shall be subject to Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2.

F. Notwithstanding any provision of this title to the contrary, each licensed group self-insurance association shall be assessed annually by the State Corporation Commission in like manner and amount to that provided by Chapter 4 (§ 38.2-400 et seq.) of Title 38.2 and shall pay such assessment in accordance with the aforesaid provisions of law; however, for the purposes of such assessment "direct gross premium income" of a licensed group self-insurance association shall be the aggregate of the amounts determined to be subject to the tax imposed by § 65.2-1006 on each employer member of such

244 association.

245 G. Notwithstanding the provisions of § 49-25, neither the State Corporation Commission nor any
246 other entity or person, as obligee under any surety bond required under this section or any regulation
247 adopted hereunder, shall be required to institute suit against an association as a condition precedent to
248 the surety's performance under the bond.

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